

Wearing more than one hat? State intervention during the teacher lockout in 2013

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Abstract

This article investigates the use of collective industrial conflict in the public sector by analysing the Danish teacher lockout in 2013. The social partners in the public sector in Denmark (and the other Scandinavian countries) engage in negotiations and reach agreements regarding wages and working conditions in accordance with a private model. This also applies to the use of the so-called weapons of conflict – strikes/blockades and lockouts/boycotts – in connection with labour disputes if the involved parties are unable to reach agreement through negotiations or mediation. But there is a big difference in the premises and conditions upon which collective industrial conflict proceeds when comparing the public and private sectors in Denmark. This article presents a critical analysis of the use of collective industrial conflicts in the Danish public sector in light of collective bargaining round and the teacher lockout in 2013. The article shows how the use of collective industrial conflicts in the public sector has a number of built-in systemic flaws, as the public employers are at one and the same time the budgetary authority and legislators. This is not a new finding, however, these multiple roles becomes problematic when public employers use the lockout weapon offensively in a combination with a state intervention to end the dispute as the case was during the teacher lockout in 2013. The article concludes with the presentation of a number of proposed adjustments for bringing the public bargaining model in balance such that open conflict is minimised.

Introduction – labour disputes and conflict resolution in the private and public sectors

Wages and working conditions in the public sector are generally regulated via collective agreements between the social partners. In fact, there is close to 100% collective agreement coverage in the Danish public sector, whereas the figure is around 70% for the private sector (Ibsen, Høgedahl and Scheuer, 2012). But collective agreements as the main way of regulating wages and working conditions is at the same time rather new to the public sector compared to the private sector, which has had rules for how the social partners voluntarily engage in collective bargaining since the renowned September Compromise of 1899 – the world's first general agreement - including rules for how and when the social partners can initiate labour disputes (Ibsen and Jørgensen, 1979). It was first in 1973 that a system of industrial relations with a mediation institute and labour court was established for the public sector. In this sense, the model of regulating wages and working conditions in Denmark has been developed in the private sector and subsequently adopted in the public sector, both with respect to collective bargaining and conflict resolution.

As argued in this article, however, there are major differences in the public and private sectors with respect to the use of collective industrial conflict. In contrast to the private sector, public employers are not merely employers but also the budgetary authority and legislators. This means that they have a number of special powers that create an asymmetrical balance of power between the social partners.

This article analyses the use of collective industrial conflict in the public sector on the basis of the 2012–13 teacher lockout. The theoretical perspective draws on economic theory about the rationale behind labour disputes, as illustrated by the Hicks (1932) strike model. The argument is that collective industrial conflict in Denmark, like in the other Nordic countries, has been developed on the background of experiences from the private labour market, which has a different logic and rationale as pertains to labour disputes and cannot be directly transferred to the public sector.

After a brief presentation of the data sources and method used to write this article, the collective industrial conflict system and its background are briefly described in the introduction as an integrated element in the conflict resolution system in the Danish collective agreement model, which was developed in the private sector. Subsequently, the theory and rationale behind the collective industrial conflict in the private sector are presented. I later examine how the collective industrial conflict has become part of the public bargaining model, including the principle

differences between the public and private sectors in terms of the use of strikes and lockouts to solve labour disputes. A critical analysis of the use of the corresponding collective industrial conflict in the public sector is then presented, as exemplified by the teacher lockout in the Danish school system in 2012–13. The article concludes with a presentation of possible adjustments to the present collective industrial conflict system in the public sector.

Data and method

The empirical data for critically assessing the utility of collective industrial conflict in the public sector draws on events prior to, during and after the collective bargaining agreement in the public sector in 2013 (CAB13). We have chosen the course of events surrounding the 2013 collective bargaining, as a number of interesting conditions and relationships were involved that give reason to raise questions about the conflict resolution model used in the public sector. First of all the teacher lockout in 2013 was the first time in history that public employers used the lockout weapon offensively and not just as a respond to a strike or strike warning posed by one or more trade union(s). Second, the teacher lockout was ended by a state intervention which is common in Denmark, however, in this case the law that supersede the prior collective agreement was very much unbalanced favouring the employers' demands.

The method used is a qualitative desk study of relevant documents published in connection with CBA13. There is first and foremost talk of primary sources in the form of official documents that are available from social partners involved, including documents used in connection with the exchange of demands. The article also uses documents published by public authorities and draws on four interviews with central negotiators carried out in December 2013. The interviews were carried out using a semi-structured questionnaire and aimed at acquiring knowledge about the bargaining process, which cannot be mapped out in the document study. In this connection, an important point to be made is that it has not been possible to obtain reports about the exchanges between the social partners in the mediation institute as the social partners are bound to secrecy with respect to these matters.

The context - The Danish agreement model and collective industrial conflict in the private sector

In order to carry out an analysis of the use of collective industrial conflict in the public sector illustrated by the teacher lockout, it is necessary to present a description of the background and

nature of the collective industrial conflict system as an integrated part of the conflict resolution system in the Danish bargaining model that is used in the private sector.

Historically, as mentioned in the introduction, the agreement model in the private sector builds on the *September Compromise of 1899*, which brought an end to a lengthy great lockout and became a kind of ‘industrial parliamentarism’ – a ‘constitution’ for how the Danish labour market is to be regulated in the future (Galeson, 1969; Ibsen and Jørgensen, 1979). The greatest victory of the trade union movement was partly being recognised as a party that had the right to enter into collective agreements and partly the right to engage in conflicts and the special protection of their elected union representatives in the workplaces. The employers’ greatest victory was the confirmation of their managerial right (*ledelsesret*) and the no-strike agreement (*fredspligten*) in the agreement period and the arraignment for Labour Court in the case of collective agreement violations. Basically both parties prevailed, however, as they both benefited from the collective bargaining model as compared to the statutory labour market models in other countries (Galeson, 1969).

