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Labour Relations in the Academy: A Case Study at the University of Saskatchewan

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In the wake of a protracted period of faculty unrest at the University of Saskatchewan, two decisions of the province's Labour Relations Board^{1,2} and an award of a sole arbitrator³ will have more enduring significance than the dispute that engendered them. In this paper I propose to consider this trilogy and comment on its importance in an assessment of labour relations in an academic setting.

I. The Background

It was in a troubled economic climate that University administrators and faculty representatives sat down in June of 1987 to begin negotiations for a new collective agreement to be in effect from July 1st of that year. The announcement three months earlier by the province's Minister of Finance of a two-year wage freeze for public sector employees signalled little or no increase in the University's operating budget, and the stated expectations of the two parties were far apart. The Faculty Association sought terms on salaries and benefits that were estimated to represent an 11 percent cost increase, while the administration was prepared only to continue the incremental and merit pay structure which, without changes to salary scales, represented a two percent increase in costs.

Nine bargaining sessions between June, 1987 and February, 1988 did not close this gap between the parties, and with the end of the academic year in sight, the Faculty Association moved quickly to take job action. Study sessions were held on March 17 and 21, and a vote was taken on a ballot calling for strike action up to and including a full withdrawal of services. Immediately following the counting of 424 votes in favour and 412 votes opposed, the Faculty Association announced it had opted for

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Those who assisted me in the preparation of this paper might prefer to remain anonymous. I am happy to oblige, though I am no less grateful for their kind assistance.

1. *The University of Saskatchewan v. The University of Saskatchewan Faculty Association* (Saskatchewan Labour Relations Board, 1989).

2. *The University of Saskatchewan Faculty Association v. The University of Saskatchewan* (Saskatchewan Labour Relations Board, 1989).

3. *In the Matter of an Arbitration of a Grievance of J.R. Miller Between the university of Saskatchewan Faculty Association and the University of Saskatchewan*. Award. 1989.

the full withdrawal of services and, beginning on March 28, about fifty percent of its members walked off the job. The strike lasted for two weeks and was ended by back-to-work legislation⁴ one day before final examinations were scheduled to begin.

The capacity of the Faculty Association at the University of Saskatchewan to lead its membership to take strike action had been increased by conditions which could not be addressed through collective bargaining, but which nonetheless could influence its success or failure. Faculty morale had been undermined by the impact of years of financial restraint on academic programs as well as on their paycheques, and an outdated governance apparatus⁵ deprived the University of an academic forum in which to address matters of concern to the institution as a whole. The only organized voice on campus for the expression of faculty concerns and frustrations was the Faculty Association, and its strategy was to attribute responsibility for the university's plight solely to its collective bargaining counterpart — an administration it denounced as incompetent if not malevolent.⁶

But there was another condition necessary for the strike. The disrepair of the University's governance structure did not deprive only the faculty of a collegial forum in which to address their concerns. It deprived the administration of the same thing. The University's Council was a body more suitable for mischief than it was for deliberation and debate,⁷ and yet senior officers in the institution did not seek, let alone find, a substitute for it. This failure of the administration to communicate effectively with its faculty meant that there was no broadly based, informed discussion within the academic community of the difficulties facing the university. Meetings of the Faculty Association membership resembled pep rallies for job action more than they did informed debate on the institution's difficulties. And when the administration was reluctant even to take timely and public issue with the Faculty Association attack — including misrepresentations that could have been

4. S. S. 1988-89, c. U-7.1.

5. The problems are documented in a report of a university working group. See *Governing the University of Saskatchewan: Tentative Proposal for Change* (1987), amended and released as a final report on *Governance* by the University's Issues and Options task force in March, 1990.

6. The consequence of this strategy was that "the political repercussions (of the dispute) were internalized within the university" and the government escaped blame for the chronic underfunding of higher education. See B. Fairburn, "Post-Secondary Trauma: Higher Education in Saskatchewan, 1982-89" in Biggs and Stobbe, eds., *Devine Rule in Saskatchewan* (1991), at p. 229.

7. *Ibid.* It was described by the working group as governance by mass meetings (all of the more than 1,000 full time faculty are included as members). One of the disadvantages is that "participation is erratic. It depends on the agenda or ... on whose ox is being gored." (p. 8).

rebutted with ease⁸ — it unwittingly strengthened the support for strike action.

