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**THESIS**

**CATCH-22: RELATIONS BETWEEN LABOR  
UNIONS AND MANAGEMENT IN PUBLIC SAFETY**

by

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September 2020

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**CATCH-22: RELATIONS BETWEEN LABOR UNIONS AND  
MANAGEMENT IN PUBLIC SAFETY**

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## **ABSTRACT**

In the United States, a small portion of firefighters are responsible for fire and emergency responses for a large segment of the population. Many of those firefighters are members of a labor union; in states that allow collective bargaining, the unions hold significant legal protections in regard to contract negotiations, job protection, and working conditions. The relationship between the firefighters' unions and the government entities that employ their members can bring about positive collaboration or costly, ongoing battles that negatively impact services. Those who oppose unions point to the associated costs and the considerable sway unions hold over elected officials. Union activists, however, point to the job protections and benefits that unions negotiate and the continued need for employees to have a collective voice. In places where public sector unions are allowed, labor and management must find a way to relate to each other in a manner that is fair and equitable to the union membership but that also ensures services provided to citizens are effective and efficient. This thesis concludes that collaboration and pursuit of shared interests benefit both labor and management, and acting outside of the legal frameworks of a unionized workforce is counterproductive and exacerbates the problem. Labor unrest drives costs through legal action and can reduce the level of service provided to taxpayers.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

ALS	Advanced Life Support
CON	Certificate of Need
CFAI	Commission on Fire Accreditation International
EMS	Emergency Medical Services
ISO	Insurance Services Office
IAFF	International Association of Fire Fighters
NATCA	National Air Traffic Controllers Association
NFPA	National Fire Protection Association
NLRA	National Labor Relations Act
FDNY	New York City Fire Department
PATCO	Professional Air Traffic Controllers Association
PERB	Public Employees Relations Board

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## EXECUTIVE SUMMARY

Police, fire, and emergency medical services personnel are on the front lines of homeland security at the local level. These men and women are sworn to protect and serve the community, providing vital services and contributing to the safety and security of the citizens they serve. These people are also public sector employees, and in many parts of the country, particularly in the northeastern United States, they are unionized. The public sector unions represent and advocate for these employees, and fight for increased wages and benefits along with workplace safety. Unions are separate and distinct organizations from government and their goals may conflict with those of the government entity whose employees they represent. The conflicts may distract from public safety and the overall mission of the organization. Demands for increased compensation, increased staffing, and adherence to concepts such as seniority—a determination for promotion and job assignment—can place government entities under financial strain and can constrain the flexibility needed to adjust to emerging threats.<sup>1</sup>

### A. BACKGROUND

Public sector unions, especially in collective bargaining states such as New York, are well established and likely to remain a factor in government labor relations for the foreseeable future. Given the legal protections afforded these unions, such as interest arbitration and the continuation of expired contract terms—and the fact that employment conditions are contractual and legally binding for employee and employer—unions essentially create government policy.<sup>2</sup>

Union activism can have positive and negative effects on the services a community provides, as well as on the union’s relationship with the government entity its members work for; in some cases, a victory for labor may hold unintended consequences. In

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<sup>1</sup> Daniel DiSalvo, *Government against Itself: Public Union Power and Its Consequences* (New York, NY: Oxford University Press, 2015), 29–30.

<sup>2</sup> George R. Crowley and Scott A. Beaulier, “Public-Sector Unions and Government Policy: Reexamining the Effects of Political Contributions and Collective Bargaining Rights” (Mercatus working paper, George Mason University, November 2014), 6–7, <https://papers.ssrn.com/abstract=3191362>.

collective bargaining states, labor contracts govern many aspects of employment. Basic items, such as pay and benefits, are required subjects of bargaining, but the full scope of a labor contract is determined by what the union and the government entity it is bargaining with agrees to. Labor contracts are legally binding and the contents of the contracts remain in force until they are modified through negotiation.<sup>3</sup> The relationship between both parties, and how they conduct themselves in the negotiation process, is critical to creating a labor contract that is acceptable to the union but that allows for the operational flexibility needed to provide services effectively. Long-term financial impacts must also be considered to ensure the community's viability throughout the term of the contract.

## **B. METHOD**

This thesis seeks to answer the question: How can public sector unions and government entities bargain with each other in a way that satisfies the needs of the labor union without compromising public safety? To answer this question, the research used case studies that show successful examples of labor-management collaboration within the fire service at the local level and compared the results with examples of labor disputes that have had a negative impact on public safety. The research also reviewed the history of public sector unionization and the legal frameworks that govern the labor-management relationship in collective bargaining states.

## **C. FINDINGS**

Though management may see unions as obstructive or unnecessary, in collective bargaining states, unions exist and have legal standing, and thus must be bargained with—failure to do so in a manner that recognizes the status of the bargaining unit may lead to labor unrest and ultimately a reduction in services and legal expenditures. Similarly, public sector unions must respect their role as public servants who work for the people. Overreach of authority and use of legal protections to force changes in the workplace can produce a toxic environment that makes positive collaboration difficult. Ultimately, labor and

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<sup>3</sup> Randi Storch, *Working Hard for the American Dream: Workers and Their Unions, World War I to the Present* (New York, NY: John Wiley & Sons, 2013), 99–100.

management must respect roles and responsibilities, among each other and for the public they serve.

Although they differ significantly from local fire service unions, successful examples of union labor-management relationships may be found in both the private sector in the United States and in some of the unionized military forces in Europe. Additionally, theoretical models of negotiations that could lead to successful outcomes based on an analysis of both sides' concerns could achieve positive outcomes in the negotiation process.

#### **D. CONCLUSIONS**

Labor-management conflict commonly revolves around compensation and working conditions. A bargaining position may best be achieved by adherence to accepted industry standards and through study of agencies of similar size and composition. Unions and their employers should seek to relate to each other from a position of collaboration, not conflict. Both sides ultimately exist to serve the citizens and should conduct themselves with that in mind. Unions and the legal protections they hold are not likely to change, but changes in the environment in which unions and their employers operate may help alleviate conflict and contribute to efficient, effective services for the public from a fairly compensated and protected workforce.

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I also would like to thank Chief Eric McMahon of the Troy Fire Department for supporting this endeavor, and my coworkers for picking up the slack while I was busy with school.

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# **I. INTRODUCTION**

## **A. PROBLEM STATEMENT**

Police, fire, and emergency medical services (EMS) personnel are on the front lines of homeland security at the local level. These men and women are sworn to protect and serve the community, providing vital services and contributing to the safety and security of the citizens they serve. These people are also public sector employees, and in many parts of the country, particularly in the northeastern United States, they are unionized. The public sector unions represent and advocate for these employees and fight for increased wages and benefits along with workplace safety. Unions are separate and distinct organizations, and their goals may come into conflict with the government entity whose employees they represent. The conflicts may distract from public safety and the overall mission of the organization. Demands for increased compensation, increased staffing, and adherence to concepts such as seniority—a determination for promotion and job assignment—can place government entities under financial strain and can constrain the flexibility needed to adjust to emerging threats.

## **B. RESEARCH QUESTION**

How can public sector unions and government entities bargain with each other in a way that satisfies the needs of the labor union without compromising public safety?

## **C. LITERATURE REVIEW**

Public sector unions, especially in collective bargaining states such as New York, are well established and likely to remain a factor in government labor relations for the foreseeable future. Given the legal protections afforded these unions, such as interest arbitration and the continuation of expired contract terms—and the fact that their employment conditions are contractual and legally binding for employee and employer—unions essentially create government policy. The purpose of this literature review is to provide an analysis of the main scholarly debates on the role unions play in the setting of government policy.

There is a body of literature that claims public sector unions are politically active organizations whose membership funds are used to lobby politicians and support their political campaigns. George Crowley and Scott Beaulier, for instance, describe such activity and how it creates government policy on many levels. For example, they note that municipalities with unionized employees have, on average, a 20 percent larger workforce than those without unions, suggesting that unions are driving public policy in terms of staffing levels.<sup>1</sup> Daniel Foster makes a similar assertion concerning law enforcement unions when he describes the restrictive conditions they place on municipalities, for example, in seniority-based job assignments and promotions.<sup>2</sup>

Union advocates offer a different perspective, stating that this driving of policy is not a matter of greed but often one of concern for public and employee safety and the rights of union members. John DeCarlo and Michael Jenkins illustrate examples of positive change initiated by police unions in areas such as crime prevention and officer safety.<sup>3</sup> The International Association of Fire Fighters (IAFF), the largest firefighter union in the United States, takes credit for being behind “nearly every advance in the fire service in the 21st century” and the corresponding changes in health and safety rules.<sup>4</sup> This claim is given credence in a 2005 *Fire Engineering* article, which lists several workplace safety regulations that were spearheaded by the IAFF in conjunction with the U.S. Fire Administration.<sup>5</sup> However, even positive change is criticized by some scholars. Steven Malanga draws a connection between union initiatives and increased spending, noting that

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<sup>1</sup> George R. Crowley and Scott A. Beaulier, “Public-Sector Unions and Government Policy: Reexamining the Effects of Political Contributions and Collective Bargaining Rights” (Mercatus working paper, George Mason University, November 2014), <https://papers.ssrn.com/abstract=3191362>.

<sup>2</sup> Daniel Foster, “Cops, and Robbers: The Public Requires Protection from Public-Safety Unions,” *National Review*, August 12, 2010, <https://www.nationalreview.com/magazine/2010/08/30/cops-and-robbers/>.

<sup>3</sup> John DeCarlo and Michael J. Jenkins, *Labor Unions, Management Innovation and Organizational Change in Police Departments* (New York, NY: Springer International Publishing, 2015).

<sup>4</sup> “About Us,” International Association of Fire Fighters, accessed December 5, 2019, <https://www.iaff.org/about-us/>.

<sup>5</sup> “USFA and IAFF Join in Risk Management and Health/Safety Projects,” *Fire Engineering* 158, no. 9 (September 2005), <https://www.fireengineering.com/magazine/fe-volume-158-issue-9/>.

most union activity corresponds with the need for increased spending and more personnel.<sup>6</sup> This sentiment is echoed by Aaron Tang, who also draws a connection between union activity and the ever-expanding size of government.<sup>7</sup>

Unions may also resort to legal action to drive their agenda. The courts have sided with the unions in some cases, upholding their demands and forcing policy change in government. For example, after a protracted legal fight between the Watertown, New York, Firefighters Union and the city over staffing levels, an appellate court judge ruled in favor of the union, effectively giving the union the right to create staffing policy over the city's (and department employers') wishes.<sup>8</sup> This ruling was the result not of the court favoring the union over the city but rather of the legal framework in which these entities exist, which is another source of debate.