Later in 1910 the social partners and the government agreed upon a distinction between ‘legal disputes’ and ‘interest disputes’. *The legal disputes* cover the situations in which there is already a collective agreement and a no-strike agreement thus applies, but where the parties disagree on the interpretation of the collective agreement or there is talk of a violation of the agreement. Collective industrial conflict – the right to strike and lockout and the right to establish blockades and boycotts – are therefore in principle reserved to solve the interest disputes; that is, the situations where either there is no collective agreement or it is expiring and must be renewed. The social partners therefore already reached agreement in 1910 that a fundamental rule for the entire Danish collective bargaining system is that when a collective agreement has been reached or is being renewed, the no-strike agreement in the collective agreement period automatically kicks in (Kristiansen 2014).

The use of industrial conflict was therefore agreed upon by the social partners in the private sector and it is based in a principle of parallelism: Both parties have somewhat equally balanced weapons available to them in case of collective industrial actions. In many other European countries the legal basis of the right to strike is found in the national constitution such as Italy or France while other countries have banned the use of lockout in the public sector like in Portugal (Scheuer 2006).

In 1910, the parties also reached agreement on establishing a state mediation system – a conciliation board – entrusted with mediating in conflicts of interest in cases where the parties cannot reach a

settlement. Extensive labour disputes did not merely affect the directly involved parties, as ‘third men’ also suffered, and the Danish Conciliation Board was therefore responsible for shortening and ending the open labour disputes. In certain cases, however, the Conciliation Board was unable to help the parties reach a settlement and end the disputes. In some of these situations, the legislative branch has chosen to end the conflict via regulatory intervention, as occurred in 1933, 1956, 1973, 1986 and 1998 (Ibsen, Høgedahl and Scheuer 2011).

This article deals exclusively with conflicting interests that can lead to strikes, lockouts or a combination of the two. It is also important to emphasize that this article address the conflict type ‘strikes versus lockouts’ as a traditional wage struggle and an institutionalised part of the agreement model despite knowing that strikes in particular can serve many other purposes (see e.g. Scheuer, 2006).

The rational basis for labour disputes - The Hicks model and strikes in the private sector

One of the oldest but still most commonly used models for the conduct of the parties involved in a strike was developed by English economist John Hicks in 1932 (Hicks, 1932). The strong appeal of the Hicks model is presumably to be found in its description of the process through which the parties successively make concessions to one another in order to reach an agreement. In figure 1, where wage levels are placed in relation to the duration of a strike, there are curves describing the behaviour of the trade unions and employers in the course of a dispute. The trade union’s ‘resistance curve’ displays the period in which union members are willing to maintain their wage demands instead of giving in and reducing their demands. The curve has a negative slope, as the costs of a strike increase as it wears on. If the duration of a strike is to be reduced, the unions must compromise on their demands. The employers’ ‘concession curve or schedule’ displays a collection of points on which the expected costs of continuing a strike and the expected costs of giving in to the trade unions’ demands balance out. The employers’ concessions curve has a positive slope, as they must offer greater wage increases in order to reduce the duration of a strike.

Figure 1: The Hicks model

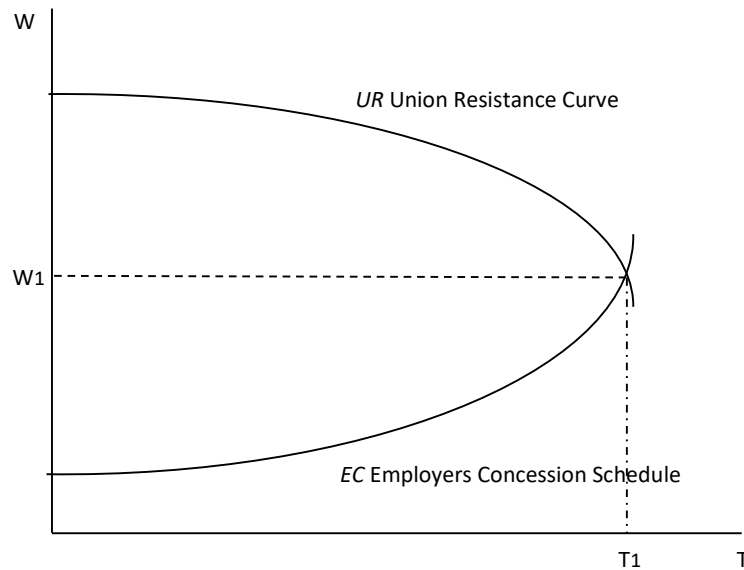


Figure 1 illustrates the relationship between wage levels (W) and the duration of a strike (T). The point where the two curves meet is the point of balance between the trade unions' wage demands and the willingness of the employers to raise wages (W_1 , T_1). There is therefore a basis for concluding a new collective agreement and the strike can end. The smaller the numerical slope of the two curves, the longer a strike will last. As strikes have negative economic consequences for third parties in addition to the two parties directly involved, one might – particularly in the Danish context – imagine that after having consulted with the parties to hear about their willingness to grant concessions to their respective counterparts, the government might choose to intervene and end the dispute with regulatory intervention (Due and Madsen, 2010).

The Hicks model is a strike model but can easily be supplemented with the employers' use of the lockout weapon in response to how the trade unions use the strike weapon. Many of the labour disputes in the Danish labour market have been started by employers initiating a lockout, to which the trade unions respond by striking (Ibsen and Jørgensen, 1979). In the Hicks model, the combination of a strike and lockout merely means that the numerical slope of the two curves grows and the length of the dispute, *ceteris paribus*, will be less, as both parties will feel the economic impact of the dispute harder as it continues.

