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Høgedahl, Laust Kristian; Ibsen, Flemming

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# New terms for collective action in the public sector in Denmark: Lessons learned from the teacher lock-out in 2013

**Laust Høgedahl and Flemming Ibsen**

Aalborg University, Denmark

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## Abstract

This article investigates the use of collective action in the public sector by analysing the Danish teacher lock-out in 2013. The social partners in the public sector in Denmark (and the other Nordic countries) engage in negotiations and reach agreements regarding wages and working conditions in accordance with an institutional set-up developed in the private sector. This also applies to the use of the so-called weapons of conflict – strikes/blockades and lock-outs/boycotts – in connection with labour disputes if the 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 as an institutionalised form of collective action proceeds when comparing the public and private sectors in Denmark. The article shows how the use of collective industrial conflicts in the public sector has a number of built-in systemic institutional flaws, as the public employers are the budgetary authority and legislators at the same time. This is not a new finding; however, these multiple roles become problematic when public employers use the lock-out weapon offensively in combination with state intervention to end the dispute, which was the case during the teacher lock-out in 2013 in Denmark. The article concludes with the presentation of a number of proposed institutional adjustments for bringing the public bargaining model into balance.

## Keywords

Collective action, industrial conflict, lockout, public sector, strikes

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## Corresponding author:

Laust Høgedahl, Department of Political Science, Centre for Labour Market Research (CARMA), Aalborg University, Aalborg, Denmark.

Email: [hogedahl@dps.aau.dk](mailto:hogedahl@dps.aau.dk)

## **Introduction**

The analysis of collective action and changing labour strategies in comparative political economy often has a point of departure in the private sector, where changing global settings are often described as drivers of change for labour, especially in competitive-sensitive industries (Harvey and Turnbull, 2015; Kuruvilla and Noronha, 2016; Lichtenstein, 2010). Here, new global value chains, price competition and migration of workers all have a direct impact on labour in various ways, such as increasing precarisation, off-shoring of production and so on (Stone and Arthurs, 2013). In the public sector, however, the cause and effect of the new global economy for labour are not so easily readable but are nevertheless still present and crucial. Changing wages and working conditions in the public sector must pass through a political filter with a variety of outcomes based on the institutional set-up of the national industrial relations systems. Past institutions, ideas and interests are all mediating factors impacting the consequences for labour. In post-crisis Europe since 2008, ‘austerity’ measures, competitiveness reforms and modernisation efforts have swept through public sector labour markets with varying intensity: from significant cut-backs in wages, pensions and longer working hours to employment and wage freezes (Bach and Bordogna, 2013). This has created ‘growing interest cleavage’ between the social partners (Brandl and Traxler, 2011: 15).

Traditionally, the Nordic countries are renowned for their high degree of collective bargaining and social capital among the labour partners (Dølvik, 2013). This is the case for the private sector and still more so the public sector. 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 et al., 2012). But collective agreements as the main method of regulating wages and working conditions are 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, with respect to both collective bargaining and conflict resolution. Similar historical developments can be traced to the other Nordic countries (Stokke, 1998).

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 as an institutionalised form of collective action. Industrial conflict is regulated through the general agreement and follows a principal of parallelism: employees can strike and employers can use the lock-out weapon when collective agreements are

re-negotiated. However, 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 unique power resources that (potentially) create an asymmetrical balance of power between the social partners.

After a brief presentation of the data sources and methods used in the article, the theory and rationale behind the collective industrial conflict in the private sector are presented. We 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 lock-outs to solve labour disputes. A critical analysis of the use of industrial conflict in the public sector is then presented, as exemplified by the teacher lock-out in the Danish school system in 2012–2013. 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 used in this article draws on events prior to, during and after the collective bargaining round in the public sector in 2013 (CBR13). 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 lock-out in 2013 was the first time in Danish history that public employers used the lock-out weapon offensively and not just as a response to a strike or strike warning posed by one or more trade union(s). Second, the teacher lock-out was ended by a state intervention, which is common in Denmark; however, in this case, the law that supersedes the prior collective agreement was very much unbalanced in favouring the employers' demands. Both circumstances illustrate a new public employer behaviour and strategy and new terms of collective action. Hence, our research design is based on the causal reasoning behind the extreme case design formulated by Flyvbjerg (2006). The idea is to obtain information on unusual cases, which can be especially problematic or especially good in a more closely defined sense.