The legal framework that governs unions in collective bargaining states sets the conditions under which unions can drive government policy. In New York state, for example, the continuation of labor contracts after they have expired is a provision of the Public Employees Fair Employment Act, more commonly known as the Taylor Law.<sup>9</sup> The efficacy of these provisions has been called into question by both labor and management. Daniel DiSalvo argues that binding contracts (even when expired) give the union no reason to bargain when conditions are unfavorable to their demands. He explains that continuing expired labor agreements may have a detrimental effect on government during times of financial hardship or when workforce adjustments are needed because it restricts management's ability to adjust benefits packages and reassign personnel.<sup>10</sup> This view is

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<sup>6</sup> Steven Malanga, *Shakedown: The Continuing Conspiracy Against the American Taxpayer* (Chicago, IL: Ivan R. Dee, 2010).

<sup>7</sup> Aaron Tang, "Public Sector Unions, the First Amendment, and the Costs of Collective Bargaining," *New York University Law Review* 91 (April 2016): 144–226, <https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-91-1-Tang.pdf>.

<sup>8</sup> Craig Fox, "NY Firefighters Will Be Paid Nearly \$1M in Back Pay," *Fire Rescue 1*, August 22, 2019, <https://www.firerescue1.com/benefits/articles/394847018-ny-firefighters-will-be-paid-nearly-1m-in-back-pay/>.

<sup>9</sup> "The Taylor Law," New York Public Employment Relations Board, accessed December 4, 2019, <https://www.perb.ny.gov/taylor-law/>.

<sup>10</sup> Daniel DiSalvo, *Government against Itself: Public Union Power and Its Consequences* (New York, NY: Oxford University Press, 2015).

shared by Thomas Kochan et al., who looked at the long-term impact of collective bargaining agreements that remained in force long after the conditions under which they were negotiated had changed. In this context, these scholars highlight that unions can resort to political activity, such as supporting candidates sympathetic to the union or lobbying, to better their position in the midst of a contract dispute.<sup>11</sup>

Union activists are also critical of those same provisions. Kate Montgomery Swearingen describes the restrictions felt by municipal employees who traded the right to go on strike for a contract continuation clause in New York state. She points out that the same detrimental effect of halting the bargaining process was felt by employees who desired workplace changes or pay increases. However, their employers also had the right to stall until conditions were more favorable (or the union dropped its demands). Swearingen sees the state's stalling tactic, combined with the inability to take more drastic actions, as a restriction on unionized employees' rights.<sup>12</sup> Lynn Zimmer and James Jacobs echo this sentiment, using the example of a labor dispute with New York state prison guards in 1979. In their view, the union representing the guards made demands regarding working conditions that arguably needed to change in light of changes in the workplace. For example, the guards felt that their authority had been curtailed following prison reforms enacted after the Attica riots of 1971 that made their working conditions more dangerous, but the state refused to respond to their demands. But, again, as the authors reveal, the perpetual enforcement of an expired contract and the state's unwillingness to bargain left the union powerless in a situation where, according to the union, workplace safety and effectiveness were at stake.<sup>13</sup>

This literature review has shown that public sector unions, through political action and the legal rights they are afforded, have the ability to drive government policy in many

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<sup>11</sup> Thomas Kochan et al., "The Long Haul Effects of Interest Arbitration: The Case of New York State's Taylor Law," *Industrial and Labor Relations Review* 63, no. 4 (July 2010): 565–84, <https://doi.org/10.1177/001979391006300401>.

<sup>12</sup> Kate Montgomery Swearingen, "Tailoring the Taylor Law: Restoring a Balance of Power to Bargaining," *Columbia Journal of Law and Social Problems* 44, no. 4 (2011): 513–51.

<sup>13</sup> Lynn Zimmer and James B. Jacobs, "Challenging the Taylor Law: Prison Guards on Strike," *Industrial and Labor Relations Review* 34, no. 4 (July 1981): 531–44.

parts of the country that allow for collective bargaining, such as New York. When labor disputes occur, they can have a detrimental effect on government operations. However, they can also have a negative effect on the union as well. To effectively provide government services, especially in the realm of homeland security, government officials and union leadership must find a way to bargain with each other effectively to meet the demands of the government mission while providing for the protections desired by employees.

#### **D. RESEARCH DESIGN**

This thesis seeks to answer the question: How can public sector unions and government entities bargain with each other in a way that satisfies the needs of the labor union without compromising public safety? To answer this question, I conducted case studies that show successful examples of labor-management collaboration within the fire service at the local level and compared the results with examples of labor disputes that have had a negative impact on public safety. I followed these studies by reviewing the history of public sector unionization and the legal frameworks that govern the labor-management relationship in collective bargaining states.

Public sector unions are a polarizing subject. Both sides are fighting for their perceived best interest in an environment of limited financial resources, with the added concern of providing a public service efficiently and effectively. It takes a concerted effort by both parties to reach a consensus that satisfies both sides, which is why I used the case study method to draw conclusions in this thesis. The case studies framed the relationship between the parties, provided insight to the positions held and desired outcomes, and ultimately showed what the results of the relationship entailed.

In the public sector, most elements of labor negotiations, grievances, and arbitration awards are a matter of public record. I examined these legal documents to build background about the relationship between the two sides. Legal documentation was a valuable source of information, as they allowed me to place the two parties' positions and arguments into context. Also, public sector labor relations are often a subject of news reporting, as the outcomes are a matter of public safety and impact public finances. These sources, though,

tend to show the negative impacts on public safety; positive collaboration is unlikely to be a result of legal action.

I examined positive collaboration through different sources. When labor and management reach a successful agreement, it may be publicized through media outlets and press releases. And in some cases, positive collaboration is the source of books and other scholarly works that tout these relationships and offer a pathway to achieve similar results. I expanded my research beyond the public sector in the United States and looked at successful models of labor-management relations in the United States private sector and in European militaries. Also, I researched examples of positive labor relations in Europe to look for successful modes of conduct that can be applied to the public sector domestically. Although the specific legal conditions may vary, the methods of conduct between both parties had enough similarities to be of value to my research.

By studying successes and failures and looking at the underlying conditions in the individual cases, I developed a series of recommendations that can be applied to the negotiation process to bring about positive collaboration between labor and management. There is no single answer to this problem; often, success or failure is a culmination of several events.

## **E. CONCLUSION AND CHAPTER OUTLINE**

In all public safety disciplines, employees are the backbone of the organization. When employees are allowed to unionize, management must bargain with the employees, and the conduct during the bargaining process will have a lasting impact on the relationship between labor and management. Poor relations between the parties can impact operational capabilities and morale, and can result in financial impacts arising from court battles and poorly negotiated contracts. Conversely, a productive labor-management environment can assure the organization is effective both operationally and fiscally. This thesis seeks to explore public sector unions, examples of positive and negative labor-management relationships, and recommendations for both sides to consider in their interactions that will help the agency provide services efficiently and effectively while still meeting the needs of the employees.

Chapter II provides a background and history of the labor movement in the United States and the extension of union rights to public sector employees. Chapter III explores the impact of public sector unions on homeland security agencies and includes case studies that illustrate the impact of union activity and the conduct between unions and management. Chapter IV presents an overview of labor-management relations and the negotiation process, and uses examples from outside the public sector for potential ideas to improve relations. Finally, Chapter V presents recommendations for building a positive labor-management relationship.

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## II. HISTORY OF PUBLIC SECTOR UNIONS

Unions have been part of the labor force in the United States since the industrial revolution, and their roots can be traced back to colonial times. Unions in the private sector have dwindled, though, as public sector membership has skyrocketed. This chapter explores the labor movement in the United States and its expansion into public sector employment.

### A. ORIGINS OF THE LABOR MOVEMENT

To understand the status of unions in the public sector, one must consider the history of the labor movement in the United States. Unions protect workers' rights and compensation but they also represent ideas that extend beyond individual workplace issues, such as the greater role that workers play in all aspects of modern society. The ideology of the labor movement binds together union members and can be a factor that complicates labor relations in the workplace, placing the priorities of the organization before the mission.

Unions are a divisive topic, as shown by the diverse viewpoints held by scholars, and can be viewed in the context of fundamental human rights, as an unnecessary restriction on free trade (in the private sector), or as a restrictive burden on government operations (in the public sector). From colonial times until American independence, the country was primarily agrarian with small-scale manufacturers and craftsmen providing artisan services.<sup>14</sup> Workers in fields such as blacksmithing and toolmaking initially worked under the old European methods of journeymen and apprentices. With the onset of the industrial revolution, the relationship began to change. Though some unions appeared before this time, they primarily oversaw wage-setting within a specific craft.<sup>15</sup> Early unions were also social groups that benefitted members in times of illness or distress in an

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<sup>14</sup> Mary Beard, *A Short History of the American Labor Movement* (New York, NY: Harcourt, Brace and Howe), 2–3.

<sup>15</sup> Harry C. Katz, Thomas A. Kochan, and Alexander J. S. Colvin, *An Introduction to U.S. Collective Bargaining and Labor Relations* (Ithaca, NY: Cornell University Press, 2017), <https://muse.jhu.edu/book/56228/>.

era before social welfare programs existed outside the church.<sup>16</sup> Unions became more than just a group of workers banding together to seek higher wages; they became a movement that focused on the wellbeing of their members and families.

As industry began to develop, workers faced increasingly difficult working conditions. Long hours, dangerous work conditions, low pay, and the use of child labor were hallmarks of early industrialization.<sup>17</sup> Professor and author Randi Storch provides an overview of the development of unions in the United States through this lens. She describes the struggle of workers to gain the right to form unions in the aftermath of the industrial revolution. In her view, workers faced oppressive conditions at the time, and the sheer number of workers employed in the growing industrial economy gave the movement strength.<sup>18</sup> She further notes that, though opposed by business interests, the threat of strikes and work stoppages inspired industry to allow the unionization movement to grow.<sup>19</sup> Workers began to see themselves as a separate and distinct group that also had an interest in markets and profits, just as employers did. The solidarity of union members against the profit motives of business owners brought the two sides into conflict over wages, a fight that continues to this day: labor contends that the work of the employees is the basis for the organization's profits and thus profits should be more evenly distributed.<sup>20</sup>

As labor organizations grew, they began to realize the potential of political involvement. The Knights of Labor, one of the largest American labor unions in the late 1800s, was also one of the first to become politically active. It ran candidates in thirty-four of the thirty-five states, along with many state and local officials. This political activism coincided with the formation of labor-based political parties and exceeded the more

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<sup>16</sup> Beard, *A Short History of the American Labor Movement*, 10.

<sup>17</sup> William E. Forbath, "The Shaping of the American Labor Movement," *Harvard Law Review* 102, no. 6 (April 1989): 1109.