The crucial point in the Hicks model – and, thus, in the respective rationales of strikes and lockouts – is that *both* parties feel the economic impact such that they become willing to make concessions to their counterpart, thereby reaching an agreement that stops or prevents the dispute. The finances

of the trade union members grow worse with each passing day, as strike pay is less than their daily wages and they must subsequently pay higher union dues to restore their war chest. Moreover, it is uncertain how many of the striking workers will be rehired after the dispute. Correspondingly, the employers lose revenue and profits as the strike continues and there are more permanent losses in terms of lost customers in domestic and export markets. In this sense, the conflicts contribute to peace, as the threat or initiation of a dispute will bring the parties to the negotiating table and get them to make concessions to one another in order to avoid more significant economic losses. In this sense, collective industrial conflict serves to make the parties accountable and reduces the number of disputes (Stamhus et al., 2010; Scheuer, 2006).

The concession curves in the Hicks model thus require power relations that are more or less symmetrical such that the one part does not possess the market power rendering them able to crush their counterpart. Should there be a monopoly on the one side of the negotiating table and considerable competition on the other, either there will be no disputes or they will be very short.

Economists have challenged the Hicks model since it was presented in 1932, as it – if the parties are willing to communicate their concessions to their counterpart and provide correct information about their economic situations and demands – strikes and lockouts will be irrational. The parties will be able to avoid losses and always be able to reach an agreement that satisfies both sides. Strikes and/or lockouts appear to demand that the one party has information that is not shared with their counterpart. Conflicts would therefore appear to be the result of asymmetrical information (Ashenfelter and Johnson, 1969). This issue will not be addressed further here, but it does not break essentially with the central points in the Hicks model about parties' economic losses and their willingness to make concessions in order to reach an agreement.

Comparison of labour disputes and conflict resolution in the private and public sectors

As strikes and lockouts also occur in the public sector, most recently in Denmark in connection with the collective bargaining agreements in 2008 and 2013, it is relevant – and the theme of this article – to compare the course of these disputes and the rationale behind the utilisation of the collective industrial conflict in the two sectors from a theoretical perspective. As demonstrated in the section above, the collective industrial conflict in the form of strikes/lockouts make good sense as a means to exhaust the parties simultaneously, thereby motivating them to reach a new collective agreement.

But is this logic found in the public sector and is the strike and/or lockout a suitable means to renew collective agreements in the public sector?

The problem in the public sector is that strikes and lockouts are not fought out in a marketplace and a negotiation situation in which the employers create a profit and earn supernormal profits. As opposed to the private sector, there is no extraordinarily large cake to fight over for the biggest piece. The Hicks model is therefore useless in the public sector, as it is not possible to lead a war of attrition between the parties until both or at least one of the parties capitulates and settles.

Add to this other significant differences in the ‘industrial relations system’ surrounding the two sectors. This is outlined in table 1:

Table 1. Comparison of the ‘industrial relations’ system in the public and private sectors in Denmark

	Public sector	Private sector
<i>Actors</i>		
Management	Elected politicians	Owner or owner-employed managers
Unions	Dominated by organizations for white-collar groups	Both organizations for white- and blue-collar workers
<i>Technology and market structure</i>		
Products	Services that are difficult to measure, prices that are not set by the market	Market prices for goods and services
Competition	Monopolies in local communities	Predominantly competition-dominated markets
Budgetary conditions	Public budgetary restrictions. Collective agreement system. Moratorium on new taxes. Tax payments regardless of strikes.	Profit margin as ‘buffer’ for wage increases. Regulation of product prices can change earnings.
<i>Power relations</i>		
Political impact on the counterpart ¹	Employer is also legislator, can always legislate the desired result. Trade unions can put political pressure on politicians through their members in order to ensure their objectives.	Management makes their decisions independently of the trade union. Lower degree of collective agreement coverage and regulation.
Economic	High degree of collective agreement coverage and the	Both parties suffer financially

¹ For more detail, see Hebdon and Stern (2003).

Instruments of conflict	employers save wages both during strikes and lockouts. Only the trade unions are hit economically – both during strikes and lockouts Right to strike and lockout with isolated exceptions for particular groups	during both a strike and a lockout The right to strike and lockout
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Table 1 lists the significant differences between the public and private sectors in key parts of the industrial relations systems with point of departure in the Danish case. The question here is whether these differences give cause for differences in the power position of the trade unions and employers in the two sectors? To begin with, the trade unions in the private sector are disciplined by market competition, and they only stand to gain in those cases where there is a profit margin forming a buffer or a market structure allowing companies to regulate prices. As indicated in the table, the budgetary conditions put together differently in the public sector. It is therefore worth discussing which perspectives this has for the trade unions in the public sector with respect to improving wages and working conditions for their members, possibly by using the strike weapon.

One view in relation to the discussions about differences in the budgetary conditions is that in contrast to most of the goods and services produced in the private sector, services produced in the public sector are marked by an inelastic demand due to their character as essential goods. Healthcare, defense and the police are examples. If the demand for services is inelastic, then the demand for labour is also. This indicates how the trade unions in the public sector basically have relatively greater power and ability to raise wages, as the trade unions do not risk their members losing their jobs. The opposite is the case in the private sector. The lack of discipline from the market mechanism on the background of the public unions is a favourable position for negotiations. This argument has been put forward as one of the main reasons why many countries have seen a more stable collective bargaining coverage in the public sector compared to the private sector (Bordogna, 2015).

In contrast to the opinion above, however, one might claim that the local suppliers (municipalities and regions in Denmark) are subject to strong budgetary restrictions via the collective agreement system, the moratorium on new taxes in effect since 2001, and the 2012 Budget law. Should the municipalities in Denmark be tempted to meet the wage demands of their employees, the budgetary

conditions mean that increased wages must be accompanied by adjustments to the amount of services produced and thus the number of employees. Obviously, this disciplines the unions organising employees in the public sector.