The method used is a qualitative desk study of relevant documents published in connection with CBR13. There is first and foremost the use of primary sources in the form of official documents that are available from stakeholders involved, including documents used in connection with the exchange of demands. The article also uses documents published by public authorities and is supplemented by 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 rational basis for labour disputes as institutionalised collective action

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' concession curve has a positive slope, as they must offer greater wage increases in order to reduce the duration of a strike.

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 then 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 –

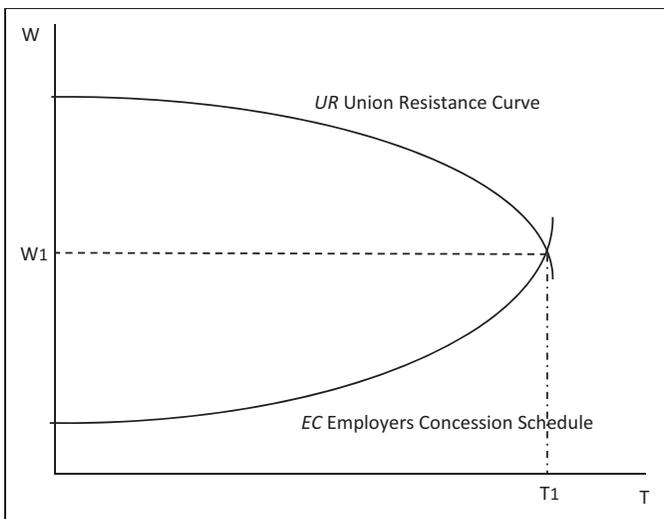


Figure 1. The Hicks model.

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 et al., 1993).

The Hicks model is a strike model but can easily be supplemented with the employers' use of the lock-out weapon in response to how the trade unions use the strike weapon. Many of the labour disputes in the Danish private labour market have been started by employers initiating a lock-out, to which the trade unions respond by striking (Ibsen and Jørgensen, 1979). In the Hicks model, the combination of a strike and lock-out 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 lock-outs – 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 with 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 (Scheuer, 2006; Stamhus et al., 2010).

The concession curves in the Hicks model thus require power relations that are more or less symmetrical, such that one part does not possess the market power that renders them able to crush their counterpart.

Many reservations have been registered by critics of the Hicks model. The assumption of symmetrical power relations in the private sector has been challenged by radical theorists who consider the capitalist as the strongest part in the ongoing struggle between labour and capital (Hyman, 1972; Ashenfelter and Johnson, 1969; Galenson 1952). Moreover, it is easy to see that, in the public sector, a strike is in no way an economic threat to the employers but more of a moral appeal to politicians (Mailand, 2014; Scheuer et al., 2016). Public sector trade unions must appeal to the general public (and voters) in the hope that the public opinion will swing in favour of their demands. The media becomes a central battleground for the two parties during the conflict.

## **Comparison of labour disputes as institutionalised collective action in the private and public sectors**

As strikes and lock-outs also occur in the public sector, most recently in Denmark in connection with the collective bargaining agreements in 2008 and 2013, it is

relevant 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 previous section, the collective industrial conflict in the form of strikes/lock-outs makes 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 lock-out a suitable means to renew collective agreements in the public sector?

The problem in the public sector is that strikes and lock-outs are not fought out in a marketplace or in a negotiation situation in which the employers create a profit and earn supernormal profits. Add to this other significant differences in the 'industrial relations system' surrounding the two sectors. This is outlined in Table 1.

Table 1 lists the significant differences between the public and private sectors in key parts of the industrial relations systems. 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 are put together differently in the public sector. It is therefore worth discussing what implications 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 as an institutionalised form of collective action.

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, defence and the police are examples. If the demand for services is inelastic, then the demand for labour is as well. 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 and collective action such as strikes. This argument has been put forward as one of the main reasons why many countries have seen more stable collective bargaining coverage in the public sector compared to the private sector (Bordogna, 2015).

