



The Conservatives are challenging public servants to strike

During the first 46 years of their right to organize and bargain collectively, from 1967 to 2013, federal public service employees had the option of choosing between two different processes for resolving impasses at the bargaining table.

The first of these two processes took the form of a hearing before an administrative tribunal – a process commonly referred to as arbitration. Under this formula, an impasse brought to arbitration is resolved on paper through a decision reached by an arbitration board. That decision is binding on both parties.

The second process was a consultation before a conciliation board, which did not produce a binding decision but rather issued recommendations designed to help the parties come to an agreement. If the parties remained unable to agree after those recommendations were issued, the union side would normally put the matter to a strike vote among its members. The subsequent scene often played itself out on the street, with employees engaging in various forms of job action.

With the passage of time, however, we have forgotten that, as recently as 1966, there was no choice available to public service workers; arbitration was considered the only acceptable option in the public service and strike action was definitely out of the question. The *Report of the Preparatory Committee for Collective Bargaining in the Public Service* (the Heeney Committee Report), published in 1965, preferred arbitration and was not in favour of giving public servants the right to strike; most if not all of the associations representing public service workers prior to unionization shared this view. Arbitration was the only word on everyone’s lips. In fact, in the discussions surrounding the bill that would propose giving federal public service employees the right to unionize, arbitration was the only mechanism mentioned for resolving deadlocks at the bargaining table. So what happened?

Indeed, only one public service employee association supported the right to strike

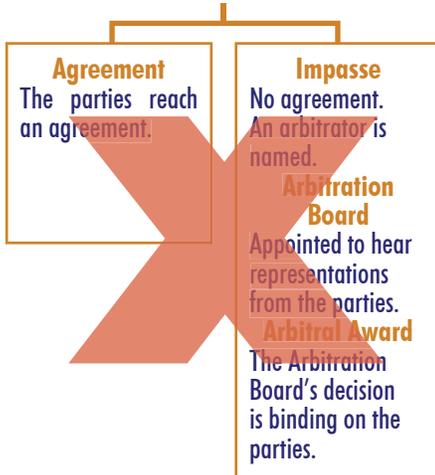
over arbitration. The Canadian Postal Employees Association staged an illegal wildcat strike in 1965 that ultimately led to the passage of Bill C-170, tabled in the House of Commons in the spring of 1966 and enacted in 1967, which became the *Public Service Staff Relations Act* (PSSRA) and subsequently the *Public Service Labour Relations Act* (PSLRA). While it did not discard the popular option of arbitration, this legislation would henceforth give public servants the right to strike. Thus unions representing public service workers were given a choice between arbitration and strike action to resolve impasses at the bargaining table. The issue was debated extensively by the Parliament of the day and has since come up in numerous parliamentary debates. Part and parcel of employee rights since federal public servants first gained the right to unionize, the right to choose between arbitration and conciliation/strike action largely defines and has always provided the framework for collective bargaining in the public service.

In the fall of 2013, however, the Conservative government – which has tabled a number of anti-union bills in recent years – took away the unions’ right to make that choice. When Bill C-4 received royal assent in December 2013, the PSLRA was amended to eliminate public service workers’ right to choose. In the current round of collective bargaining, therefore, it is the employer’s contention, based on its interpretation of the applicable legislation, that federal public service workers must strike if they reject the employer’s proposals at the bargaining table. So 46 years of history has suddenly fallen by the wayside. The right to choose has been taken away, and strike action is the only recourse open to unions unwilling to accept what the employer is offering.