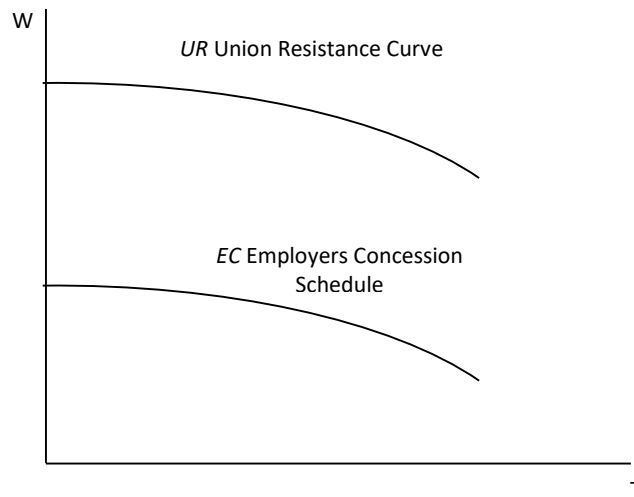
Another argument for a limited power position for the public unions relates to how the municipalities and regions enjoy something close to monopoly status as the suppliers of health and welfare services. While the municipalities and regions can basically be regarded as monopolies with respect to the supply of public services, which gives the unions some measure of wiggle room to increase wages at the negotiations table locally, thereby increasing tax revenues – here disregarding the moratorium on new taxes. This option is limited, however, by the ability of citizens and companies to move to other locations with lower taxes, which conversely undermines the negotiating position. Furthermore, in recent years, outsourcing, free-choice options, private hospitals have weakened the monopoly status of the municipalities and regions.

The reasoning above indicates (cf. also Freeman and Medoff 1984, p. 51), that, in the short term, the elasticity of the demand for labour in the public sector can be greater than in the private sector, as the public employers have no ‘buffer’, for example in the form of surplus profits or favourable positions in the product market, which allows increasing wages to be passed by the product prices. This undermines the negotiation position of the public organizations, *ceteris paribus*, as well as their opportunity to achieve a better collective agreement result by striking.

The trade union movement is further weakened in the public sector when it comes to the utilization of collective industrial conflict as a means to improving their collective agreements because of the asymmetrical power relations – both politically and economically – in the public sector. As emphasized above, there is a fundamental difference in the course of the dispute in terms of the economic losses and therefore an incentive to make concessions to one’s counterpart and ultimately reach an agreement. A strike in the public sector will affect the ability of public employers to produce services for the citizen, leading to dissatisfaction among their ‘customers’. But a strike will in most cases not cost the public employers money – to the contrary! They actually save wages while the trade unions empty their war chests. And should the public employers establish a lockout, as in 2013, the same pattern will repeat itself – the trade unions lose money while the public employers save on wages. While the trade union concession curve in a Hicks model falls from left to right and the employer concession curve will not – as in the Hicks model from the private labour

market – increase from left to right, but rather to the contrary will actually fall and have a decreasing slope, as the dispute will produce economic gains for the employers (cf. figure 2.).

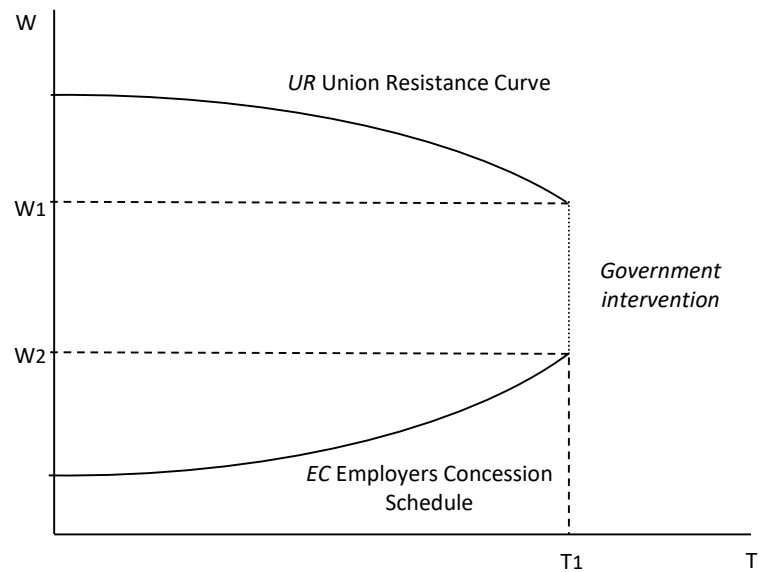
Figure 2 – Hicks model utilized in the public sector IR system



Economically, the power relations between the parties in the two sectors are therefore very different. While the economic power is fairly evenly distributed in the private sector, there is a clear asymmetry in the public sector in favour of the employers.

When it comes to political power, the distribution of power is even more in favour of the employers in the public sector, as the state can always legislate its way to a result that is beneficial to the public employers.

Figure 3 – The Hicks model – Strike ended by government intervention



The Kanslergade Agreement in 1933 was the first time a Danish government intervened and passed legislation in order to end a labour dispute. Since then, government intervention has brought an end to major disputes in 1956, 1973, 1986 and 1998, and two disputes involving nurses were stopped by legislative intervention in the 1990s (Ibsen in Jørgensen, 2014). The Danish government has typically intervened in a labour dispute with reference to ‘third party’ losses and socio-economic losses in the form of damage to Denmark’s competitiveness, a growing balance of payments deficit and increasing unemployment. History has shown that successive governments have allowed disputes to last longer out of respect for the self-regulation principle, but they have intervened when they have become convinced that it was no longer possible for the parties themselves to find a solution to the dispute in question. This requires special timing in relation to the public sector, as open disputes are often heavily politicized. Many had likely expected that the conflict in 2008 would first end when the government had intervened, which did not occur (Due and Madsen, 2010).