<sup>18</sup> Randi Storch, *Working Hard for the American Dream: Workers and Their Unions, World War I to the Present* (New York, NY: John Wiley & Sons, 2013), 20.

<sup>19</sup> Storch, 20–21.

<sup>20</sup> Beard, *A Short History of the American Labor Movement*, 16–17

familiar strikes and boycotts unions used to effect change.<sup>21</sup> Unions morphed from organizations that helped to elect labor-friendly politicians to organizations that were involved in the political arena, and through more drastic action they attempted to force the hand of employers when other tactics failed. Early achievements of this political activity included the adoption of child labor laws and restrictions on working hours that resulted in the forty-hour workweek.<sup>22</sup>

The expansion of labor unions was also facilitated by government policy that recognized the unions, and legislators began passing legislation at the behest of the unions. The National Labor Relations Act of 1935 (NLRA)—initially passed as an attempt to placate unions and lessen disruptive strikes that threatened economic activity—continues to provide the framework for labor law in the United States.<sup>23</sup> Enacted in the midst of the depression, this act fit as a part of the sweeping changes proposed by President Franklin Roosevelt and his New Deal. Roosevelt expressed his approval of workers’ rights during one of his fireside chats in May 1933:

Well considered and conservative measures will likewise be proposed which will attempt to give to the industrial workers of the country a more fair wage return, prevent cut-throat competition and unduly long hours for labor, and at the same time encourage each industry to prevent over-production.<sup>24</sup>

Roosevelt saw labor rights as a factor in economic recovery and part of the larger agenda of social equality. He believed that workers should be able to “afford the very goods that they produce” and advocated for reduced working hours and the total elimination of child labor.<sup>25</sup> Business interests criticized such reforms, arguing that labor interference would

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<sup>21</sup> Forbath, “The Shaping of the American Labor Movement.”

<sup>22</sup> Robert Whaples and Randall E. Parker, eds., *Routledge Handbook of Modern Economic History* (New York, NY: Routledge, 2013), 240.

<sup>23</sup> Forbath, “The Shaping of the American Labor Movement,” 252

<sup>24</sup> Gordon Lloyd, ed., *The Two Faces of Liberalism How the Hoover-Roosevelt Debate Shapes the 21st Century* (Salem, MA: M&M Scrivener Press, 2006), 172.

<sup>25</sup> Roger Daniels, *Franklin D. Roosevelt: Road to the New Deal, 1882–1939* (Urbana: University of Illinois Press, 2015), 187.

be economically unfeasible. However, Roosevelt believed labor reform could be achieved in concert with economic recovery for businesses.<sup>26</sup>

To assure a balance between workers' rights and employer power, the federal government enacted legislation. The National Industrial Recovery Act (NIRA), which gave workers the right to join unions, preceded the NLRA, but the NIRA included the labor provision only as part of a larger package of reforms.<sup>27</sup> Labor is not just part of the NLRA; the NLRA solely focuses on labor. A core tenet of the legislation is the principle of majority rule within the bargaining unit, assuring democratic self-determination for a union. The act also includes the monitoring of employer conduct in respect to labor relations and it affords protections to groups seeking to unionize.<sup>28</sup> The NLRA is still in existence today. Its main challenge came from the Taft–Hartley Act of 1947, which allowed individual states to prohibit mandatory union membership. Such states are today considered right-to-work states.<sup>29</sup>

Unions continued to grow in strength and number in a trajectory that peaked during the post–World War II boom years. Unions then began a slow decline as changes in industry and economics started to affect the workforce.<sup>30</sup> Offshoring, automation, and relocation of industry to less labor-friendly states were factors in the decline. Also, a lack of legal and political support for union formation beginning in the 1970s, caused by pressure from employers and a decrease in the perceived need for and value of unions by the workforce, was a factor in declining union membership.<sup>31</sup> Nonetheless, some in the workforce felt the battle had been won and the goals of the labor unions had been met.

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<sup>26</sup> Daniels, 188.

<sup>27</sup> Irving Kovarsky, “A Social and Legal Analysis of the Secondary Boycott,” *Oregon Law Review* 35, no. 2 (1956): 117.

<sup>28</sup> Henry S. Farber and Bruce Western, “Ronald Reagan and the Politics of Declining Union Organization,” *British Journal of Industrial Relations* 40, no. 3 (September 2002): 385–401, <https://doi.org/10.1111/1467-8543.00240>.

<sup>29</sup> Storch, *Working Hard for the American Dream*, 82–83.

<sup>30</sup> Bill Fletcher and Fernando Gapasin, *Solidarity Divided: The Crisis in Organized Labor and a New Path toward Social Justice* (Berkeley: University of California Press, 2008).

<sup>31</sup> Henry S. Farber, “Union Membership in the United States: The Divergence between the Public and Private Sectors” (working paper, Princeton University, 2005).

## **B. UNION RIGHTS FOR PRIVATE SECTOR EMPLOYEES**

Under the NLRA, workers have the right to organize and participate in unions and be protected from retaliatory action from employers. When 30 percent of workers in a given unit elect to organize, the National Labor Relations Board (NLRB), which holds the responsibility of enforcing U.S. labor law, verifies the validity of the petition and then certifies the resulting vote.<sup>32</sup> Once a union has been certified, the NLRB enforces conduct between the union and the employer as the initial contract is being negotiated. During the formation of a union, the NLRB enforces conduct between the labor organization and employer until the initial contract is ratified. Once the contract is ratified, enforcement is relegated to the authority having jurisdiction. In the case of right-to-work states, the NLRB protects workers' rights to organize but employees do not have to join the union. Even if a majority of employees have elected to join, membership is not compulsory. In contrast, union membership in collective bargaining states is compulsory if a majority of workers choose to unionize.<sup>33</sup> Examples of improper conduct given by the NLRB follow below.

### **Labor organization conduct that violates the law:**

- Threats to employees that they will lose their jobs unless they support the union.
- Seeking the suspension, discharge or other punishment of an employee for not being a union member even if the employee has paid or offered to pay a lawful initiation fee and periodic fees thereafter.
- Refusing to process a grievance because an employee has criticized union officials or because an employee is not a member of the union in states where union security clauses are not permitted.
- Fining employees who have validly resigned from the union for engaging in protected concerted activities following their resignation or for crossing an unlawful picket line.
- Engaging in picket line misconduct, such as threatening, assaulting, or barring non-strikers from the employer's premises.
- Striking over issues unrelated to employment terms and conditions or coercively enmeshing neutrals into a labor dispute.

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<sup>32</sup> Paul Weller, "Promises to Keep: Securing Workers' Rights to Self-Organization under the NLRA," *Harvard Law Review* 96, no. 8 (June 1983): 1769–27, <https://www.jstor.org/stable/pdf/1340809.pdf>.

<sup>33</sup> "Jurisdictional Standards," NLRB, accessed February 13, 2020, <https://www.nlr.gov/rights-we-protect/law/jurisdictional-standards>.

### **Employer conduct that violates the law:**

- Threatening employees with loss of jobs or benefits if they join or vote for a union or engage in protected concerted activity.
- Threatening to close the plant if employees select a union to represent them.
- Questioning employees about their union sympathies or activities in circumstances that tend to interfere with, restrain or coerce employees in the exercise of their rights under the Act.
- Promising benefits to employees to discourage their union support.
- Transferring, laying off, terminating, assigning employees more difficult work tasks, or otherwise punishing employees because they engaged in union or protected concerted activity.
- Transferring, laying off, terminating, assigning employees more difficult work tasks, or otherwise punishing employees because they filed unfair labor practice charges or participated in an investigation conducted by NLRB.<sup>34</sup>

### **C. UNION RIGHTS FOR PUBLIC SECTOR EMPLOYEES**

For labor advocates, it does not matter whether the government or the private sector employs you. In an essay describing the rise of public sector unions, Robert Shaffer illustrates the similar struggles over working conditions faced by public sector employees: they also want the right to bargain for fair wages, safe working conditions, and increased benefits, as their counterparts in the private sector do.<sup>35</sup> From an ideological standpoint, the struggle is similar, even today as public sector unions deal with changes in policy and public perception. Still, at its core, the goal of the democratic representation of employees remains the same.<sup>36</sup> Regardless of employment status, union activists believe in the right for employees to collectively bargain and have representation for the benefit of the employee.

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<sup>34</sup> “Employer/Union Rights and Obligations,” NLRB, accessed February 13, 2020, <https://www.nlr.gov/rights-we-protect/rights/employer-union-rights-and-obligations>.

<sup>35</sup> Robert Shaffer, “Where Are the Organized Public Employees? The Absence of Public Employee Unionism from U.S. History Textbooks, and Why It Matters,” *Labor History* 43, no. 3 (August 2002): 315–34.

<sup>36</sup> Andy Danford, Mike Richardson, and Martin Upchurch, “‘New Unionism,’ Organising and Partnership: A Comparative Analysis of Union Renewal Strategies in the Public Sector,” *Capital and Class* 76 (2002): 1–27.

Although workers perceive no difference in the rights to which they feel they are entitled, the government as an employer did not share the same view during the early years of union activism. Union activist and author Michael Goldfield describes the initially fierce resistance to public sector unions, even by otherwise progressive government officials.<sup>37</sup> There was concern that tactics used by unions in the private sector, such as strikes and work stoppages, could not be tolerated in the realm of public service. Roosevelt echoed this attitude in his 1937 letter to the president of the National Federation of Federal Employees, where he wrote,

The process of collective bargaining, as usually understood, cannot be transplanted into the public service.... The employer is the whole people who speak by means of laws enacted by their representatives in Congress.... I want to emphasize my conviction that militant tactics have no place in the functions of any organization of Government employees.<sup>38</sup>

The arguments used at that time resurfaced in a 2004 article in the *University of Pennsylvania Journal of Business Law*. In a debate over collective bargaining rights in the newly formed Department of Homeland Security, the same arguments recurred: government employees should not be allowed to bargain owing to their status as servants of the people.<sup>39</sup> The power that unions can have over the agencies that employ them remains a concern, especially in the realm of public safety.

Attitudes began to change in the post–World War II era, with significant policy shifts coming from the Kennedy administration. Executive Order 10988 established public sector union recognition and limited collective bargaining rights for some federal employees.<sup>40</sup> Labor historian Irving Bernstein opines that Kennedy “updated the New Deal,” and this was part of that effort.<sup>41</sup> Viewed as part of a more extensive program of

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<sup>37</sup> Michael Goldfield, “Public Sector Union Growth and Public Policy,” *Policy Studies Journal* 18, no. 2 (Winter 1989): 404–20.

<sup>38</sup> Goldfield.

<sup>39</sup> Joseph Slater, “Homeland Security vs. Workers’ Rights? What the Federal Government Should Learn from History and Experience, and Why,” *University of Pennsylvania Journal of Business Law* 6, no. 2 (Winter 2004): 295–356.