Legislation ended the work stoppage but it did not end the dispute. On April 8, the last day of the strike, picket lines came down as striking members of the Faculty Association (all of whom were also members of the University Council) went to the Council meeting scheduled for that day to support the motion of one member calling for the dismissal of the University's President and three Vice-Presidents.⁹ Mediation, conciliation, renewed and failed negotiations, informal talks between the parties' lawyers, and a second round of mediation ensued over the next seventeen months. By the end of this period, there did not exist a closed agenda of issues to be addressed let alone any prospect that the two parties could reach an agreement. Finally, with the bargaining relationship in shambles, and after a second round of mediation, the parties accepted the mediator's proposals for a four year contract.¹⁰ By the time the new agreement was signed, it had less than a year and a half to run.

II. *The Litigation: The Matter of Salary*

For students of labour relations there is much of interest in the dispute at the University of Saskatchewan. The most obvious and immediate questions are of local concern, and have to do with the breakdown of the bargaining relationship in that setting. Of wider importance are matters arising from the dispute that were submitted to arbitration or taken to the province's Labour Relation Board. Included in these was the issue of payment for work performed during the strike.

In the summer of 1988 the Faculty Association filed 306 grievances relating to the issue of withholding pay for the period of the strike. It is not surprising that this was a sensitive issue. No more than half of the University's faculty had joined the work stoppage¹¹ and the Faculty Association was not constitutionally empowered to discipline members who did not participate. In addition, Association leaders apparently had

8. Perhaps the most persistent and damaging misrepresentation was that the administration had amassed a ten million dollar surplus from funds that should have been available for salary increases. The two authors who have written on the strike to date agree that the claim was false. See B. Fairbairn, "The Prof Motive: Radical Conservatism at the University of Saskatchewan," *NuWest Review* 14, 1 (Oct-Nov 1988) 20-23, at p. 21. See also J. Sutherland, "The Final Cheapening," *Saskatchewan Report* (June, 1988) pp. 12-16 at pp. 15, 16.

9. This tumultuous meeting was adjourned after notice of motion was given. Three weeks later, on April 28, the motion was carried by a vote of 274-166.

10. Mediation — report of Howard E. Tennant, August 28, 1989.

11. Naturally it is difficult to be precise here. My statement is based on University estimates based on payroll records and on information about the impact of the strike on particular university programs.

taken the view that salaries could not or would not be withheld in the event of a strike, or if they were, would be recovered as part of a settlement or through the grievance process, and they encouraged their membership to share this opinion.¹²

The first of the grievances to be heard alleged a violation of Article 19 of the Collective Agreement¹³ in the withholding of salary for the strike period from the May, 1988 paycheque to history professor J.R. Miller. Article 19 states that "salaries shall be paid by cheque during the month they have been earned"¹⁴ and the Faculty Association rested its case on two principal arguments. The first was that withholding pay from Professor Miller was an act of discipline and, accordingly, that the onus was on the University as employer to justify this action. The second was that pay could not be withheld in May for strike action that occurred in March and April.¹⁵ This latter argument was unworthy of the Association; it had requested the administration not to withhold pay in April¹⁶ and the University, with some reluctance, agreed to postpone the deduction until the end of May.¹⁷ The arbitrator ruled that the Association was estopped from objecting to a delay which it had requested and which occurred pursuant to an agreement to which it had been a party.¹⁸

The argument that the withholding of pay for the strike period was disciplinary in nature requires more attention. The actual claim that this action represented punishment by the University of the Association or those of its members who supported it was given short shrift by the arbitrator.¹⁹ He found that it was very clearly the case "that the

12. In the unfair labour practice case relating to the strike pay grievance, the Labour Relations Board found as a fact that the May/88 tentative agreement was defeated mainly because it "did not provide for payment of wages to faculty members while they were striking." *Supra*, note 1, at p. 2. In the second unfair labour practice case, the Board stated "On May 18, 1988, members of the Association rejected the tentative agreement, largely because it did not provide for payment of wages to those who participated in the strike." *Supra*, note 2, at p. 5.

The conclusion is irresistible. If striking Association members believed they should and would be paid for the strike period, it could only be because they were encouraged in their view by the union leadership.

13. *1986-87 Collective Agreement between the University of Saskatchewan and the University of Saskatchewan Faculty Association*.

14. *Ibid.*, Article 19.

15. *Supra*, note 3, at pp. 27, 28.