When a government ends a conflict by resorting to regulatory intervention, it has the character of binding arbitration. It is therefore up to the government to draw a line that dictates wages, working hours and so forth that make up the law that replaces the collective agreement until the next renewal of the agreement. In other words, the government is responsible for assessing how the parties are to be accommodated, as illustrated by the spread between W1 and W2 in figure 3. The political custom in Denmark is for the government to base its considerations on a settlement proposal or

outline from the Danish Conciliation Board and to consult the social partners in the drafting of the legislation (Ibsen, 2014).

The economic asymmetry between the parties in the public sector means that there are entirely different mechanisms at play in this context that determine in whose favour the pendulum swings in a dispute. Here, it is largely the public opinion that counts. Battles are won through strategic communication and spin in a struggle for public sympathy. Disputes in the public sector are therefore always heavily politicized, and the parties – or the one of the parties – can therefore be affected by negative public opinion.

The initiation of strikes in the public sector therefore builds on other motives and strategies than pressuring the employers to make larger wage increases and improved working conditions. The purpose of a strike can be to win sympathy and support in the population for specific collective agreement demands in order to press the politicians in the *Folketing* to, via legislation, meet the agreement demands. This strategy is called ‘forum shopping’ – where the trade union bets on both sides: the employers and the *Folketing* – in order to optimize their negotiating strategy. In these situations, the trade union negotiators spend more time trying to influence the politicians in the *Folketing* than to pressure the employers to meet their demands. The trade unions used the forum shopping strategy most recently during CBA08 in the public sector (Due and Madsen, 2010), and during CBA13, DLF in particular tried to pressure the Danish politicians to intervene in the great lockout and, via government intervention, to find a compromise between the views of the two parties (Mailland, 2014). The forum shopping strategy cannot be accommodated in the Hicks model, as one or both parties are jumping back and forth between the collective bargaining wage struggle and the political game in the *Folketing* as a way of meeting their objectives.

The most significant difference between utilizing the conflict weapon as a solution in negotiating disputes is, thus, the asymmetrical power relations in the economic and political spheres in the public sector, as the public employers have their thumb on the power in both spheres (illustrated in figures 1 and 2). This would mean, *ceteris paribus*, that the traditional conflict weapons – strikes and lockouts – are unsuited for solving conflicts in the public Danish collective bargaining model. In our opinion, the teacher conflict in CBA13 is a good example of this.

Utilization of the conflict weapon in the public sector – the great lockout in CBA13

In the following, I will demonstrate the problems involved in using the right to collective industrial conflict in the public sector if the conflict weapon is used according to the rules in the private sector. I use the great teacher lockout in CBA13 as an example.

The public employees had very low expectations to CBA13, as the crisis awareness still prevailed in 2013. The public therefore expected a very peaceful collective agreement process with a prompt and narrow settlement that would be voted through without much drama by a large majority from both parties. The fact that it did not unfold in this manner throughout the public sector was primarily due to two factors:

The employers' new and very aggressive negotiating proposal and negotiating strategy and the strong coordination between the demands formulated by the Ministry of Finance and the negotiation strategy, and

The employers' interaction with the government's political work with reform.

In the following, I will merely describe and analyse the negotiations at the municipal level, well aware that the public employers – the Ministry of Finance/Agency for Modernization (Moderniseringsstyrelsen) and Local Government Denmark (LGDK) – coordinated their objectives and negotiation strategies in the state and municipal levels and that the LGDK Strategy was in many ways subordinate to the strategic objectives of the Ministry of Finance (Ibsen, 2013; Mailand 2014).

The LGDK demands on the municipality area were based on the economic crisis and were in accordance with the LGDK long-term employer policy. LGDK was gambling that the classic employer demands, such as more local wage formation, more space for local management, increased productivity and efficiency and an increased labour supply. LGDK also wanted to reduce the number of protected trade union representatives (shop stewards) and that the cooperative systems could be simplified and include fewer meeting days. But the hotbed for a possible conflict was located somewhere else altogether. It was hidden in the sentences: 'the simplification of the arrangement of work is the key component to increasing productivity in the municipalities. The rules for working hours must therefore not hamper everyday practice or inhibit change and readjustments in the local government services' (KL, 2013 own translation). These two sentences were generally directed at the municipal workplaces, but they were particularly directed towards the

everyday operations in the public elementary school system, and the LGDK demands to the school teachers were clear: Away with the special rules on how working hours could be used and rules allowing local agreements on working hours. All of the agreements on preparation time were thus supposed to lapse and be replaced by a general agreement on working hours: Teachers have a 37-hour work week. According to LGDK, in principle – like other public sector employees – the teachers were to be present at the school 37 hours per week. The individual teacher, in dialogue with the school management, should thereafter make agreements on how work is to be organized, where the manager, due to their managerial right has the final word. It later became apparent that the Agency for Modernization had made the same rigid demands on the state level.

LGDK's main demand in the elementary school area was therefore a strong, manager-controlled model, which in reality took power away from the school teachers, their union representatives and organisations with respect to the organization of work and how work hours are used. The demands made by the Agency for Modernization were entirely synchronized with those made by the teachers on the state level, where upper secondary schools dominated, which laid bare the strong coordination of demands at an early stage in the negotiation process together with the strategic objectives shared by the Ministry of Finance/Agency for Modernization and LGDK.