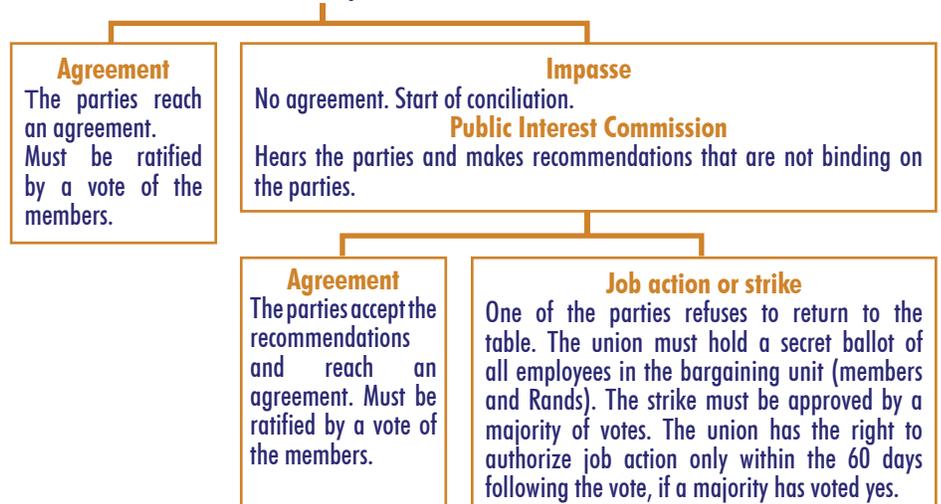
And that brings us to where we are today. The groups represented by CAPE are facing a new set of ground rules in the current round of collective bargaining. Whereas CAPE’s members had previously always opted for arbitration to resolve impasses at the bargaining table, the employer/legislator will now force them to engage in strike action if they refuse what the employer is offering.

Collective bargaining in the federal public service

Arbitration*



Conciliation / strike



The new legislation allows the employer to force a vote on its final offer at any point in the bargaining process.

* Under the amended terms of the *Public Service Labour Relations Act*, this route is only available if more than 80% of the members of a bargaining unit are designated essential. Four percent of positions in the EC group and 30% of positions in the TR group are designated essential.



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We hear you! Your thoughts on a possible strike vote



Mobilization Bulletin, Volume 1, No. 2, March 13, 2015

Can you afford to lose a week's pay each year?

In 2013, the federal government legislated away, (through Bill C-4), the right for a union to choose a dispute resolution method should there be an impasse at the bargaining table. Binding arbitration is no longer an option for CAPE, and the default conciliation/strike option may force CAPE to conduct a strike vote. A strike under the *Public Service Labour Relations Act* is defined as: "a cessation of work or a refusal to work or to continue to work by persons employed in the public service, in combination, in concert or in accordance with a common understanding, and a slow-down of work or any other concerted activity on the part of such persons that is designed to restrict or limit output".

A positive strike vote is important leverage for a union to conclude an agreement before contemplating any form of job action. It is more a measure of the support members put behind their bargaining team. The strike vote also allows an escalation of job action that may or may not require a cessation of work and associated loss of income.

In anticipation of the possibility of a strike vote, in January CAPE prepared a series of questions and gave its 8,549 members registered to receive e-communications the opportunity to provide their views on this subject. A total of 3,338 members took the time to answer the questions online, which represents a 39% response rate. As a matter of comparison, the CAPE National elections had a 15% participation rate and the last dues increase vote had a 37% participation rate.

As shown in the following table, should CAPE hold a strike vote today, 44% of respondents would vote yes, or are leaning towards voting yes; 41% would vote no or are leaning towards voting no and 16% did not know how they would vote.

| Response | Frequency | Percentage |
|---------------------|-----------|------------|
| Yes | 409 | 12.5% |
| Leaning Towards Yes | 1012 | 31.0% |
| Leaning Towards No | 680 | 20.8% |
| No | 655 | 20.1% |
| Don't Know | 510 | 15.6% |
| Total | 3 266 | 100.0% |

The three most important reasons for our members' hesitation to vote in favour of a strike are:

- I don't believe the current government can be beaten by a strike
- I don't have sufficient savings to deal with the loss of income during a strike
- I don't know enough about how a strike would work

It is clear by the responses that CAPE members need more detailed information about how a strike would work (the range of possible activities job action might involve, strike pay, what other unions are planning to do, etc.) and CAPE's approach to the Employer's proposal on sick leave (what members would lose if the current plan is replaced).