In contrast to the aforementioned opinion, however, one might claim that the local suppliers (municipalities and regions in Denmark) are subject to strong budgetary restrictions posed at the state level. 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 to the number of employees. Obviously, this disciplines the public sector trade unions.

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

**Table 1.** Comparison of the 'industrial relations' system in the public and private sectors in Denmark.

	Public sector	Private sector
<b>Actors</b>		
Management	Elected politicians	Owner or owner-employed managers
Unions	Dominated by organisations for white-collar groups	Organisations for both white- and blue-collar workers
<b>Technology and market structure</b>		
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.
<b>Power relations</b>		
Political impact on the counterpart <sup>a</sup>	Employer is also a legislator and can always legislate the desired result. Trade unions can put political pressure on politicians through their members in order to ensure their objectives.	Management make their decisions independently of the trade union. Lower degree of collective agreement coverage and regulation.
Economic	High degree of collective agreement coverage, and the employers save wages during both strikes and lock-outs. Only the trade unions are hit economically – during both strikes and lock-outs.	Both parties suffer financially during both a strike and a lock-out.
Instruments of conflict	Right to strike and lock-out with isolated exceptions for particular groups	The right to strike and lock-out

Ibsen and Stamhus (2016).

<sup>a</sup>For more detail, see Hebdon and Stern (2003).

the suppliers of health and welfare services. Yet 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 negotiation table locally, thereby increasing tax revenues. This option is limited,

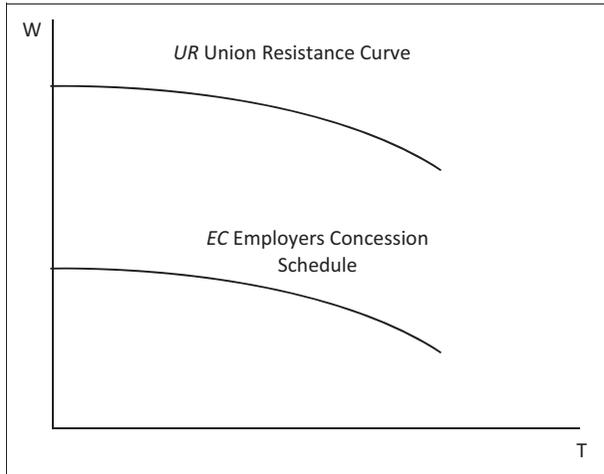
however, by the ability of citizens and companies to move to other locations with lower taxes, which conversely undermines the negotiating position. Furthermore, in recent years, outsourcing, free-choice options and private hospitals have weakened the monopoly status of the municipalities and regions (for similar development in the UK, see Bach, 2002).

The reasoning above (cf. also Freeman and Medoff, 1984: 51) indicates, in the short term, that 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 organisations, *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 utilisation of collective industrial conflict as a means to improve their collective agreements because of the asymmetrical power relations – both politically and economically – in the public sector (Traxler, 1999). As emphasised earlier, 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'. Contrary to this, a strike will in most cases not cost the public employers money. Public employers actually save wages while the trade unions empty their war chests. While the trade union concession curve in a Hicks model falls from left to right, the employer concession curve will not – as in the Hicks model from the private labour market – increase from left to right, but will actually fall and have a decreasing slope, as the dispute will produce economic gains for the employers (cf. Figure 2).

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.

The Kanslergade Agreement in 1933 was the first time that 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 payment deficits and increasing unemployment. This requires special timing in relation to the public sector, as open disputes are often heavily politicised (Due and Madsen, 2003, 2006).