<sup>40</sup> Goldfield, “Public Sector Union Growth and Public Policy.”

<sup>41</sup> Shaffer, “Where Are the Organized Public Employees?”

social action, Kennedy's order liberalized federal policy toward unions.<sup>42</sup> The policy shift can also be attributed in part to the massive expansion of government employment in the postwar era. Government employees wanted the same rights as workers in the private sector and the increase in their numbers helped build momentum for unionization.<sup>43</sup> More government employees combined with relaxed rules regarding unionization led to an explosive growth in public sector union membership, first at the federal level, with states and localities following.<sup>44</sup> The growth coincided with the civil rights movement. In some southern cities, minority workers in low-wage local jobs found strength and a route to better living conditions through unionization.<sup>45</sup> Twenty-two states gave workers the right to collectively bargain in the 1960s, with thirty-six granting union rights by 1975.<sup>46</sup> Thus, societal changes and favorable legislation led to an expansion in the number of unionized public employees.

But unionization and collective bargaining differ from one another. The union is the organization whereas collective bargaining is the right of the organization to bargain with its employer, as allowed (and enforced) by law. Where collective bargaining is allowed, what follows is a path to dispute resolution that, if necessary, is mediated by governmental authority.<sup>47</sup> This is one of the more contentious debates concerning union policy and public sector employees because the government has the right to mediate its own disputes. Imagine if a plaintiff had similar power in civil court.

In the private sector, the workers' ability to strike as a form of protest balances against the employer's ability to close up shop or move. Also, employers can fire or reclassify employees.<sup>48</sup> Government entities, on the other hand, have far less flexibility;

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<sup>42</sup> Irving Bernstein, "Promises Kept: John F. Kennedy's New Frontier," *The American Historical Review* 97, no. 1 (February 1992): 314–15, <https://doi.org/10.1086/ahr/97.1.314>.

<sup>43</sup> Shaffer, "Where Are the Organized Public Employees?"

<sup>44</sup> Goldfield, "Public Sector Union Growth and Public Policy."

<sup>45</sup> Storch, *Working Hard for the American Dream*.

<sup>46</sup> Storch.

<sup>47</sup> "Collective Bargaining," AFL-CIO, accessed June 2, 2020, <https://aflcio.org/what-unions-do/empower-workers/collective-bargaining>.

<sup>48</sup> Farber, *Union Membership in the United States*.

they cannot shut down as a result of a labor dispute. Under these conditions, government employment is more stable and secure. Although unionized employees may see some restrictions in government employment, such restrictions have not been reflected in the numbers of union workers. As seen in Figure 1, the percentage of unionized government employees continues to be much higher than in the private sector. Though the data in this chart ends in 2004, the trend has continued: The Bureau of Labor Statistics reports that in 2019, 33.6 percent of public employees were in a union<sup>49</sup>

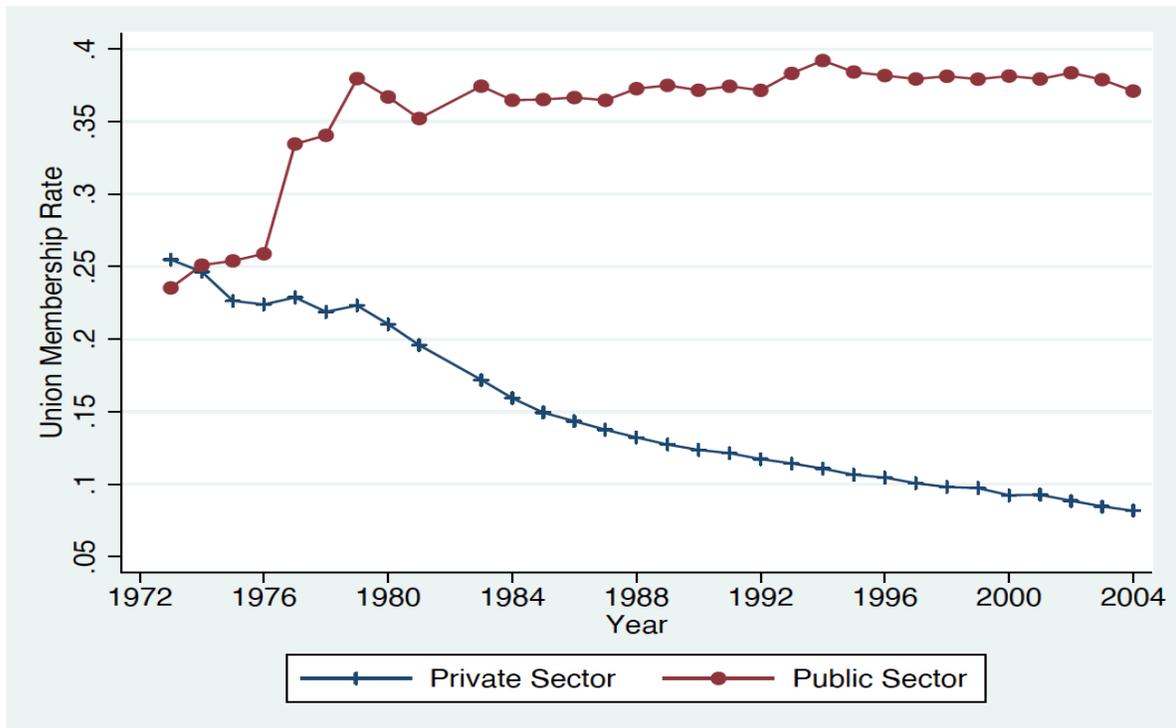


Figure 1. Private and Public Sector Union Membership Rates, 1973–2004<sup>50</sup>

<sup>49</sup> “Union Members—2019,” Bureau of Labor Statistics, January 22, 2020, <https://www.bls.gov/news.release/pdf/union2.pdf>.

<sup>50</sup> Source: Farber, *Union Membership in the United States*.

#### D. IMPETUS FOR LEGAL PROTECTIONS GRANTED TO UNIONS

The legal status of unions varies throughout the country. The two primary models, however, are right-to-work and collective bargaining. This distinction involves the rights of employees to negotiate legally binding contracts with their employers. New York, for example, is a collective bargaining state. Beyond merely allowing unions to bargain, other laws address employer-employee relations. In New York, these laws are part of the Taylor Act, which, along with binding arbitration, contains another provision that extends a labor contract after it has expired.<sup>51</sup> The passage of the Taylor Act originated in New York City on New Year's Day of 1966. That day, transit workers went on strike, paralyzing the city.<sup>52</sup> The impact of the strike forced lawmakers to make compromises that would prevent such a strike from happening in the future. The resulting legislative action prohibits strikes by public employees and, in return, grants additional protections such as the continuation of expired contracts and the formation of the Public Employees Relations Board (PERB) to litigate labor disputes.<sup>53</sup>

The Taylor Act has been called into question by both labor and management. DiSalvo argues that binding contracts (even when expired) give a union no reason to bargain when conditions are not favorable to its demands. He explains that this can have a detrimental effect on government during times of financial hardship or when workforce size requires adjusting benefit packages and reassigning personnel.<sup>54</sup> In support of this view, Kochan et al. look at the long-term impact of collective bargaining agreements, which remain in force long after the conditions in which they had been negotiated have changed. These scholars highlight that unions can resort to political activity to better their position during a contract dispute.<sup>55</sup> Financial and material support to politicians has long been a key activity of unions, and the payoff for providing support during an election can

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<sup>51</sup> New York Public Employment Relations Board, "The Taylor Law."

<sup>52</sup> Swarengen, "Tailoring the Taylor Law."

<sup>53</sup> Swarengen.

<sup>54</sup> DiSalvo, *Government against Itself*.

<sup>55</sup> Kochan et al., "The Long Haul Effects of Interest Arbitration."

be the negotiation of a contract favorable to the union. Political activism, though, can be seen as a defense against similar tactics used by business leaders who also use financial support to achieve favorable legislation.

Some union activists, however, are critical of this law. Swearengen describes the restrictions felt by municipal employees who trade the right to go on strike for the contract continuation clause permitted by the Taylor Law.<sup>56</sup> She points out that employees who desire workplace changes or pay increases feel the same detrimental effect of halting the negotiating process.<sup>57</sup> However, employers also have the right to stall until conditions are more favorable (or the union drops its demands). Swearengen sees the use of delaying tactics, combined with the inability to take more drastic action, as a restriction on worker rights.<sup>58</sup> Although the Taylor Law was an attempt to improve labor relations in New York state, both sides still question its effectiveness.

Unions may wield considerable political influence, but this influence is not absolute. During the 1980 presidential election, for example, PATCO, the Professional Air Traffic Controllers Association, endorsed Ronald Reagan in his bid for the presidency. Yet when the union voted to strike, Reagan did not acquiesce to its demands; he fired nearly 13,000 striking employees.<sup>59</sup> Reagan's action was a major backlash against public sector unions that bled over into further polarization between the political parties. Over thirty years later, the effects of Reagan's actions are still being felt, as evidenced by the policies of Governors Walker (Wisconsin) and Christie (New Jersey), both of whom signed legislation that reforms public sector pension programs and places limits on items that are mandatory subjects of negotiation in public employee contracts.<sup>60</sup> Christie signed this

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<sup>56</sup> Swearengen, "Tailoring the Taylor Law."

<sup>57</sup> Swearengen.

<sup>58</sup> Swearengen.

<sup>59</sup> J.A. McCartin, "Reagan vs. Patco—The Strike That Busted Unions," *New York Times*, August 2, 2011, <https://www.nytimes.com/2011/08/03/opinion/reagan-vs-patco-the-strike-that-busted-unions.html>.

<sup>60</sup> Deborah Prokopf, "Public Employees at the School of Hard Knox: How the Supreme Court Is Turning Public Sector Unions into a History Lesson," *William Mitchell Law Review* 39, no. 4 (2013), <http://open.mitchellhamline.edu/wmlr/vol39/iss4/11>.

legislation despite promising not to during his campaign for election, angering the unions that had given him their support.

States that allow for collective bargaining also mandate compulsory union membership and dues collection, regardless of the employee's personal choice. The theory is that a union contract covers all employees in a bargaining unit, and thus all employees should be required to financially support the union. Opposition to this requirement reached the Supreme Court, where it was found to be a violation of the First Amendment. The *Janus* decision ruled that mandatory dues collection in this context is illegal. The court determined that union activity is inherently political, as the funds raised are used to influence the government (the employer). Mandatory dues collection for use in political activity is considered a free speech issue because employees are not allowed to opt out of paying dues if they do not support the union's political activity. This ruling threatens the primary income source for unions and thus their primary means for political influence.<sup>61</sup> Public sector unions are under attack; however, in states where collective bargaining is legal, they still factor into politics and the services that their employees provide.