Additional comments echoed these findings, especially the need for more information.

It is not surprising that a significant proportion of those who provided comments were not in favour of a strike for various reasons: financial, political, or belief that a strike would either not work or would backfire in the realm of public opinion. We will work in coming weeks to address these concerns directly. Meanwhile, a significant proportion of respondents are engaged and would support job action, not necessarily a strike, but a strike if necessary.

In the responses we received to January's job action survey, a number of members indicated that they either did not want to or could not afford to participate in possible job action measures if CAPE and Treasury Board failed to reach an agreement and negotiations broke off.

While it is true that CAPE members have always chosen arbitration over conciliation/strike to resolve bargaining impasses in the past, the government has now amended the *Public Service Labour Relations Act* (PSLRA) to eliminate the possibility of a choice, leaving conciliation/strike as the only possible settlement mechanism.

In this context, and in light of the setbacks which the government is seeking to impose, you may at some point be forced to withhold your services for an hour or a day in order to pressure the employer. Some job action measures will not translate into financial losses for you (e.g., work to rule, extended breaks, lunch-hour demonstrations). Others could financially affect groups of workers in a particular region, department or agency for a specified amount of time. In this second case, workers could receive strike pay or lose an hour's pay or a day's pay as applicable. CAPE will try to find creative ways to disrupt the employer's operations; nevertheless, an impact on your wages remains a possibility.

But have you really taken the time to calculate just how much of a recurrent financial loss the employer's sick leave and short-term disability proposals represent? Consider the following example.

A financial loss equivalent to one week per year for the rest of your career

According to the Parliamentary Budget Officer, public servants take an average of 11 days of sick leave each year. Under the existing system, all of those days are fully paid.

Now let's jump ahead to the year 2017 and assume that the employer has successfully imposed its new sick leave and short-term disability plan. Instead of 15 days of sick leave per year, you now have only 6 days and they are not bankable. At the start of the year you come down with a really bad flu that keeps you away from work for six working days. When you go back to work, you note that you are now out of sick leave.

In May, you are unlucky enough to get a serious infection and your doctor prescribes seven days of bed rest, including five working days. Since you are out of sick leave, you want to go on short-term disability, but you can't because there is a 7-day unpaid waiting period.

This case may be hypothetical, but it is also very plausible. If you follow the average for public service employees as a whole and take 11 days of sick leave per year in future years, what the government is proposing will cost you a week's pay each year – that's 2% of your salary taken out of your pocket and off the government's books each year.

Can you really afford to accept the government's proposals?



Facing brutal cold, they were more than 200 in front of the Prime Minister office on February 19

February 19 demonstration and solidarity march

On February 19 of this year, PIPSC, PSAC and CAPE Locals publicly confronted the government on two major issues: collective bargaining and the next federal election.

A crowd of 200, including members of CAPE, braved the cold weather to attend a lunchtime demonstration in front of Stephen Harper's office. At the same time, a solidarity march was being held across the Ottawa River in Gatineau, from the Place du Portage office complex to the government buildings at Terrasses de la Chaudière. In addition, some CAPE Locals, such as the Library and Archives Canada Local, held their own workplace demonstrations.

The Presidents of all three unions addressed the demonstrators outside the Prime Minister's Office. CAPE President Emmanuelle Tremblay pointed out that federal public servants' battle to keep their sick leave benefits will have an impact on all Canadian workers. "This government is trying to drive down the terms and conditions of employment of public service workers. Public service unions have no choice but to push back in order to halt the erosion of the rights of all workers. We are fighting a battle that affects the entire labour force." Federal public service unions have all signed a solidarity pact not to make concessions on sick leave at the bargaining table.