16. See correspondence exchanged between the mediator and Vice-President Rowlett, and between the mediator and Professor Larry Stewart, Chief Negotiator and Senior Grievance Officer for the Faculty Association.

Ibid., at pp. 15-17.

17. *Ibid.*

18. *Ibid.*, at pp. 32, 33.

19. *Ibid.*, at pp. 22, 23.

University had intended to implement a no work, no pay policy.”²⁰ Why, then, would the Association advance a position which, if not frivolous, was close to it?

The answer may have been that the apparent advantages of winning on the point were too good to resist. It is trite law that in grievance cases generally, the onus rests on the grievor to establish his or her case, but in discipline cases it rests on the employer to make its case with respect to imposing discipline and the reasonableness of the penalty. If an arbitrator had ruled that the act of withholding pay for the strike period was disciplinary in nature, it would have been incumbent on the University to prove that Professor Miller and each of the remaining grievors had been participants in the strike. And this — as everyone involved knew — it could not do. The administration had not monitored the activities of individual faculty members so as to identify who did or did not participate in the strike. It planned to withhold salary for the strike period from all Faculty Association members, leaving it open to those who had performed their assigned duties to so indicate to their deans and they would be paid. If the administration had been obliged to prove that particular members participated in the work stoppage, the result would have been that no one would have lost salary for the period of the strike.

The final argument advanced by the Association was that by requiring an employee who sought to be paid to indicate whether he or she had performed his or her duties, the administration was violating a prohibition against interrogating employees as to whether they had exercised rights under *The Trade Union Act*.²¹ This argument was said by the arbitrator to have no merit²² and it was summarily dismissed.

Finally, the arbitrator ruled, because the salary deductions were not disciplinary in nature, the onus remained on the grievor Professor Miller to make his case. Because he did not testify, he had failed to discharge the onus and he lost his grievance arbitration.²³ But it was only one down with 305 grievances to go — or so it seemed. The administration and the Faculty Association had been unable to agree on a common approach, or upon guidelines which could facilitate global settlement. The administration had proposed a policy arbitration in an attempt to

20. *Ibid.*, at p. 23.

21. *Ibid.*, at p. 26.

22. *Ibid.*

23. This does not mean that Professor Miller was not paid. Professor Stewart of the Faculty Association testified before the Labour Relations Board on April 17, 1989 that Professor Miller subsequently wrote to his dean to indicate that he had performed all of his assigned duties during the period of the strike. If university policy was applied, this means that he would have been paid.

establish such guidelines for the cases of Professor Miller and the remaining grievors, but the Association declined. With no apparent solution other than the prospect of 306 arbitrations, the administration went before the Labour Relations Board to complain that the Association failed to negotiate in good faith for the settlement of the grievances.

The Collective Agreement between the University and the Faculty Association provides for the existence of a joint employer-Association grievance committee charged with facilitating a fair and proper settlement of grievances.²⁴ To achieve this end, the grievance provisions give wide scope to this committee, with the entitlement of either the University or the Association to have other persons — including an aggrieved employee — attend its meetings for the purpose of providing information relating to grievances.

The Association had brought 306 grievances to this joint committee. It took the position that it would provide no information to the employer to facilitate their settlement. Then, when administration representatives on the committee sought to have individual grievors attend for the purpose of providing information on their own cases, the Association announced that it would advise its members not to provide any information. The Association continued to assert that the act of withholding pay for the strike was disciplinary in nature, and that the onus rested on the University to prove that each and every grievor had participated in the strike. It became clear that until the issue was settled, the grievances could not seriously be addressed.

The matter came to a head at a meeting of the Joint Grievance Committee on July 15, 1988. Administration representatives proposed that the question of onus be submitted as a policy grievance to an arbitrator for a ruling as to whether the withholding of pay was disciplinary in nature. The Association refused, the meeting ended, and the matter was placed before the Labour Relations Board.

In reply to the University's allegation that it had obstructed the grievance procedure, the Association raised three defences. First, it argued that because what was charged was a violation of the Collective Agreement, it should be heard by an arbitrator and not by the Board. Secondly, it stated that its conduct was justified because the administration's approach to the settlement of the grievance was itself unlawful, and finally, it claimed to be acting in good faith and on the advice of lawyers.