With respect to the interaction between the public sector employers and the ongoing reform work taking place in the government, it quickly became apparent to the public that the government's high-profile elementary school reform was politically and financially inextricably linked with the results of the negotiations, particularly those between LGDK and the Danish Union of Teachers (Danmarks Lærerforening – DLF). Just days before the parties exchanged demands, the government, via Ministry of Education Christine Antorini, presented its proposal for elementary school reform. It quickly became clear that the reform was underfunded and depended on the agreements regarding teacher working hours being changed in the upcoming collective bargaining agreements. But the reform work had already had consequences for collective bargaining well before the negotiations started. Back in January 2012, the government had established a working group under the Ministry of Finance that was entrusted with investigating the opportunities for 'getting their money's worth. The working group consisted of representatives from the government presented by the Agency for Modernization and the municipal employers (LGDK). In this connection, the Danish Union of Teachers (DLF) expressed their shock over not having been invited to participate in the negotiations and pointed out that the working group could be seen as a

two-part arrangement (government–employers), but with a blind partner in the game (the teachers/wage earners), as opposed to the three-part arrangement otherwise described in the government platform (Regeringen, 2011). Access to government documents later revealed that not only had the reform group discussed the content but also the financing of the reform – and not least how possible courses of negotiations could come to look in connection with the collective bargaining, including the coordination of a conflict and government intervention.

In that sense, CBA13 in the public sector was heavily politicized from the beginning, which came to influence the course of the negotiations. The strategy of the municipal and state employers appeared to be to isolate the teacher union (DLF) and take a head-on confrontation over the existing working hours rules in elementary schools (Mailland, 2014). At no point did the parties actually engage in negotiations, and after a ‘paper-free tour’ through the conciliation institution that resulted in an exit without any proposed mediation on the table, the lockout that LGDK had threatened with in accordance with the rules of the main agreement came into effect. The lockout was extensive, involving almost 67,000 teachers on the municipal and state levels who were covered by the collective agreement. It was precisely because the lockout was so extensive that the teachers were not able to counteract by striking, as all of the teachers who were covered by the collective agreement had already been locked out. What the teachers could do was to ask other trade unions and professional associations to help by initiating sympathy disputes. This is an opportunity that exists across the industrial sector and the main organizations. But DLF never requested the announcement of sympathy disputes, apparently due to the fact that the DLF leadership was worried that such a request would be turned down, which would display DLF as being even more isolated and weakened (Mailland 2014).

After 25 days, the dispute was ended on 26 April by government intervention, which met all of the significant LGDK demands regarding changes to working hour rules. DLF was not included in the drafting of Act 409, as it came to be known. This legislation abolished the rules for teachers’ working hours, and the teachers received a modest salary increase in addition to the general settlement, protective rules and DKK 1 billion (ca. €134 million) earmarked to boosting the teachers’ competence levels.

This paved the way for the financing of parts of the school reform and – in the opinion of the government and LGDK – the introduction of a managerial right and working hour rules that applied

throughout the public sector. ‘Game over’ and new power relations and working conditions in Danish elementary schools.

The Great Teaching Lockout – casting light on the systemic error in the conflict resolution model in the public sector

We can conclude that the dispute on the elementary school area as part of CBA13 made it likely that the copying of the conflict resolution model applied in the private sector to the public sector was a problem on a number of levels and could lead to solutions that did not harmonize with the thoughts and ideas behind the construction of the Danish model of collective bargaining in the public sector. As shown above, this relates to how the material and structural conditions that the rationale behind the private sector model for conflict resolution depends upon are not present in the current conflict resolution system in the public sector. As illustrated using Hick’s strike model, the public sector is struck by systemic errors when it comes to:

- **The economic resources – the employers as budgetary authority**

The purpose of the conflict is to inflict losses on one another in order to achieve successive concessions from both sides such that the parties approach one another enough that a settlement becomes possible. There will typically be talk of economic losses for both parties regardless of whether there is talk of a strike or lockout if the conflict takes place in the private sector, but in connection with the great lockout, it was only the one part – the teacher’s union – that would suffer financial losses, whereas especially LGDK would stand to gain from a lockout via saved wages. The total savings amounted to billions, while the locked out teaching organizations had to borrow money in order to cover the missing wages. The employers in the public sector are also the budget authority, meaning that the public coffers are in principle inexhaustible, whereas private companies can be threatened by bankruptcy should disputes occur. The strike as a weapon of conflict thus lacks its most important feature: *the increasing financial losses on both sides of the front line are in that sense unsuited to solving conflicts in the public sector.*

- **The political power – the employers as legislators**

As described above, the great lockout was brought to an end by government intervention and the passage of Act 409. There is really nothing new about major disputes being ended by government intervention. As also describe above, this is actually a part of the Danish agreement model. The

problem with government intervention in disputes in the public sector, however, is that the employers on the state level enjoy the parliamentary power to take action. As it is said in Danish, there is nobody above or alongside the *Folketing*. Whoever happens to be presiding over the government must therefore be able to balance the two roles as employer and legislator; the point being that there are no institutional rules or conditions to ensure this. The system relies on soft regulation in the form of social trust between the parties, which requires that the government refrain from speculating in the two roles and confusing its employer interests and political ambitions. Another relevant factor is the hierarchy among the public employers. From the end of the 1990s and up through the 2000s, the state has developed ever-increasing ‘micro-management’ of especially the municipal finances through legislation – including the 2012 Budget – via the coordinated regulation of the respective collective bargaining carried out by the municipal and regional authorities. The Agency for Modernization and thereby the Ministry of Finance has assumed a more pronounced ‘big brother’ role in the collective bargaining in the public sector. The increasingly hierarchical conditions between the public employers can be used strategically to implement national political ambitions on the municipal level.

The intervention in the 2013 great lockout followed the pattern of the government intervention in previous conflicts but was atypical on multiple parameters. Its content closely resembled the LGDK demands regarding the renewal of the collective agreement (corresponding to wage level W2 in figure 3), and neither party – as is otherwise custom – had any influence on the drafting of the legislation. This was made possible due to the absence of a proposed settlement from the conciliator. It is otherwise political custom in Denmark that if a government intervenes in a union conflict, the most recent settlement proposal, which is available from the conciliator, is the basis for a solution. The argument is that doing so respects the parties’ self-regulation. Without a settlement proposal, however, the government had a free pen, so to speak, and was thus able to write a new collective agreement via the legislation without having to refer to existing agreements or drafts.