## **E. CONCLUSION**

The labor movement in the United States has not only attempted to secure better pay and working conditions for employees but also has reflected a larger push for civil rights and equality for all Americans. Union activists consider their work to extend beyond issues of employment to a larger agenda of equality and enhanced quality of life for all workers. As time passed, many of the original goals of the labor movement were met and the number of union members in the private sector diminished significantly. However, union membership in the public sector continues to grow and is a significant factor in the management of the workforce at all levels of government.

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<sup>61</sup> "Unions Are Confronted with an Existential Threat," *Economist*, February 24, 2018, <https://www.economist.com/united-states/2018/02/24/unions-are-confronted-with-an-existential-threat>.

### **III. IMPACT OF UNIONS ON HOMELAND SECURITY AGENCIES**

Public sector unions have a significant impact on the conditions under which their members work, and in many cases on the governmental agencies that employ them. This chapter explores the effects of unionization on the public workforce and looks at some of the operational impacts on public safety agencies at the local level. Employee compensation, including health care and retirement, are a significant portion of many municipal budgets, and union contracts can dictate the assignment and utilization of personnel. Three examples are presented to show how the relationship between fire department unions and the communities they serve can have a direct impact on municipal finances and operational capabilities.

#### **A. OPERATIONAL IMPACTS OF LABOR CONTRACTS**

In collective bargaining states, the conditions of employment are negotiated into a legally binding contract. The contract negotiation has input from both parties, so management should be cognizant of contractual items that can have adverse effects on operations. However, for a variety of reasons, that may not be the case—e.g., as a result of poor negotiating tactics, changing work conditions, or political pressure applied by the union. In the case of changing conditions, the fact that labor contracts stay in effect after they expire (and changes are subject to quid pro quo bargaining), ineffective or obstructive work practices may remain in effect long after their utility has passed.

When operational matters are negotiated into a labor contract it may prevent the municipality from making necessary adjustments in response to changing conditions. Also, the nature of the negotiation process may not address needed changes because of the difficulty and potential cost associated with changing the terms of a contract. Making a change in contractual working conditions without negotiating is known as a unilateral change. Unilateral changes generally are not allowed when dealing with a unionized

workforce unless the employer can prove extenuating circumstances that impact public safety and security, or a higher authority allows for the suspension of the union contract.<sup>62</sup>

### **1. Mandatory Items**

Mandatory items *must* be negotiated in the initial contract and upon request of either party during renegotiations after the contract term has expired.<sup>63</sup> Both sides are required to negotiate the topic and cannot refuse to engage in discussions. If an agreement cannot be reached, a conflict resolution process is then used. Other topics *may* be agreed upon and then placed into the resulting labor contract if both sides agree to do so.<sup>64</sup> If a nonmandatory topic has been agreed upon and placed into the contract, the topic then becomes a mandatory item in subsequent renegotiations.<sup>65</sup> For example, the staffing level of a fire department is not a mandatory topic of bargaining. However, if a fire department union and its employer agree to staffing levels as a contract item, it then becomes a mandatory item when the contract is up for renegotiation. The inclusion of a staffing clause prevents the employer from changing staffing levels without consent from the union.

### **2. Permissive Items**

Outside of mandated subjects of bargaining, other items may be inserted into labor contracts that can have an effect on the operations of a public safety agency. Permissive subjects of bargaining are the avenue by which unions can have an impact on the operational aspect of an agency. For an item to be considered permissive, both parties must agree to discuss it; once it has been entered into a contract it becomes legally enforceable and transforms into a mandatory subject.<sup>66</sup> Once the item is in a contract, it has to be negotiated by both parties to be removed or modified.

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<sup>62</sup> Stephen F. Befort, "Public Sector Bargaining: Fiscal Crisis and Unilateral Change," *Minnesota Law Review* 69 (1985): 1221–75.

<sup>63</sup> La Rae G. Munk, "Mandatory Subjects of Bargaining," Mackinac Center for public Policy, August 1, 1998, <http://www.mackinac.org/1378>.

<sup>64</sup> Munk.

<sup>65</sup> "Labor-Management Relations," New York State, accessed February 24, 2020, [https://www.dos.ny.gov/lg/handbook/html/labor\\_management\\_relations.html](https://www.dos.ny.gov/lg/handbook/html/labor_management_relations.html).

<sup>66</sup> Munk, "Mandatory Subjects of Bargaining."

One example of a negotiated subject is seniority rights for job assignments. Seniority is a hallmark of union ideology. It is a concept that is rooted in the premise that time on the job is the only thing that cannot be corrupted by politics, nepotism, or favoritism.<sup>67</sup> While valid in theory, this concept can adversely affect an agency's ability to perform its duties. Fire and police departments have long valued experience as a defining factor in an individual's ability to perform a task, and that attitude is reflected in seniority-based job assignments that appear in many union contracts. Mandatory bargaining subjects ensure that seniority governs items such as pay, time off, and vacation. However, if a municipality allows seniority to govern job assignments, a person better suited to the job but who has less time employed may be passed over.<sup>68</sup>

The restrictive nature of an employment contract may also have a detrimental effect on employee morale and motivation. Though the concept of waiting your turn may be acceptable for pay steps or more time off, if no flexibility is allowed until an employee has gained a sufficient amount of time on the job there is no incentive for employees to better themselves professionally. In the dynamic world of homeland security, the most able individuals must be put into positions where their skills and abilities are best used. Failure to do so is a waste of resources.

### **3. The Negotiation Process**

It would be unfair to place the blame for negotiation conditions solely on the unions; after all, a contract is an agreement between two parties. While that agreement may be influenced by political activism or politicians attempting to gain union support, ultimately it is an agreement that both the government entity and the union enter into. Because contracts may remain in force even after they have expired, items that are no longer operationally or fiscally sensible may remain in place and be enforceable. At that point, the only way to remove such items is to negotiate them out of the next contract, which may be problematic for one or both sides. Some labor contracts date from the 1960s,

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<sup>67</sup> Abraham Weiss, *Collective Bargaining Provisions. Seniority* (Washington, DC: U.S. Government Printing Office, 1949).

<sup>68</sup> J. McDowell and G. Pabst, "Are Women Better Cops?" *TIME* 139, no. 7 (February 17, 1992): 70.

when public employees were first allowed to unionize. All items in the contract since that point have been subject to negotiation. Public safety has changed dramatically since then, but contracts do not adjust to the changes automatically.

Labor contracts are considered *quid pro quo* in that provisions can be adjusted, added, or deleted in return for something.<sup>69</sup> Changes that are representative of current working conditions, or in response to a new threat or operational requirement, must be agreed to by both parties. This is an example of how nonmandatory items can be placed into a labor contract. For example, in the Troy, New York, police department all positions were traditionally put out to bid annually. Positions in the detective bureau were included, and if senior officers elected, to, they would be able to bid a spot and displace a detective from a position where that person was actively working cases that could go on for years. An FBI review criticized this practice, but the union refused to concede without monetary compensation.<sup>70</sup> When the city agreed to place all positions to bid (which it did not have to bargain for) it made the practice contractual. As another example, two Boston firefighters were killed in the line of duty while fighting a fire. Autopsies revealed that “one firefighter had a blood alcohol level of .27, and the other had traces of cocaine in his system.”<sup>71</sup> After public outcry and a demand for drug testing, the union conceded, but only in return for a 2.5 percent raise as opposed to the 1.5 percent raise that was initially offered. The monetary compensation was a necessity because drug testing is not a mandatory subject of bargaining and the fire department could have refused to negotiate submitting to the practice.

The necessity of negotiating for important changes is a fact of life for public safety agencies that operate in collective bargaining states. Whether it seems sensible or not, it is the law and must be followed, or the government employer risks grievances from unions

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<sup>69</sup> George A. Akerlof, “Labor Contracts as Partial Gift Exchange,” *The Quarterly Journal of Economics* 97, no. 4 (November 1, 1982): 543–69.

<sup>70</sup> Howard D. Teten and John W. Minderman, “Police Personal Problems—Practical Considerations for Administrators,” *FBI Law Enforcement Bulletin* 46, no. 1 (January 1977): 8–15.

<sup>71</sup> Jessica Fargen, “Mayor Wants Mandatory Drug Testing for Firefighters,” *Boston Herald*, November 30, 2007, <https://www.bostonherald.com/2007/11/30/mayor-wants-mandatory-drug-testing-for-firefighters/>.

(with the associated costs). Unfortunately, failure to negotiate changes leaves labor practices in place that are not conducive to the efficient and effective provision of services.

## **B. FINANCIAL IMPACTS**

Personnel costs make up a significant portion of government spending at the local level, making employee pay and benefits an item that is scrutinized and often criticized. Proponents of government reform, such as the Empire Center for Public Policy, claim that benefits received by government workers are excessive in comparison to the private sector.<sup>72</sup> However, in the realm of homeland security agencies, that is a difficult claim to prove.<sup>73</sup> Homeland security agencies at the local level include the police and fire departments that fill first responder roles; for those service providers there is no clear counterpart in the private sector. For example, there are only a handful of privatized fire departments in the United States, and private fire departments are primarily used for wildland, industrial, and airport fire protection.<sup>74</sup> For police departments, the scope of responsibility borne by police officers cannot be applied to private sector security officer, who, for example, do not possess the powers of arrest and have limited ability to use force.<sup>75</sup> Thus, the only way to assess the fairness of workers in the homeland security field is to compare their compensation to that of similar government workers in the same field and to judge compensation rates at the local level by comparing them to other municipalities with similar characteristics. The validity of this process of comparison is evidenced in the guidelines used by the New York State Public Employees Relations Board (PERB) when making determinations in labor disputes. The guidelines require the following:

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<sup>72</sup> “About the Center,” Empire Center for Public Policy, accessed April 18, 2020, <https://www.empirecenter.org/about-the-center/>.

<sup>73</sup> Thom Reilly, “Rethinking the Role of the Profession on Public Sector Compensation,” *Public Administration Review* 73, no. 1 (2013): 8–9, <https://www.jstor.org/stable/23355428>.

<sup>74</sup> Ben Evarts and Gary P. Stein, *U.S. Fire Department Profile 2018* (Quincy, MA: National Fire Protection Association, February 2020), <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Emergency-responders/osfdprofile.pdf>.

<sup>75</sup> Michelle T. Sullivan, “Binding Arbitration as a Means of Settling Public Sector Union Contracts: A Process with an Image Problem?” *University of Toledo Law Review* 43, no. 3 (Spring 2012): 655.

Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.<sup>76</sup>

### **1. Compensation**

In collective bargaining states, pay is a mandatory subject of bargaining.<sup>77</sup> Studies on public sector pay rates show that, in general, base salaries are lower for public sector jobs than for comparable private sector ones. However, the overall compensation is higher in the public sector when health care and retirement costs are factored in, as government jobs tend to have more generous benefit packages, including defined-benefit pensions, which have become rare in the private sector.<sup>78</sup> The difference in overall compensation is illustrated in Figure 2, which shows a benefits comparison between New York state government employees and average private sector equivalents.

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<sup>76</sup> New York Public Employment Relations Board, “The Taylor Law.”

<sup>77</sup> New York Public Employment Relations Board.

<sup>78</sup> DiSalvo, *Government against Itself*.

	State	Private avg
Number of paid holidays	12	9
Number of paid vacation days:		
After 1 year	14	10.2
After 5 years	18	15
After 10 years	20	18.1
Percent with access to:		
Retirement benefits of any kind	100	78
Defined-benefit pension	100	34
Percent with access to employer-supported health benefits:		
Medical	100	84
Dental	100	64
Vision	100	40
Outpatient prescription drug	100	81
Percent employer share of health insurance premium:		
Individual coverage	90	82
Family coverage	75	74

Figure 2. Public versus Private Sector Employee Benefits in New York<sup>79</sup>

Data from the Bureau of Labor Statistics show a consistent difference in pay between unionized and nonunion public employees, regardless of the classification of work performed. One survey shows an average increase of 10 to 15 percent in salary for departments that are unionized.<sup>80</sup> Even in collective bargaining states, there are also nonunion employees. Often these workers hold appointed positions. In New York, for example, such employees are classified as management-confidential. Though employees in this class may have lower salaries overall, they do not have to bargain through a union and are able to craft more flexible and responsive work conditions, albeit without the associated job protections that come with being part of a unionized workforce.<sup>81</sup> On the

<sup>79</sup> Source: “Taylor Made,” Empire Center for Public Policy, accessed March 20, 2020, <https://www.empirecenter.org/publications/taylor-made/>.

<sup>80</sup> Brigham R. Frandsen, “The Effects of Collective Bargaining Rights on Public Employee Compensation: Evidence from Teachers, Firefighters, and Police,” *ILR Review* 69, no. 1 (January 1, 2016): 100.

<sup>81</sup> Helene S. Tanimoto and Gail F. Inaba, “State Employee Bargaining: Policy and Organization,” *Monthly Labor Review* 108, no. 4 (April 1985): 56.

other hand, nonunion government employees may be granted raises when the unionized workforce is not or is in negotiations. Employees that are not covered by a labor contract can have the conditions of their employment changed unilaterally, at the will of their employer. The use of merit pay is an example. Merit-based raises are rare in labor contracts that instead rely heavily on seniority to grant pay increases. The reliance on seniority, as opposed to performance, as the main factor in pay raises is often criticized as an example of union inefficiency.<sup>82</sup>

Differences in pay are notable between employees in collective bargaining states and those in right-to-work states. A report from 2017 on average firefighter salaries clearly illustrates this point, explaining that the top ten states for firefighter earnings are collective bargaining states (see Figure 3).<sup>83</sup> There are two key aspects to these figures, however: one is the basic pay rate and the other is hours of work. Working hours are a significant factor when it comes to comparing pay for firefighters. In the United States, most professional firefighters work a fifty-six hour week.<sup>84</sup> Because a fire department is a twenty-four hour operation, a fifty-six hour workweek generally corresponds to three shifts of firefighters to achieve around-the-clock coverage. In a handful of states, firefighters work a forty-hour week (the average is forty-two hours with built-in compensatory time). And not coincidentally, those states are also collective bargaining states that are located in the northeast.<sup>85</sup>

To staff a department and have a forty-hour workweek, a department must have four shifts, thus increasing the required staffing by 25 percent. To provide around-the-clock staffing, departments are forced to hire more personnel or cut daily staffing levels. In New York, the forty-hour workweek was considered a victory for the firefighter's union, as

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<sup>82</sup> "Pay for Performance: A Simple Concept, but Difficult to Implement," Main Municipal Association, accessed April 18, 2020, <https://www.memun.org>.

<sup>83</sup> Andrew DePietro, "Here's How Much Firefighters Earn in Every State," *Forbes*, March 31, 2019, <https://www.forbes.com/sites/andrewdepietro/2019/03/31/firefighters-salary-state/>.

<sup>84</sup> Larry T. Hoover, Jerry L. Dowling, and Eugene E. Bouley, "The Erosion of Police and Firefighter Wage Parity," *Monthly Labor Review* 119 (1996): 13.

<sup>85</sup> Bill Maccarone, "RI Law Mandates OT for Firefighters after Working 42 Hours per Week," *Firefighter Overtime*, May 14, 2019, <http://www.firefighterovertime.org/2019/05/14/ri-law/>.

professional firefighters now had the same hours of work as the rest of the workforce.<sup>86</sup> The forty-hour workweek for firefighters was then incorporated into labor contracts, as hours of work is a mandatory subject of bargaining. Even though fifty-six hour weeks are permissible for certain categories of public safety workers at the federal level and those covered by the Fair Labor Standards Act (FLSA), any attempt to change that in collective bargaining states would have to be negotiated.

<b>Rank</b>	<b>State</b>	<b>2017 Mean Annual Wage</b>
1	New Jersey	\$75,880
2	California	\$73,860
3	New York	\$70,560
4	Washington	\$70,300
5	Nevada	\$66,670
6	Oregon	\$64,330
7	Connecticut	\$63,130
8	Alaska	\$60,930
9	Massachusetts	\$60,550
10	Maryland	\$58,590

All ten states are collective bargaining states

Figure 3. Top Ten States for Firefighter Earnings<sup>87</sup>

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<sup>86</sup> Uniformed Firefighters Association of Greater New York, accessed February 20, 2020, [https://www.ufanyc.org/about\\_us/history.php](https://www.ufanyc.org/about_us/history.php).

<sup>87</sup> Source: DePietro, “Here’s How Much Firefighters Earn in Every State.”

## **2. Benefits**

Benefits, such as pensions, time off, and health care, are another component of government employee compensation. Benefits may be negotiated by unions or are part of the employment package, and are another financial impact of government employment. Some benefits, such as the inclusion of overtime in pension calculations, can have a lasting impact on state and municipal budgets that continue well after an employee has retired.

It can be difficult to control costs because, as noted above, items that are entered into a labor contract remain in force unless removed during subsequent negotiations. Removal of an item that is considered a benefit to the union often results in a concession on the part of the employer that otherwise benefits workers, even if the item is costly or outdated. In addition, contractual items that may have been considered low cost at one point can prove to be costly over time, yet remain in force.

Three so-called fringe benefits that are common in public employment are a retirement plan, health care, and time off. Each has an associated cost and a history.

### ***a. Retirement***

Public employee pensions have been identified as an area of concern. A 2017 study of all fifty states identifies a pension funding gap of nearly \$1 trillion.<sup>88</sup> Pensions are an item of great concern to union members, and attempts to reform the existing pension systems are met with great resistance from unions and politicians who lobby on the unions' behalf. However, the cost of negotiating those benefits out of a contract may result in a similarly expensive concession. Pension liabilities have been well publicized and have become a major concern for government officials. Legacy costs, meaning costs associated with employee benefits that exceed the term of employment (such as retirement and health care) consume an ever-increasing portion of municipal budgets.<sup>89</sup>

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<sup>88</sup> "The State Pension Funding Gap: 2017," Pew, June 27, 2019, <https://pew.org/2KFZWFL>.

<sup>89</sup> "Pension Legacy Costs and Local Government Finances," LILP, accessed February 21, 2020, <https://www.lincolnst.edu/publications/articles/pension-legacy-costs-local-government-finances>.

Police and fire unions have successfully negotiated retirement plans that are more generous than those for other government employees, including retirement after twenty or twenty-five years of service (regardless of age) at 50 percent of the final salary. The impetus for such plans is rooted in the stressful and physically demanding nature of the work. Similar to the military, which offers retirement after twenty years, the concept of early retirement for police and fire employees is designed to keep the force youthful and physically able to perform the work.<sup>90</sup> In New York, municipal police officers and firefighters enjoyed a twenty-year retirement (regardless of age) until 2009, when new employees were required to contribute a percentage of their salary and work until twenty-five years of employment.<sup>91</sup>

Another well-publicized aspect of police and fire retirement plans is the inclusion of overtime in pension calculations. Fire and police departments require constant, around-the-clock staffing. Around-the-clock staffing, in turn, often gives employees the opportunity to work significant overtime.<sup>92</sup> Here is another aspect of union influence that can drive costs. Many union contracts allow for overtime to be assigned based on seniority, meaning that employees close to retirement age are able to work the most overtime, which increases the wages used to calculate their pensions.<sup>93</sup> The combination of inflated pensions and twenty- or twenty-five-year pension systems (regardless of retirement age) has added significantly to state and local budgets. What's more: these are defined-benefit pensions, meaning that the annuity is for life, as opposed to a defined-contribution program, whose benefit ends when the account is depleted. As life expectancies increase,

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<sup>90</sup> Michael Bucci, "Police and Firefighter Pension Plans," *Monthly Labor Review* 115, no. 11 (November 1992): 37–42.

<sup>91</sup> Thomas L. Gais and Paul J. Yakoboski, "Public Sector Pension Reform: Addressing Pressing Fiscal Realities from a Long-Term Perspective" (special report, Nelson A. Rockefeller Institute of Government, June 2013), 22.

<sup>92</sup> Foster, "Cops, and Robbers."

<sup>93</sup> Ronald G. Ehrenberg, "Retirement System Characteristics and Compensating Wage Differentials in the Public Sector," *ILR Review* 33, no. 4 (July 1, 1980): 470–83, <https://doi.org/10.1177/001979398003300402>.

this cost increases as well. In fact, it has become common for police officers and firefighters to collect pensions for longer than they worked to earn them.<sup>94</sup>

Attempts to reform pension systems are often met with fierce resistance and lobbying by unions. In the case of pension reform in New York, the backlash was sufficient enough to cut back on the extent of changes, and the estimated savings will not be felt for years.<sup>95</sup> Pension programs illustrate another example of the difference between collective bargaining and right-to-work states. In areas with less union influence, pension plans have been modified and benefits reduced.<sup>96</sup>

***b. Health Care***

The cost of health care is a source of nationwide debate, and employee health care is no exception. Data from 2018 show rates are not increasing as much as they have in the past, but cost is still trending upwards, as shown in Figure 4.<sup>97</sup> Health care benefits, like other contractual items, are left in place unless modified through negotiation. Another aspect of health care, like pension benefits, is the continuation of coverage after retirement and the resulting costs to the employer.