The jurisdictional argument rested on the proposition that grievance and arbitration provisions in a collective bargaining agreement provide

24. *Supra*, note 12, Article 29.

the exclusive recourse open to the parties to the agreement for its enforcement.²⁵ The Labour Relations Board rejected the argument on the basis that what was alleged was not simply a breach of the employment contract but a violation of a duty imposed by *The Trade Union Act* to negotiate in good faith for the settlement of the salary grievances. In distinguishing between its jurisdiction and that of an arbitrator, the Board stated:

The essence of the complaint and the nature of the remedies sought are all important. If the complainant primarily seeks to enforce rights which owe their existence to The Trade Union Act and which have not or cannot be altered by private negotiation, then the Labour Relations Board will assume jurisdiction. If it primarily seeks to enforce rights which owe their existence to a collective bargaining agreement, then grievance and arbitration procedures embodied in the agreement itself should provide the exclusive recourse open to the parties.²⁶

On the merits, the Association's case fared no better. The Board ruled that "it had no interest in resolving the individual grievances,"²⁷ and found that "it deliberately clogged the procedure for the resolution of all employee grievances and disputes as part of a larger strategy designed to pressure the employer into making a special wage offer for employees who had participated in the strike."²⁸ With respect to Association claims that it was merely resisting unlawful attempts by the administration to interrogate its members, the Board found that individual grievors were asked only whether they wished to provide any information that might assist the Joint Grievance Committee in settling their grievances.²⁹ As for its argument that it was acting on the advice of its lawyers, the Association failed on the basis that the quality of the advice it received — from its lawyers or anyone else — "could not alter the duty to negotiate in good faith for the settlement of the grievances."³⁰

III. *The Litigation: The Obligation to Meet*

The University had its turn as a defendant as a result of certain correspondence exchanged between it and the Faculty Association in late October and early November of 1988. The recent history of negotiations was not auspicious. Five months earlier a tentative agreement worked out with the assistance of a mediator was rejected at a general meeting of the

25. *Supra*, note 1, at p. 12.

26. *Ibid.*

27. *Ibid.*

28. *Ibid.*, at p. 13.

29. *Ibid.*

30. *Ibid.*

Association "largely because it did not provide for payment of wages to those who participated in the strike."³¹ The 306 salary grievances began to accumulate as the parties returned to the table for the first of what would be nine bargaining sessions from May to October. During this time the Association "resisted narrowing the outstanding issues,"³² and the University pleaded that it could not go beyond the total cost of the tentative agreement that already had been turned down by the Association's membership in May. On October 26 the administration presented its 'best proposal' for a restructured settlement and indicated a willingness to meet to discuss it or any other restructured proposal that did not exceed the projected cost of the earlier agreement. When the Association did not accept these limitations the administration refused to attend further bargaining sessions, claiming that there was "no useful purpose in having the negotiating committees meet only to restate their respective positions."³³

This, said the Faculty Association, was an unfair labour practice, and the Labour Relations Board agreed. "The duty to bargain in good faith obligates both parties to meet, to enter into full and frank discussion of the issues that separate them, and to make every reasonable effort to achieve a collective bargaining agreement."³⁴ The Board acknowledged that this obligation is not unqualified; the parties may be excused from meeting during a strike or lock-out, or, "if all they are doing is clearly restating their respective positions, there is no hope of settlement, and continued dialogue would serve no useful purpose."³⁵ The University, it said, might have justifiably concluded that agreement was impossible on account of the 'pay for striking' issue.³⁶ And in the Board's opinion the University's frustration with the Faculty Association's approach to bargaining was understandable.³⁷ But "no matter which party bears the most responsibility for the problem, the only place a settlement can be achieved will be at the bargaining table."³⁸ When the administration presented in writing its best proposal for a restructured settlement on October 26, it was obliged to give the Association an opportunity to respond in face-to-face discussion.³⁹

31. *Supra*, note 11, at p. 5.

32. *Supra*, note 2, at p. 8.

33. *Ibid.*, at p. 4.

34. *Ibid.*

35. *Ibid.*, at p. 6.

36. *Ibid.*, at p. 7.

37. *Ibid.*, at p. 8.

38. *Ibid.*

39. *Ibid.*

IV. *Commentary*

1. *Pay for Striking*

In the post-strike period the dispute between the University of Saskatchewan and its Faculty Association was dominated by what the Labour Relations Board called the 'pay for striking' issue. It was a major impediment to achieving a collective agreement; it was the principal issue in the grievance arbitration and in the first of the Labour Relations Board cases described above. And it was an essential feature of the second. The litigation on the issue represented important differences about the nature of a university as a workplace, and will be of continuing interest in the conduct of labour relations in the academy.