Since the Conservative government has legislated October 19, 2015, as the scheduled date of the next federal election, the unions have symbolically chosen to make the nineteenth day of each month a day for action. Regardless of whether the election is actually held on that date, our main goal is to encourage all of our coworkers to exercise their right to vote and to show their support for their union.

On March 19, let's get TOGETHER for healthy workplaces



We are back on March 19th

CAPE Locals have been invited to organize activities on March 19, Day of Action "Together for healthy workplaces".

Please visit the CAPE website for more details on those activities: www.acep-cape.ca.

Discussing at the table the priority issues identified by CAPE members

Despite the employer's somewhat obsessive focus on its proposal to significantly weaken the sick leave provisions of the TR and EC collective agreements, CAPE sought to bring discussions around to the priority workplace improvement issues identified previously by its members. Among those priorities, the proposal to improve the provisions concerning employee performance review seems to have found some traction with the employer.

CAPE's position and the wording it proposes are based on the principles of good faith and the employer's obligation to provide clear and measurable targets, appropriate standards, and the necessary tools, training and mentoring, as appropriate, that would allow employees to meet their assigned performance objectives. CAPE believes that the best way to avoid circumstances that could potentially lead to discriminatory, arbitrary or bad-faith decisions — in short, decisions that could be characterized as constituting abuses of authority leading to legitimate complaints, but which might otherwise be avoided — is to make the performance review exercise as objective as possible.

CAPE's position is supported by case law. In fact, much of the wording proposed by CAPE is drawn directly from the arbitration decisions that defined the employer's obligations in recent years, e.g. the Mazerolle, Plamondon and Raymond decisions. Moreover, the Association's general goal in seeking to establish a framework for performance assessment should normally be shared by the employer. Not only does a performance review process that respects case law and minimizes possible variations in judgement contribute positively to the work of public service employees and the effective operation of the public service, it also by extension contributes to the well-being of all Canadians. It is in everyone's best interest to have a public service with absolutely no tolerance for arbitrary management decisions.

We need your personal email address

You can rest assured that we are not asking for your personal email address in order to flood your inbox with a tonne of messages. Rather, as bargaining slowly progresses, we expect to be sending you information that definitely should not fall into the hands of the employer.

On March 31, therefore, we will stop sending messages containing information on collective bargaining and mobilization through the employer's email system.

So please visit CAPE's website (www.acep-cape.ca) immediately to update your contact information.



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The 2013 PAFSO strike: successes and lessons learned

In 2013, the members of the Professional Association of Foreign Service Officers, for the first time ever, had to resort to strike action to successfully renew their collective agreement with the Treasury Board Secretariat.

Rolling up its sleeves to develop and implement an effective mobilization structure, PAFSO quickly turned to its members and asked them to play a more active role in the process. Within a few weeks, the union had a network of 150 union stewards tasked with keeping members informed of the progress of negotiations and upcoming job action measures.

PAFSO represents 1,350 Canadian Foreign Service Officers. The Association's main demand at the bargaining table was to close the wage gap between FS group members and members of the EC group (represented by CAPE) as well as PIPSC members of equivalent classification. The government was steadfast in its refusal to budge on this issue.

In mid-March, PAFSO put the matter to a vote. Ballots were received from 75% of PAFSO's members, and 82% of those votes were in favour of job action up to and including strike action. PAFSO commenced its job action measures on April 2, 2013.

The first such measure was a request from PAFSO for its members to add a note after the signature block in their emails indicating that negotiations with the government had broken off and explaining the issues at stake. The employer was quick to respond and threatened officers with disciplinary action up to termination of employment if this message was not removed. The members had little choice but to comply. However, some job action measures (e.g., turning off cell phones after 5:00 p.m. and refusing to perform duties not included in job descriptions) went uncontested by the employer.