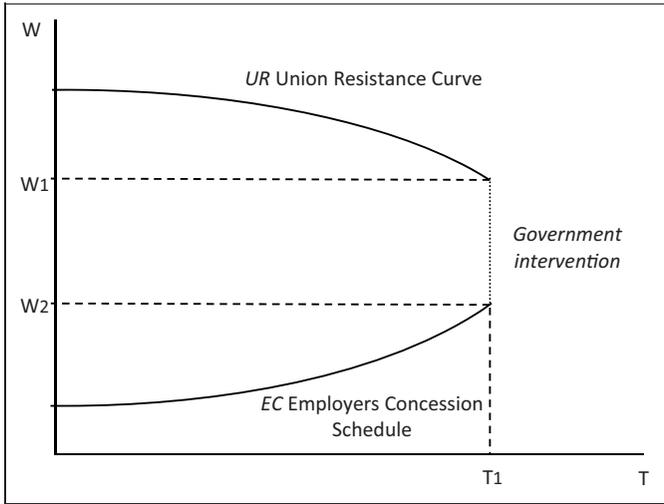


**Figure 2.** Hicks model utilised in the public sector information retrieval (IR) system.

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  $W_1$  and  $W_2$  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. Communication and agenda-setting are important power resources for labour in the public sector (Gumbrell-McCormick and Hyman, 2013). Disputes in the public sector are therefore always heavily politicised, and the parties – or one of the parties – can therefore be affected by negative public opinion.

The most significant difference between utilising 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 lock-outs as an institutionalised form of collective action – are unsuited for solving conflicts in the public Danish collective bargaining model. In our opinion, the teacher conflict in CBR13 is a good example of this.



**Figure 3.** The Hicks model – strike ended by government intervention.

### Collective action in the public sector: The teacher lock-out in 2013

In the following, we will demonstrate the problems involved in using collective action in the public sector if the conflict weapon is used according to the rules in the private sector. We use the teacher lock-out in CBR13 as an example.

The Danish Industrial Relations System in the public sector is highly centralised on both sides of the table. At the state level, the Ministry of Finance (FM) negotiates through the Agency for Modernisation (MS) with its counterpart, the Confederation of State Central Unions (CFU), which negotiates on behalf of all unions in the state sector. At the municipal level, the central organisation for the 98 municipalities in Denmark, the Local Government Denmark (KL), negotiates with the ‘Negotiation Community’ (FF) (Forhandlingsfællesskabet), and at the regional level, the Regional Employers (Regionerne) negotiates with FF as well.

The public employees had very low expectations for CBR13, as a ‘crisis awareness’ from 2008 still prevailed in 2013. The public therefore expected a very peaceful collective agreement process. 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 employers’ interaction with the government’s political work with reform.

In the following, we will merely describe and analyse the negotiations at the municipal level, being well aware that the public employers – the Ministry of Finance/Agency for Modernization (Moderniseringsstyrelsen) and Local Government Denmark (KL) – coordinated their objectives and negotiation

strategies at the state and municipal levels and that the KL Strategy was in many ways subordinate to the strategic objectives of the Ministry of Finance (Mailand, 2014).

The KL demands on the municipality area were based on the economic crisis and were in accordance with the KL long-term employer policy. KL was gambling that the classic employer demands, such as more local wage formation and more space for the local management, increased productivity and efficiency and an increased labour supply. KL also wanted to reduce the number of protected trade union representatives (shop stewards) and ensure 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 KL demands to the school teachers were clear: remove the special rules on how working hours could be used and the 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 KL, 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 organised, where the managers, due to their managerial right, have the final word. Furthermore, KL demanded the liquidation of the special seniority rules regarding working time. It later became apparent that the Agency for Modernization had made the same rigid demands at the state level.

KL’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 organisation of work and how work hours are used. The demands made by the Agency for Modernization were entirely synchronised with those made by the teachers at 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 KL.

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 KL and the Danish Union of Teachers (Danmarks Lærerforening – DLF). Just days before the parties exchanged demands, the government, via Minister 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 (KL). In this connection, the Danish Union of Teachers (DLF) expressed its 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. Access to government documents later revealed that the reform group had discussed not only 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, CBR13 in the public sector was heavily politicised from the beginning, which came to influence the course of the negotiations. The strategy of the municipal and state employers appeared to isolate the teacher union (DLF) and confront it head on over the existing working hour rules in elementary schools (Mailand, 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 lock-out that KL had threatened in accordance with the rules of the main agreement came into effect. The lock-out was extensive, involving almost 67,000 teachers at the municipal and state levels who were covered by the collective agreement. It was precisely because the lock-out 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 organisations. 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 (Mailand, 2014).