DLF was not consulted at all, which in turn provides support to the theory about how a master plan had existed from the outset of CBA13 for the elementary schools, also including how the dispute was supposed to end (Ibsen in Jørgensen, 2014; Mailand, 2014).

All told, we can conclude that the course of events surrounding CBA13 was a veritable demonstration of power, staged and carried out by the Ministry of Finance/Agency of Modernization, with LGDK as a willing partner. This then involuntarily demonstrated how the use

of collective industrial conflict on the basis of the logic drawn from the private sector did not fit with the regulatory logics, norms, rules and customs prevailing in the public sector. In some ways, there is talk of a systemic error when actors in the public sector unquestioningly copy the conflict resolution model used in the private sector. The cause is the asymmetrical power relations on both the economic and political levels. The systemic error that has been identified must be corrected, and it is therefore relevant to investigate whether there are correctives and/or alternatives to the current conflict resolution system in the public sector.

Conflict resolution models in the public sector – alternatives to the current system

We can see, then, that when the public agreement and conflict resolution model is operated according to a private model, a number of systemic errors are adopted that can only be viewed as inappropriate and dysfunctional.

In the final section, we will therefore discuss the other alternatives that exist to the current conflict system. We believe that this discussion is urgent, not only in the light of CBA13 but also for the sake of the functionality of the collective bargaining agreement and conflict resolution model in the public sector in the future. We make particular note of how the public sector is dealing with ‘modernization,’ which includes ‘a simplification of the rules established by the collective bargaining agreement so that barriers for a modern management and personnel policy are removed and there are better frameworks for solving problems on the state, municipal and regional levels’, as stated in a government decision from 2011 (Regeringen, 2011). This modernization via a simplification of the rules set by collective agreements is expected to contribute to savings of DKK 12 billion by 2020, as presented in the government ‘Vækstplan DK’ (Plan for Danish Growth, Regeringen, 2013). The political interest in abolishing the central agreements on wages and working conditions is therefore pronounced.

Add to this how we have experienced an increasing polarization of the collective bargaining in recent years as the collective agreements have grown broader and include an increasing number of the classic welfare arrangements, including pensions, maternity funds and so forth (Ibsen, 2014). On that background, the political interest in the content and outcome of the collective agreements is therefore also increasing.

On the basis of the analysis presented above, we present a number of proposals in the following for adjustments and changes to the current collective bargaining and conflict resolution system used in

the public sector, which can contribute to strengthening the model by ensuring free and depoliticized negotiations, thereby limiting open labour disputes for the benefit of the parties and society in general. It is important to emphasize that this list is by no means exhaustive and that some of the proposals are mutually exclusive, while others supplement one another.

- **New general agreement constructions**, which grant *special consideration to the double role played by employers in the public sector*.

Firstly, it seems reasonable to discuss whether the right of employers to collective industrial conflict should/can be eliminated or moderated. Other countries have placed far more severe restrictions on the role of the employer in the public sector than is the case in Denmark. Some countries (Portugal, Italy) have completely prohibited the use of lockouts in the public sector, while others have highly restrictive conditions for the use of collective weapons, and the rules of the game are generally arranged in most places in order to counteract power asymmetries (Elvander, 2002; Hebdon and Stern, 1998). One might imagine that the lockout might be reserved for use as a response to the right to strike. Another variation could be that the wages saved by the employers should 'remain in the system' and be earmarked for the continued education of the locked out employees or an expansion of the staff so that the economic consequences of the conflict would be more evenly distributed.

Increased involvement of third parties with greater power granted to the Conciliation Board and the use of compulsory/voluntary arbitration. Another way to go is via the greater involvement of a third party with, for example, greater power in the Conciliation Board and/or the use of compulsory/voluntary arbitration. For example, the Conciliation Board could be given more power to make a settlement proposal or initiate compulsory. At the same time, the mediation proposals can be made a binding starting point for any possible government intervention (Stokke and Thornqvist, 2001).

A more radical change would be to eliminate the collective industrial conflict in the public sector entirely, to be replaced by compulsory arbitration. Using a strike as a weapon in a traditional wage struggle to increase the salary scale in the public sector is already ineffective in the long term as long as trade unions and professional associations have taken the position that they will fight to maintain the regulatory regime. If the trade unions strike their way to wage increases that exceed the average wage increases in the private sector, the public wage increases will automatically be

reduced. Such events occurred after CBA08 in the public sector, resulting in dramatic wage increases while shortly thereafter, in 2009, the private sector was struck by the global financial crisis, which led to a significant fall in private sector wage increases. If the unions in the public sector secure wage increases via disputes and these increases outpace the increases in the private sector, they will not be allowed to retain these gains, and a traditional wage struggle in the public sector therefore makes little sense. The power of being able to strike is therefore correspondingly limited, and the same applies for the collective industrial conflict. Its elimination would therefore be a limited loss for the union movement, and if the right to lock out is abolished at the same time, then the total gain for the trade union movement is positive. Conversely, the power of the employers is more significantly restricted, and if the alternative to eliminating the collective industrial conflict is the introduction of compulsory arbitration, then regulatory action with a one-sided bias in favour of the employers is also reduced. All told, it would therefore appear as though the trade union movement stands to gain the most from the elimination of the collective industrial conflict. It is also clear that the abolition of collective industrial conflict will benefit the ordinary citizen as the third party, who often become hostages in an open labour dispute in the public sector.

New negotiations structure and strengthening of the trade unions' power to negotiate, which on the employer side removes or limits the double role of the employers as both employers and legislators, and on the employee side improves the coordination and solidarity across cartels and federations.