For PAFSO, the mobilization of members was key. PAFSO's members work in 180 Canadian missions abroad as well as in the National Capital Region. As soon as PAFSO began its job action measures, the employer struck the first damaging blow by blocking all email messages from PAFSO to its members' government email addresses. PAFSO had no choice but to set up its own communications structure by quickly compiling the personal email addresses and home telephone numbers of its members. In fact, PAFSO has one important piece of advice for CAPE: start doing this now so you don't have to go into panic mode when the employer shuts you out of its email system.

PAFSO created an eight-member job action committee that worked in close collaboration with a network of 150 wardens (emergency action coordinators) present in nearly all of the affected workplaces.

The network of wardens enabled PAFSO to establish, maintain and distribute a comprehensive list of members, their mailing addresses, personal email addresses and telephone numbers. The network also provided PAFSO with the ability to answer members' questions quickly while serving as the eyes and ears of the union in its members' workplaces. The network held meetings via teleconference twice a week. Meeting minutes were prepared; the most frequently-asked questions were answered; and members were reminded of the purpose of job action measures. The Chief Warden, in charge of the network, was also tasked with answering members' emails. For PAFSO, this network was indispensable in ensuring the impact of job action measures.

In April, the members created a Foreign Service Officers coffee break service which organized collective coffee breaks in FS workplaces. Plans were kept secret until a few minutes before a break was to be held, at which point instructions were relayed to affected members via email. The network also organized creative



dress campaigns to draw public attention to the issues at stake and remind the employer of members' solidarity.

Because its members are geographically scattered, the union created two Facebook pages to provide the membership with forums for discussion: a secret group open to all members and a second group open only to the network of wardens. These pages allowed members to engage in discussions, share job action strategies and overcome some isolated members' feelings of solitude. These discussion groups channelled a number of ideas and constituted an effective barometer for gauging what members were thinking.

In its post-mortem analysis of the strike, PAFSO identified the ingredients that contributed to the successful mobilization of its members. The first of these was the ongoing solidarity of its members. The government's attitude bonded members together and strengthened their common resolve. Secondly, PAFSO's establishment of an effective communications network contributed tremendously to the success of mobilization. PAFSO's leadership used its network to listen to members and answer their questions quickly. In addition, communication went both ways, with leadership informing members and members contributing their ideas and suggestions.

As CAPE undertakes a campaign to encourage its members to provide their personal email addresses to the union, even as some members continue to express their reluctance to do so, it should be recalled that PAFSO faced the same challenge. According to PAFSO's leaders, members' reluctance evaporated when they realized that those who had refused to provide their personal email addresses to the union were often the only members not to be informed of a strategy or a job action measure.

Along similar lines to what CAPE is planning, PAFSO adopted a strategic job action approach that placed only a limited number of members on strike, but in sensitive areas. PAFSO opted for highly decentralized job action measures that involved only specifically targeted missions or locations. PAFSO was thus able to refund 100% of the wages of its striking members. PAFSO members also developed creative ways to avoid doing the work of those who were off the job. They consulted more with co-workers

before handing in their work, and they did not work outside of normal office hours. Ultimately, managers learned that there was no point in trying to get them to do the work of their striking colleagues.

In the five months that PAFSO was on strike, only two or three full-scale walkouts involving all members were organized; these walkouts were on a voluntary basis, and lost wages were not reimbursed by PAFSO. Indeed, PAFSO members quickly learned that certain sacrifices were necessary if there was to be any hope of obtaining what they wanted.

The agreement signed by PAFSO and Treasury Board on September 26, 2013 was ratified one month later by a strong majority of PAFSO's members. Of particular interest is the fact that PAFSO developed a post-strike "demobilization" plan, which consisted in rebuilding bridges in workplaces between members and their managers as well as colleagues in other unions. This demobilization effort gave rise to a number of reconciliation initiatives such as thank-you notes and bonding over coffee and cake with fellow workers and supervisors who were affected by the job action measures. According to PAFSO, the overall effect was quite positive and bridges were indeed rebuilt.



PAFSO picket, August 2013 in Ottawa.