Consider, again, the positions of the parties. Immediately following the vote on a question that implied room for alternatives (the ballot called for strike action "up to and including" a full withdrawal of services), the Faculty Association's executive called for a full strike. It did so on the votes of 50.7 percent of those who cast ballots, or about 40 percent of the University's faculty. In so doing, it divided the faculty, and those who rejected the call to strike numbered at least as many as those who heeded it.

Having called and sustained this strike for two weeks, the Faculty Association was disturbed about the prospect of participants in the strike losing two weeks pay and non-participants receiving their salaries upon indicating to their deans that they had performed their assigned duties. Added to this was the problem that the Association members had been encouraged to believe that they would not lose salary for the period of the strike. These members, and apparently the union leadership, had concluded either that the University would not or could not deduct pay or, if it did, would be forced to return it to participants in the strike at a later date.

The administrators, on the other hand, knew that the faculty was divided. They knew, too, that while some of the University's colleges had been brought to a near standstill by the strike, others had been virtually unaffected. They were not in a position to close the university and in these circumstances would have been reluctant to do so even if they could. Nor could they lawfully withhold pay from those who did not join the strike.

But the administration was determined in its view that salary must be deducted from striking members of the Faculty Association. Its position was based on the obvious proposition that the tension that drives a strike toward some kind of resolution is produced by an employer losing employees and employees losing income. If this tension — in the form of a no work, no pay policy — could not be produced in a strike that

threatened the academic progress of students at the University of Saskatchewan, then a labour relations model that tolerated strikes in that setting would and should be questioned.

But how could salary be deducted from participants in the strike? The concept of 'walking off the job' in a university is a peculiar one compared to strikes in a factory, the post office or even the school system. The reason lies in the nature of a university. Academic endeavor is not easily fixed in time or place. Classes and meetings may be scheduled, but study, reading, grading and writing are not and cannot be. They are solitary activities and cannot be constrained by timeclocks or monitored by supervisors. In good universities, professors are accorded the latitude to engage in them where and when they wish. The employment culture of academia emphasizes the honour system — the personal commitment of scholars to pursue scholarship. It can be no other way.

In this culture, the reality is that there is no work stoppage in the conventional sense. Of course at the University of Saskatchewan regularly scheduled classes came nearly to an end in some colleges, though several of these were scheduled off-campus or in professors' homes. There was a picket line, but occasional duty on the line would not deter all or even most from academic work in their homes, in other off-campus locations, or because the University remained open, in their offices, laboratories and libraries on campus.

What is a strike in this environment? And who were the participants in it? These were fundamental questions and the different attempts by the parties to answer them were at the root of the continuing dispute between the University and the Faculty Association. The University's answer was circumspect and sensible. It determined that salary should be withdrawn from faculty members who had decided to take part in the strike. It would do this by deducting pay from all members of the Faculty Association except those who indicated that they had performed all of their assigned duties. In short, as the arbitrator in the Miller grievance put it, "the employer was prepared to allow the honour system and the conscience and integrity of the faculty member"⁴⁰ to determine the pay issue.

The Faculty Association's reply did not signal one of the finer moments in the histories of either universities or trade unions. Its executive had taken pride in the fact that it had been able to mobilize a strike; indeed, it offered souvenirs of the event for sale to its members,⁴¹

40. *Supra*, note 3, at pp. 26, 27.

41. The souvenirs were offered for sale in Faculty Association Newsletter No. 113 (May, 1988).

and one year later called for a birthday celebration in honour of it.⁴² But it challenged the administration to prove that anyone had been a participant. The failure to do so, it said, would mean that a no-work, no pay policy could not be implemented and a loss of pay would not be borne by anyone. The Association left no stone unturned in its quest, even to the point of arguing that deductions could not be made in May for a strike that occurred in March and April, when the postponement had been arranged by the mediator pursuant to the Association's request.⁴³

It is surprising that the implications of taking this position did not deter the Faculty Association from its course. Suppose that it had been successful in pursuing its claim for salary to be paid to members who have been on strike. What would have been the consequences? One that naturally would have troubled the university as employer would have been the clear message that faculty strikes do not entail financial loss. This is a message that no employer could afford to give; it would have compromised collective bargaining at the University of Saskatchewan for years to come. More important, such a result would have encouraged observers to conclude that this model of labour relations does not belong in a university environment. The fundamental tension that makes a strike the weapon of last resort in collective bargaining is the tension caused by mutual loss — loss of employee service to the employer and loss of income to workers. If this tension is not present a strike is no longer a weapon of last resort, and should one occur, the urgency for the parties to seek a compromise that will end it will be missing. The conclusion is unavoidable. If the University could not withhold salary from striking members of the Faculty Association, then strikes should not be tolerated in that setting. It would not have taken long for those responsible for public policy in the province to have so concluded.