After 25 days, the dispute ended on 26 April by government intervention, which met all of the significant KL 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 DKK1bn (ca. €134 m) 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 KL – the introduction of a managerial right and working hour rules that applied throughout the public sector and posed new power relations and working conditions in Danish elementary schools.

### **The teaching lock-out: Casting light on the systemic error in the conflict resolution model in the public sector**

We can conclude that the dispute over the elementary school area as part of CBR13 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 harmonise with the thoughts and ideas behind the construction of the Danish model of collective bargaining in the public sector. As shown previously, 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 since the public employers are also 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 so 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 lock-out if the conflict takes place in the private sector, but in connection with the lock-out, it was only the one part – the teacher's union – that would suffer financial losses, whereas KL in particular would stand to gain from a lock-out via saved wages. The total savings amounted to billions, while the locked-out teaching organisations 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.*

Second, political power with the employers as legislators is also a problem. As described earlier, the great lock-out 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 described earlier, this is actually part of the Danish agreement model. The problem with government intervention in disputes in the public sector, however, is that the employers at the state level enjoy the parliamentary power to take action. 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 on 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 to the 2000s, the state developed ever-increasing ‘micro-management’ of the municipal finances through legislation in particular – 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 therefore the Ministry of Finance, has assumed a more pronounced ‘big brother’ role in collective bargaining in the public sector. The increasingly hierarchical conditions between the public employers can be used strategically to implement national political ambitions at the municipal level.

The intervention in the 2013 lock-out followed the pattern of the government intervention in previous conflicts but was atypical on multiple parameters. Its content closely resembled the KL demands regarding the renewal of the collective agreement (corresponding to wage level W2 in Figure 3), and neither party – as is otherwise the 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 a political custom in Denmark that if a government intervenes in an industrial 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 CBR13 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 CBR13 was a veritable demonstration of power staged and carried out by the Ministry of Finance/Agency of Modernization, with KL as a willing partner. This then involuntarily demonstrated how the use of collective industrial conflict as an institutionalised collective action 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 at both the economic and political levels. The analysis clearly shows that shifting *ideas* among governments, in terms of austerity or modernisation efforts, can lead to public employers utilising the existing *institutions* in new ways in order to maximise interests.

In the final section, we will briefly discuss other alternatives to the existing conflict system.

### **Conflict resolution models in the public sector: Alternatives to the current system**

On the basis of the analysis presented here, 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 depoliticised negotiations, thereby limiting open labour disputes for the benefit of the parties and society in general. It is important to emphasise that this list is by no means exhaustive, and that some of the proposals are mutually exclusive while others supplement one another.

First, 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 (e.g. Portugal, Italy) have completely prohibited the use of lock-outs 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 lock-out 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 that there should be an expansion of the staff so that the economic consequences of the conflict would be more evenly distributed.

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 initiative 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 the strike in the public sector in 2008, 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 (Scheuer et al., 2016). 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 becomes a hostage in an open labour dispute in the public sector.

As the analysis shows, one of the systemic errors is that the public employers are also legislators and the Danish system has not granted particular consideration to this dual role. In Sweden, for example, the Swedish Agency for Government Employers (Arbetsgivarverket) was established in 1994, and 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 depoliticised 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, it is then obvious to point out that the public wage earner organisations can get far with greater unity and by coordinating their negotiating strategy. While, as mentioned earlier, there was a very close partnership between the Ministry of Finance and KL before and during the collective bargaining, the corresponding coordination on the side of the trade union movement was remarkably weak. 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 – yet with the caveat that as long as the regulation arrangement exists, the power of the strike in labour disputes will be relatively limited.

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### **Biographical notes**

**Laust Høgedahl** is a postdoctoral researcher associated to Centre for Labour Market Research (Carma) at the Department of Political Science, Aalborg University. His work focuses on unionisation, organising and collective bargaining. He is currently doing a cross-national study of public sector industrial relations in the Nordic countries focusing on industrial conflict and conflict resolution.

**Flemming Ibsen** is a Professor Emeritus associated to the Centre for Labour Market Research (Carma) at the Department of Political Science, Aalborg University. His main research interests are industrial relations, wage theory, wage bargaining and collective agreements in combination with welfare reforms and reforms of the public sector.