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<sup>94</sup> “Majority of New FDNY Retirees Receive Six-Figure Pensions,” Empire Center for Public Policy, July 26, 2018, <https://www.empirecenter.org/publications/majority-of-new-fdny-retirees-receive-six-figure-pensions/>.

<sup>95</sup> E.J. McMahon and Josh Barro, “Pension Explosion” (report SR8-11, Empire Center for Public Policy, December 2010), <https://www.empirecenter.org/wp-content/uploads/2013/09/PensionExplosion.12.2010.pdf>.

<sup>96</sup> Ann C. Hodges and William Warwick, “The Sheathed Sword: Public-Sector Union Efficacy in Non-Bargaining States,” *ABA Journal of Labor & Employment Law* 27, no. 2 (Winter 2012): 275–91.

<sup>97</sup> Segal Consulting, “2018 Segal Health Plan Cost Trend Survey” (data report, Segal Consulting, 2017).

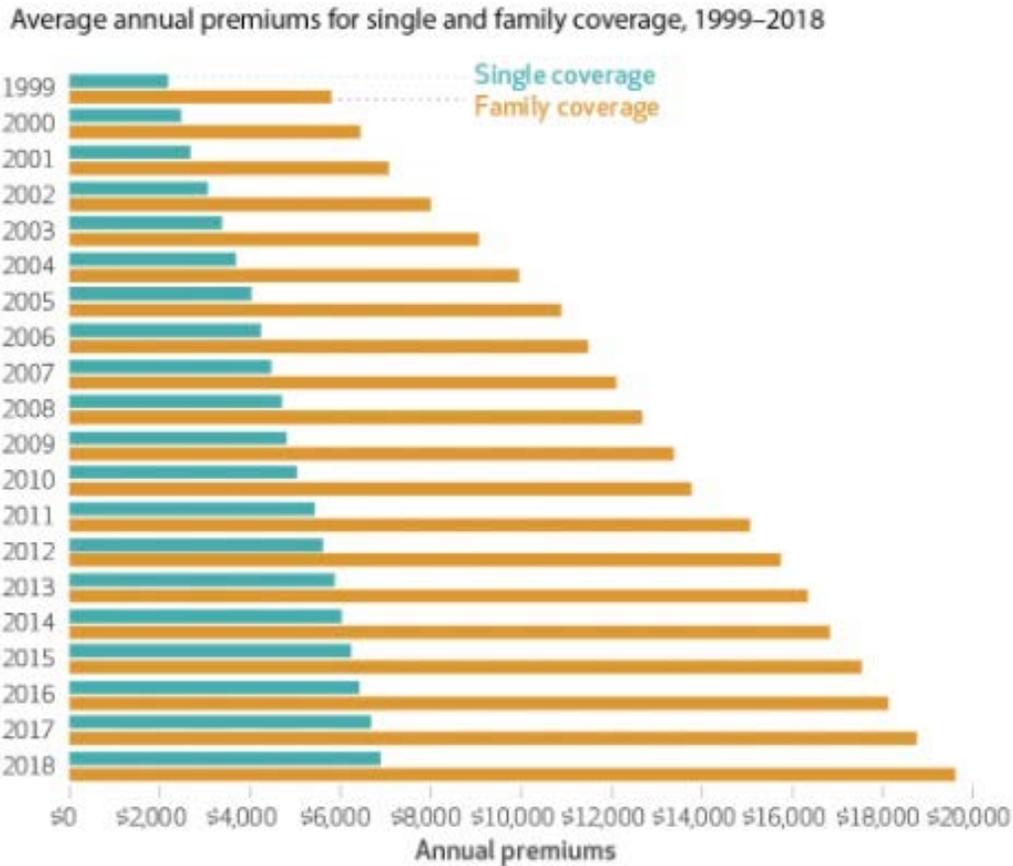


Figure 4. Average Annual Health Care Premiums, 1999–2018<sup>98</sup>

*c. Time off*

Similar to health care, time off may have been negotiated at a time when it was more cost-effective to pay employees than to offer benefits. Vacation, personal leave, compensatory time, and sick leave are items that can have an adverse impact on agencies that require constant staffing, as positions must be filled when regular workers are off duty. This is a consequence of operating an agency that has around-the-clock staffing needs, which can only be controlled by reducing the services provided or modifying time off and restricting when it can be taken.<sup>99</sup>

<sup>98</sup> Source: “Health Insurance: Premiums and Increases,” National Conference of State Legislatures, accessed April 20, 2020, <https://www.ncsl.org/research/health/health-insurance-premiums.aspx>.

<sup>99</sup> Ana Champeny, “Overboard on OT: Reductions in Uniformed Overtime Needed,” Citizens Budget Commission, August 17, 2017, <https://cbcny.org/research/overboard-ot>.

Both health care and time off are negotiated items in a contract, and both are examples of the unintended long-term consequences of contract items. An item that may be beneficial to one side may become unamenable to the other side or cost prohibitive in the future. A National Institute of Health report on employee health care benefits illustrates the effect on wages based on the initial value of a benefit:

Suppose that workers negotiate a health insurance benefit that is worth \$1 per hour and costs the employer exactly \$1 per hour (henceforth all wage rates are in hourly terms) to provide. The employer, who was previously willing to pay \$20, will now pay \$20 less the \$1 cost to provide the benefit. Other points on the employer's demand schedule—which indicates the number of workers it would hire at different wages—will also change by the \$1 cost of the benefit. Workers who were previously willing to accept a wage of \$20 are now willing to supply their labor for \$1 less, since they value the benefit at \$1. As a result, the net wage (the money wage + the value of the benefit) remains unchanged at \$20, but the equilibrium money wage falls to \$19, or by exactly the amount of the benefit. The workers accept the lower money wages, and the same 1,000 workers are employed at the same net wage, \$19 in money wages plus the \$1 benefit. The workers are no worse off at a wage of \$19 with the health insurance than they were at \$20 without the health insurance, because the insurance is worth the \$1 that they lose in the reduced wage.<sup>100</sup>

However, when the benefit (in this case time off) increases in cost, the benefit and the wages are set in the contract and cannot be changed until a renegotiation takes place.

In sum, benefits that are entered into labor contracts constitute an expenditure that can go on indefinitely, and items that may initially seem inconsequential may later become unmanageable. Unions have successfully obtained better pay and benefits for their members. From the perspective of the employee, those benefits are a positive outcome; for the government agencies that bear the burden of these expenses, however, it can be a difficult process to budget for employee expenses while providing the expected level of service. However, the blame cannot be placed solely on the unions, as all of these benefits are negotiated by both parties.

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<sup>100</sup> C. Montagne, "Bargaining Health Benefits in the Workplace: An Inside View," *The Milbank Quarterly* 80, no. 3 (September 2002): 547–67, <https://doi.org/10.1111/1468-0009.00022>.

## **C. CASE STUDIES OF UNIONS AND THE IMPACT ON HOMELAND SECURITY AGENCIES**

Union activism can have positive and negative effects on the services a community is provided; in some cases a victory for labor may even hold unintended consequences. Using three examples from the fire service, this section shows the impact of labor advocacy in its various forms.

### **1. The Troy, New York, Fire Department during a Financial Crisis**

There are instances where a union may lobby its employer for changes in working conditions beyond what is in the contract. Such activity may prove mutually beneficial to both parties; if successful, for instance, it may strengthen the position of the union while simultaneously providing a tangible benefit to the employer. An example of a successful collaboration between a union and management occurred in the City of Troy Fire Department, where city government and the firefighters union worked to expand the fire department's role by providing ambulance services to the city.

The Troy Fire Department, located in upstate New York, provides emergency medical services (EMS) and transportation at the advanced life support (ALS) level, in addition to traditional fire protection and rescue services. The EMS program began in the early 1980s, with firefighters being trained as emergency medication technicians (EMTs) and later to the more advanced paramedic level.<sup>101</sup> Firefighters would respond to calls for service and then a private ambulance service would transport the patient to the hospital. This type of service was known as first response ALS.<sup>102</sup> The program was grant-funded and in line with the national trend of fire departments entering the EMS field.

At the time there was a drop in the number of structure fires nationwide. Though some degree of care was provided by fire departments to the sick and injured, it was nothing

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<sup>101</sup> Troy Uniformed Firefighters Association, "Troy's Bravest, 200 Years of Fire Protection" (history book, Troy Uniformed Firefighters Association, 1989).

<sup>102</sup> Odelia Braun, Russ McCallion, and James Fazackerley, "Characteristics of Midsized Urban EMS Systems," *Annals of Emergency Medicine* 19, no. 5 (May 1, 1990): 536-46.

more than basic first aid.<sup>103</sup> At the same time, however, the growing use of automobiles and the newly formed interstate highway system was producing an alarming number of deaths and serious injuries from automobile crashes.<sup>104</sup> This experience showed the value of trained first responders who could quickly respond to medical emergencies to begin treating victims outside of the hospital environment. The growth of the EMS field coincided with increasingly under-utilized fire departments, and the opportunity spurred grant funding for fire-department-based EMS services.<sup>105</sup>

By the early '90s, Troy had entered a period of economic turmoil that was not uncommon for cities in the northeast as businesses moved out of the area and the tax base withered.<sup>106</sup> These changes placed a significant strain on municipal finances, and cuts were proposed to the fire department in an attempt to control costs.<sup>107</sup> At the same time, the city was seeing an increase in calls for EMS response, in part due to demographic changes to the population. As call volume increased ambulances were increasingly delayed; after a series of high-profile incidents the Troy Firefighters Union was interested in having the fire department assume EMS transport duties.<sup>108</sup>

In addition to providing a higher level of service to the community, taking on the transport role also held a financial benefit. EMS transport can be billed to health insurance companies, and this can provide a revenue stream that can be used to offset some of the expense of running a fire department. The union proposed this expansion of service, along with the expectation that staffing levels would be maintained, in return for assuming the

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<sup>103</sup> Combat experience and battlefield casualties in the Korean and Vietnam conflicts showed the value of early treatment and rapid transport to a medical facility.

<sup>104</sup> Dennis Edgerly, "Birth of EMS: The History of the Paramedic," *Journal of Emergency Medical Services* 38, no. 10 (October 8, 2013), <https://www.jems.com/2013/10/08/birth-ems-history-paramedic/>.

<sup>105</sup> National Commission on Fire Prevention and Control, *America Burning* (Washington, DC: National Commission on Fire Prevention and Control, 1973), 139, <https://www.usfa.fema.gov/downloads/pdf/publications/fa-264.pdf>.

<sup>106</sup> Bruce Squires, "Financial Woes Endemic, but Troy Was Slow to Act," *Schenectady Gazette*, July 30, 1995, sec. Regional.