It was possible to soften the impact of income loss in other ways. Contract settlements after strikes frequently make provision for lump sum payments which recognize that employees have lost money. But this is not what the Faculty Association pursued. It sought to have members' salaries for the strike period restored to them. Had it been successful, it might have brought a legislated end to the availability of the strike as a weapon in collective bargaining at the University of Saskatchewan.

What also was remarkable about the position of the Faculty Association was the challenge it presented to the employment culture of

42. The birthday party was announced in published Faculty Association bulletins in March, 1989.

43. *Supra*, note 3, at pp. 27, 28.

academia, to academic freedom. In taking the position that it was incumbent on the University to prove that faculty members whose pay was withheld were on strike, the Association was giving legitimacy to employee supervision of a kind that is and should be an anathema to scholars. In fact this was explicit. The Faculty Association's chief negotiator and senior grievance officer gave evidence at the hearing of the unfair labour charge brought by the University against the Association with respect to the handling of the 306 grievances. He testified that deans and other out-of-scope personnel, with the assistance of administrative staff who were members of the Canadian Union of Public Employees, should have been in a position to monitor the activities of faculty so as to identify who was and who was not on strike.⁴⁴ And the cross-examination of deans by the Association's counsel in the same hearing was directed in part to establishing the existence of a capacity to engage in precisely this kind of supervision.⁴⁵ In other words, in this view, the University could and should have kept tabs on faculty members to establish who was teaching, who was in his or her laboratory, the library, or presumably any other place on campus where academic work might be done. If the University could do so for the purpose of identifying participants in the strike, Association leaders might have asked themselves, who was to say it could not do so for other reasons?

This position threatened the employment culture of academia in other ways. It suggested that the University could identify those who went on strike by monitoring activities on campus whereas, of course, many scholars go to work in basement studies in their homes or other convenient places on or off university property. As well, it undermined provisions of the collective agreement which stipulated that during a strike employees shall not be denied access to university facilities by the employer. If striking employees might be found on campus along with non-striking ones, how was the employer supposed to distinguish between them? It could not, of course, and it should not have to try, but the Association's claim that deans and other out-of-scope personnel were in a position to identify participants in the strike implied that it could have and should have.

The seriousness with which the Faculty Association pursued the strike pay issue was revealed in what might be termed its back-up position. If it were held that the university was not required to prove participation in the strike on the part of each grievor, it did not mean all salary for the

44. The evidence before the Labour Relations Board was summarized in notes prepared by an administrative assistant who was present throughout the hearings.

45. *Ibid.*

period of the strike could be withheld from participants. The Association's alternative claim, as summarized by the Labour Relations Board was this: "if its members had done any part of their assigned duties they should be paid for what they had done."⁴⁶ The union's chief negotiator and senior grievance officer explained this in his evidence before the Board. The Association's belief, he testified, was that if faculty worked, they should be paid for the work they performed. If they were to lose money at all, it should be only for duties they failed to perform.⁴⁷

In making this argument the Association was articulating the understandable sentiments of many within its ranks. There had been no work stoppage in the conventional sense. A strike was called, but what this meant to a number of participants was an end to teaching and committee work. If the strike had been prolonged by a week or two it might have disrupted final examinations, but even this is speculative. While there were members who felt that what was necessary was a full withdrawal of services, others continued with many of their scholarly activities. Naturally they felt some indignation when their full salaries for the strike period were withdrawn — particularly when union leaders had encouraged them in their belief that this would not be done.

And so the Faculty Association indicated its alternative course. Grievors should be paid for the work they did. If they stopped teaching or did not mark examinations, they could lose some money for that. But they were entitled to be paid part salary if, for example, they continued with their research, attended a scholarly conference, or consulted with students off-campus or by telephone. Now this presents an obvious problem of quantification: What portions of income are to be attributed to different academic duties? Does teaching represent one-third or perhaps forty percent of a professor's salary? The Faculty Association struck quickly in March — not in May or July — and clearly aimed at the academic progress of students, for it was here that it could bring to bear the most pressure. Perhaps, therefore, teaching and related duties should represent fifty percent of income.