As the analysis shows, one of the systemic errors is that the public employers are also legislators and that the Danish system has not granted particular consideration to this double role. In Sweden, for example, the Swedish Agency for Government Employers (Arbejdsgiververket) was established in 1994, which is a public employer authority under the Ministry of Social Affairs that is intended to ensure the 'arm's length' principle between politicians and public employers in order to ensure open, free and depoliticized negotiations. An assessment made in connection with the 20th anniversary of the Swedish Agency for Government Employers shows that the Swedish experiences are generally positive and regarded as an important stage of development of the public, Swedish agreement model (Arbetsgivarverket, 2014).

Finally, then, it is obvious to point out that the public wage earner organizations can get far with greater unity and by coordinating their negotiating strategy. While as mentioned above there was a very close partnership between Ministry of Finance and LGDK before and during the collective

bargaining, the corresponding coordination on the side of the trade union movement was remarkably weak. The so-called CFU community is strongly coordinated internally when it comes to reaching settlements, while the internal coordination in KTO has been weak and it has been up to the individual association or union whether or not it will accept the general KTO settlement or go solo and possibly end up in a dispute. The coordination between CFU and KTO has been correspondingly weak, as for example during CBA13, and strong coordination – partly internally in KTO/the current negotiations community, partly between CFU and the negotiations community – could be able to strengthen the total bargaining power of the trade union movement in relation to the corresponding power of the employers. CBA15 in the public sector revealed how the negotiations community appeared more united than during CBA13, and if the trade union movement is also willing to use the sympathy-dispute weapon, the power of the trade union movement in the collective agreement game will grow much stronger; although with the caveat that as long as the regulation arrangement exists, the power of the strike in labour disputes will be relatively limited.

We have examined a number of proposals in the above as to how the public collective agreement model can be brought into balance in order to ensure meaningful negotiations marked by trust between the parties and to reduce open labour disputes that cost society and citizens dearly as third parties.

References

- Arbetsgivarverket (2014) *Från politisering till professionell arbetsgivarroll Arbetsgivarpolitik i statlig sektor 1994–2014*, DanagårdLiTHO.
- Ashenfelter, O., & Johnson, G.E. (1969). Bargaining theory, trade unions, and industrial strike activity. *The American Economic Review*, 35-49.
- Due, J., & Madsen, J. S. (2003). *Fra magtkamp til konsensus: Arbejdsmarkedspensionerne og den danske model*. Copenhagen: DJØF Publishing.
- Due, J., & Madsen, J.S. (2006). *Fra storkonflikt til barselsfond: Den danske model under afvikling*. Copenhagen: DJØF Publishing.
- Due, J., Madsen, J.S., & Jensen, C.S. (1993). *Den danske model: En historisk sociologisk analyse af det kollektive aftalesystem*. Copenhagen: DJØF Publishing.
- Freeman, R.B., & Medoff, J.L. (1984). *What Do Unions Do?* New York: Basic Books.
- Galenson, W. (1969). *The Danish system of labor relations: A study in industrial peace*. Russell & Russell.
- Hebdon, R.P., & Stern, R.N. (1998). Tradeoffs among expressions of industrial conflict: Public sector strike bans and grievance arbitrations. *Industrial & Labor Relations Review*, 51(2), 204-221.
- Hebdon, R., & Stern, R. (2003). Do public-sector strike bans really prevent conflict? *Industrial Relations: A Journal of Economy and Society*, 42(3), 493-512.
- Hicks, J.R. (1932) *The Theory of Strikes*. London: Macmillan.
- Ibsen, F., Høgedahl, L., & Scheuer, S. (2011). *Kollektiv handling*. Samfundslitteratur.
- Ibsen, F., & Jørgensen, H. (1979). *Fagbevægelse og stat*, bd. I-II. Copenhagen: Gyldendal.
- Jørgensen, H. (ed.) (2014). *Arbejdsmarkedsregulering*. (1 udg.) Copenhagen: DJØF Publishing.
- Mailand, M. (2014). *Overenskomstforhandlinger under pres – OK2013 i den offentlige sektor*.
- Moderniseringsstyrelsen og CFU (2012), 'Serviceeftersynet af de overenskomst- og aftalemæssige rammer i staten' http://www.modst.dk/ServiceMenu/Nyheder-og-presse/Nyhedsarkiv/OEkonmistyrelsen/~/_media/Nyheder/2%20halv%C3%A5r%202012/Serviceeftersyn/F%C3%A6lles%20indledning%20serviceeftersyn.ashx

Produktivitetskommissionen (2013), 'Analyserapport 3: Styring, ledelse og motivation i den offentlige sektor. Publikationer september 2013.

<http://produktivitetskommissionen.dk/media/151231/Analyserapport%20til%20web.pdf>

Regeringen (2013), 'Vækstplan DK, Stærke virksomheder, flere job

http://www.fm.dk/publikationer/2013/vaekstplan-dk-staerke-virksomheder-flere-job/~media/Publikationer/Imported/2013/V%C3%A6kstplan%20DK/v%C3%A6kstplan%20DK_st%C3%A6rke%20virksomheder%20flere%20job_web.pdf

Regeringen, Akademikerne, Danske Regioner, FTF, KL og OAO (2013), 'Principper for samarbejde mellem parter på det offentlige arbejdsmarked om modernisering'

<http://oim.dk/media/502155/Principper%20for%20samarbejde%20mellem%20parter%20p%C3%A5%20det%20offentlige%20arbejdsmarked%20om%20moderniserin1.pdf>

Scheuer, S. (2006). A novel calculus? Institutional change, globalization and industrial conflict in europe. *European Journal of Industrial Relations*, 12(2), 143-164.

Stamhus, J., Scheuer, S., & Christensen, S. (2010). Tre strejker i det offentlige – en komparativ lønmodtager-investeringsanalyse. *Nationaløkonomisk tidsskrift*, 147(3), 360-374.

Stokke, T.A., & Thornqvist, C. (2001). Strikes and collective bargaining in the Nordic countries. *European Journal of Industrial Relations*, 7(3), 245-267.