The debate is absurd, of course, but it is a debate that was contemplated, indeed invited, by the Faculty Association. What the Association sought was unworkable, but that is not the only thing to be said about it. Once again it revealed a stunning naïveté — if that is all it was — about the conduct of collective bargaining and job action. The suggestion that striking professors could pick and choose duties they would perform, and for which they would be paid, is as much an implicit

46. *Supra*, note 1, at p. 6.

47. *Supra*, note 43.

rejection of the trade union model as was putting the University to the proof that anyone had participated in job action. A faculty strike was just a work reduction plan. From among the wide range of academic duties, participants could continue to do the things they wanted to do and receive some portion of their incomes for doing so. And if they stopped teaching and thereby affected third parties (students) more than if they stopped their research, well, that was their choice. An individually tailored work reduction plan.

2. The Conduct of Bargaining

The 'pay for striking' matter was not the only question raised by the labour dispute at the University of Saskatchewan. For some time there had been little of the trust required to sustain a mature bargaining relationship; after recent events there was none. This is not unusual in the wake of a protracted fight of this kind, and one normally would have been content to indulge in the cliché that time heals all wounds and to hope that it is true. However, certain patterns of conducting labour relations have developed at the University of Saskatchewan which, if not addressed, will continue to undermine collective bargaining in that setting. If repeated, they would have the same potential elsewhere.

The first of these has to do with timing and the pace of negotiations. They invariably got underway upon the expiry of an agreement and continued for several months at a leisurely pace. In 1987, negotiations began in June and continued at the rate of one meeting per month — nine sessions in total over the months preceding the rapid escalation to job action. This was a somewhat genteel schedule: late start, infrequent meetings and long adjournments during the summer months. Unfortunately it did not suit the members of the Faculty Association as well as it apparently suited the negotiators for both sides. They were understandably annoyed by routinely late settlements and their frustration with the repeating pattern in 1987-88 played a part in the events of that year.

After the strike the same thing happened. There were nine meetings in the six months between the rejection of the May/88 tentative agreement and the end of negotiations in late October. In addition to the growing reluctance of the two sides even to sit down together and talk, there was by this time another factor. The administration had retained Winnipeg labour consultant Harold Piercy to assist in reaching a contract, but instead of serving as a consultant and advisor, he assumed the chair of the administration's negotiating team. While Mr. Piercy was well qualified to help bring order to talks that lacked civility and protocol, he was not in a position to make himself available for the prolonged period of time that

would have been needed to restore at least some continuity to negotiations. His was a busy schedule and it could not be cleared for the concentrated effort that was needed to salvage a negotiated end to the dispute in Saskatoon.

The result of these factors — the timing and scheduling of contract talks, and the late entry of Mr. Piercy in the chair of the administration's team — was that there was no opportunity for generating the momentum that is often the catalyst for settlement. It may have been that a negotiated end for this fight was beyond the reach of the parties but, to put the matter in modest terms, these things didn't help.

If a negotiated settlement was not possible, the single most important reason was that as the dispute progressed, the issues that divided the parties could not be identified, isolated and addressed by the negotiators with a view to reaching agreement. The Faculty Association Chairperson's remark that "[t]here were as many reasons for being on the picket line as there were picketers"⁴⁸ is a revealing one. It was a concession that the dispute was unfocused and diffused, and that it was a vehicle for the expression of a range of grievances and disappointments that was limited only by the number of people involved.

Indeed this was an acknowledgement of what was at once the Association's success and failure. Its strategy had been to exploit a wide range of concerns and frustrations and it did so effectively. But in doing so it conveyed to its membership and to the public the idea that its fight with the administration was about issues which in fact were not on the bargaining table and which could not properly be addressed through the collective bargaining process. That politics of this kind can intrude upon labour relations in any setting is not unusual. But experienced labour leaders and negotiators know that they must keep their sights on the bargaining table where a fixed agenda of contract issues must be identified and addressed. If the task of reaching a settlement on these issues is not the most important work to be done, collective bargaining cannot work. In this dispute, reaching an employment contract was secondary in importance to discrediting an unpopular administration, and in the later stages of the fight, to securing payment for work performed during the strike.

The Labour Relations Board commented upon the resistance of the Faculty Association to narrowing the issues between the parties and sympathized with the administration's claim that it was pursuing a "receding horizon" of union demands.⁴⁹ The Association's apparent

48. See Sutherland, *supra*, note 8, at p.14.

49. *Supra*, note 2, at p. 8.

difficulty in defining its position reflected its approach to the dispute, and in particular its unwillingness to recognize the limitations of the collective bargaining process. Contract talks about the terms and conditions of employment should not have imposed upon them the burden of all the disappointments and frustrations of the participants and their constituents; as well as mischievous claims that professors on strike should not lose income. Either the Association did not understand this fact, or was prepared to overlook it in order to further its political aims in this dispute.

V. *Epilogue*

There were changes at the University of Saskatchewan in the months following the mediation report that broke the deadlock between the University and the Faculty Association. Disabled by serious illness, the president who was the object of so much rancor retired one year before the end of his term, and his successor has been prepared to address some of the problems that contributed to the fight. He has recognized the governance problems that have beset the institution in modern times, and has committed himself to implementing many of the reform proposals advanced in 1987 by the University's working group on governance.⁵⁰ He also has undertaken administrative reorganization in the interest of improving leadership effectiveness in what is one of the country's most complex post-secondary institutions.⁵¹

But there are some problems that cannot be addressed by a new university administration alone. In the course of the labour dispute at the University of Saskatchewan the employment culture of academia was challenged — not by an intrusive and overbearing administration, but by the union charged with representing faculty interests. There have not yet been signs that most faculty recognize this side of the role played in their name by the Faculty Association. Unless this happens, the process of reform and renewal will remain incomplete.

50. *Supra*, note 5. But already there are disconcerting signs that efforts to reform the university's governance apparatus may be frustrated. The Faculty Association has claimed that change to the existing University Council must be bargained collectively between the Association and the administration. On November 19, 1990, Faculty Association Chairperson Professor Arne Paus-Jenssen wrote a letter on the subject of the president's proposal for a representative university council and sent copies to all in-scope personnel. Paus-Jenssen reasoned that because the University Council is mentioned in the collective agreement, "the university must bargain collectively with the Faculty Association" for any changes to the Council. This proposition is wrong in law and unsound in policy, but its real danger is the foreboding message it represents about the capacity of the institution to generate change and reform within.

51. The University of Saskatchewan has 13 colleges including five in areas of medical science (medicine, dentistry, pharmacy, nursing and veterinary medicine).

VI. *Conclusion*

Even with the benefit of hindsight it is sometimes difficult to distinguish between labour relations problems that are attributable to poor bargaining, and difficulties whose roots lie deeper in features of structure and organization. Certainly most of what happened in the course of the conflict that has been described here was avoidable and can be laid at the doorstep of the parties. But not all of it, for beneath events that can be seen as episodic and passing there is one theme that will not go away. It is the tension between a university culture that requires academic freedom and collegiality, and a labour relations model that often features both the substance and rhetoric of confrontation.

A vigorous academic culture will not for long co-exist with persistently confrontational relationships within. North American industry has suffered in global competition in part because of the adverse consequences of a labour relations model founded on confrontation. So too, North American universities will deteriorate if such a model acquires and retains prominence in their affairs. And it is likely to do so wherever the structure and organization of academic self-government is weak — as at the University of Saskatchewan where the faculty association union has displaced the university council as the organized voice of the academic community.

In one way or another, both parties to the dispute at the University of Saskatchewan acknowledged that this model of labour relations is not easily accommodated in the culture of a university. The administration did so when it did not attempt to rely upon hierarchical management in determining who were, and who were not at work during the strike. It was prepared instead to allow the honour system to determine the issue. The faculty association's position was more ambiguous. It sanctioned a regime of hierarchical management in its argument that the administration could have kept tabs on faculty members to determine who worked and who didn't. However, its insistence that its members be paid for the period of the strike, was an implicit rejection of the 'no work, no pay' dictum which is central to industrial action in this model.

To the extent that they have adopted or imitated the labour relations models of corporate North America, universities have neglected their role as laboratories of innovation. Instead of seeking new means of conflict resolution, they embraced the substance and rhetoric of confrontational industrial relations just as its weaknesses were becoming apparent in the emerging global economy. It was this development that was illustrated in the dispute at the University of Saskatchewan. The quality of that institution a generation from now will depend in part on the success of its faculty and administration in achieving its modification or reversal.