<sup>107</sup> Municipal Assistance Corporation for the City of Troy, "Mission Statement," New York State, accessed August 3, 2020, <https://www.abo.ny.gov/annualreports/MissionStatements/State/MunicipalAssistanceCorporationCityOfTroy.pdf>.

<sup>108</sup> Tim O'Brien, "Dworsky Seeks Inquiry into Late Call for Help," *Troy Record*, April 11, 1990.

added duties.<sup>109</sup> The proposal was seen as a win-win for the union. Firefighter jobs would be protected and the city would see an enhanced level of service. To assume this added role, however, a major obstacle had to be overcome that would require cooperation between the union and city government.

In the state of New York, ambulance services are regulated and an agency (either private or public) can only operate in a given area if the agency holds a certificate of need (CON). An agency petitions the New York Department of Health, which issues or denies a CON after an assessment of the area to determine a need for ambulance service.<sup>110</sup> In the case of Troy's application, the CON was initially denied; the Department of Health determined that the current private ambulance services were sufficient.<sup>111</sup> Undeterred, the union and city worked to lobby the state legislature for a home rule bill that would allow a municipality to assume the responsibility of providing ambulance service outside of the CON process. The efforts paid off and the Troy Fire Department initiated EMS transport service in October 1995.<sup>112</sup> In return for taking on the additional job responsibilities, subsequent labor agreements guaranteed staffing levels and a more generous pension plan. The union also conceded to working overtime at a reduced rate.<sup>113</sup>

Positive collaboration between the union and city government resulted in an increased level of service and a revenue stream that helped offset costs. The union gained staffing (and thus job security) provisions and an improved retirement plan. This success illustrates the value of a positive working relationship between a union and management. Although the union's motive was to protect jobs, the union was able to accomplish this

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<sup>109</sup> Ian Clements, "Union Wants Paramedic Rig Back," *Troy Record*, October 25, 1990.

<sup>110</sup> "EMS Operating Certificate Application Process (CON)," accessed February 25, 2020, <https://www.health.ny.gov/professionals/ems/policy/06-06.htm>.

<sup>111</sup> Tim O'Brien, "State Rejects Troy' Bid to Run Ambulance Service," *Albany Times Union*, March 4, 1994.

<sup>112</sup> Ronald Canestrari, "AN ACT, in Relation to Authorizing the City of Troy to Establish a Municipal Ambulance Service" (State of New York, June 14, 1995).

<sup>113</sup> Cathy Woodruff, "Troy's Firefighters Answer the Call; Take Reductions to Save City \$5M," *Schenectady Gazette*, June 4, 1996.

goal in a way that also provided a benefit for the city, as opposed to pursuing a confrontational labor action.

## **2. The Houston, Texas, Fire Department Pay Parity Victory and Backlash**

The Troy Fire Department example illustrates the results that can be achieved from positive collaboration. However, unions may also resort to more disruptive tactics in an attempt to force a desired settlement. In the private sector, strikes and work stoppages are examples of tactics used by unions when an acceptable agreement cannot be reached. In the realm of public safety, such actions are prohibited but that does not rule out the use of political influence to achieve a goal.

In many parts of the country, police and fire compensation is linked in some sort of parity policy.<sup>114</sup> As noted above, it is difficult to determine what constitutes adequate compensation in the public sector for jobs with no direct private sector equivalent. Similarly, it is difficult to compare jobs with different responsibilities and requirements—like police officers and firefighters. Still, some municipalities elect to compensate police and fire employees similarly, owing to each job’s responsibility and level of risk. Pay parity is codified in different ways. Sometimes it is an aspect of a labor contract. In other cases it is simply used by a police or fire union to determine fair wages absent any private sector comparison. The *me too* clause is the name given to contract language that triggers contract talks if another bargaining unit receives a raise.<sup>115</sup> Pay parity may also be written into a city’s charter. In either case, parity between police and fire is often used as a negotiating tool between bargaining units to negotiate higher wages.

In the City of Houston, Texas, police officers and firefighters had a significant and growing pay disparity. In October 2018, Houston firefighters were making, on average, at least 30 percent less than other firefighters in similarly sized cities in Texas. In a ten-year span Houston police saw their pay increase by nearly 30 percent while the fire department

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<sup>114</sup> Daniel DiSalvo, “The Trouble with Public Sector Unions,” *National Affairs* (Fall 2010), <https://www.nationalaffairs.com/publications/detail/the-trouble-with-public-sector-unions>.

<sup>115</sup> Hoover, Dowling, and Bouley, “The Erosion of Police and Firefighter Wage Parity.”

only saw a 3 percent raise.<sup>116</sup> After unsuccessful attempts to negotiate raises, the Houston firefighters union resorted to political action. The city was open to negotiating a multi-year contract to phase in raises to close the gap, which would allow time to budget for the pay increase and lessen the immediate impact to the city's overall budget. This proposed compromise was not acceptable to union leadership and more decisive action was desired.

In addition to being a collective bargaining state, Texas also allows for ballot referendums. The Houston firefighters union proceeded to gather signatures for a ballot proposition that would mandate pay parity with the police department. The union was successful and the resulting Proposition B was placed on the ballot for the November 2018 election; the proposition would authorize pay parity with the police department at all ranks, equaling an almost 24 percent raise for all firefighters.<sup>117</sup> The political action worked and the firefighters were able to garner significant public support. The proposition passed and the firefighters received their sought-after wage increase. The city then promptly issued layoff notices to 220 firefighters and demoted another 454.<sup>118</sup> Mayor Sylvester Turner, citing \$80 million in unbudgeted expenses, claimed no other option after the union refused to negotiate a phase-in period of several years. Ultimately a judge found that Proposition B was unconstitutional, as no requirement for pay parity exists under Texas law.<sup>119</sup> The layoffs were rescinded and the union and city then proceeded to negotiate through the proper channels.

Confrontational labor action is a gamble that unions occasionally make when they are unable to achieve their goals through the negotiation process. Such action, though,

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<sup>116</sup> Jasper Scherer, "Fact Check: A Look at Key Claims in the Firefighter Pay 'Parity' Debate," *Houston Chronicle*, October 22, 2018, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Prob-B-Houston-firefighter-pay-parity-debate-13335857.php>.

<sup>117</sup> Liz Farmer, "How Can a City Issue Pay Raises and Layoff Notices in the Same Week?" *Governing*, May 10, 2019, <https://www.governing.com/week-in-finance/gov-houston-firefighter-layoffs-pensions-mayor-turner.html>.

<sup>118</sup> Farmer.

<sup>119</sup> Jen Rice, "Judge: Prop B Is 'Unconstitutional and Void in its Entirety,'" *Houston Public Media*, May 15, 2019, <https://www.houstonpublicmedia.org/articles/news/2019/05/15/333305/judge-prop-b-is-unconstitutional-and-void-in-its-entirety/>.

brings with it the risk of unintended consequences that can potentially damage the whole of the union or harm the employer—and the citizens it serves.

### **3. The Providence, Rhode Island, Fire Department Labor Dispute**

Just as labor unions may resort to disruptive action to achieve their goals, employers also have methods to act outside of the negotiation process. For example, if a municipality is facing budgetary constraints there may be a desire on the part of the elected leadership to take decisive action to control expenditures. Cuts in pay or modification of work schedules may yield cost savings, but if the workforce is unionized such action requires negotiations before it can be put into effect. Public sector unions are in most cases prohibited from going on strike, but they do have the right to pursue legal action in the event their employers violate the collective bargaining agreement.

As previously mentioned, in most parts of the country fire departments operate on a fifty-six-hour workweek. Provisions are made in the Fair Labor Standards Act to allow the increased number of weekly hours and to ensure alternate forms of compensation are provided to employees for the additional work.<sup>120</sup> However, in the northeast many fire departments operate on a forty-hour week.<sup>121</sup> This was the case in Providence, Rhode Island, when the city found itself in the midst of financial difficulties. The mayor at the time, Jorge Elorza, had the idea that if the Providence Fire Department were to change to a fifty-six-hour work week, the change would result in significant savings by essentially reducing the need for 25 percent of the workforce. By switching from four to three shifts, the firefighters on the fourth shift could be reassigned, overtime would be nearly eliminated, vacancies would be eliminated, and excess positions would be eliminated through attrition. But the approach had one major obstacle: the working hours of firefighters are set contractually and changing the conditions of employment is a mandatory

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<sup>120</sup> “Fact Sheet #8: Law Enforcement and Fire Protection Employees under the Fair Labor Standards Act (FLSA),” U.S. Department of Labor, accessed February 24, 2020, <https://www.dol.gov/agencies/whd/fact-sheets/8-flsa-police-firefighters>.

<sup>121</sup> DePietro, “Here’s How Much Firefighters Earn in Every State.”

subject of bargaining.<sup>122</sup> Still, the mayor elected to make the change and in April 2015 the department began working a three-shift, fifty-six-hour workweek.

After the change in work schedules was implemented, the firefighters union went on the offense. Lawsuits were filed immediately on behalf of the union, claiming that the change in schedule was not negotiated, which constituted an unfair labor practice. The city's action was considered a unilateral change, which is generally not allowed when dealing with a unionized workforce unless the employer can prove extenuating circumstances.<sup>123</sup> Courts sided with the union and ultimately the city had to transition back to a four-shift system.<sup>124</sup> In addition to reverting to the old schedule, the city was also ordered to pay \$5.9 million for overtime owed to employees for the time the fifty-six hour workweek was in effect. A wave of retirements followed the shift change, which resulted in so many vacancies that there was still a significant amount of overtime needed to staff the department on a daily basis, thus negating the intended savings.<sup>125</sup> In October 2016 a new contract was approved between the firefighters union and the city. Included in this contract was a reduction in daily staffing numbers and other cost-saving measures.<sup>126</sup>

Regardless of the motivation to change working conditions, government entities in collective bargaining states are bound by the labor contracts they enter into. Violation of labor contracts in collective bargaining states inevitably leads to lawsuits, and attempts to achieve cost savings may ultimately result in costly litigation that negates the intent of the change and creates a hostile labor-management relationship that can make future positive collaboration difficult.

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<sup>122</sup> Dan McGowan, "Inside the High-Stakes Battle between Mayor Elorza and the City Fire Union," WPRI, May 22, 2015, <https://www.wpri.com/news/inside-the-high-stakes-battle-between-mayor-elorza-and-the-city-fire-union/>.

<sup>123</sup> Befort, "Public Sector Bargaining," 1247.

<sup>124</sup> Dan McGowan, "12 Key Things to Know about Providence's Proposed Firefighter Deal," WPRI, October 19, 2016, <https://www.wpri.com/news/12-key-things-to-know-about-providences-proposed-firefighter-deal/>.

<sup>125</sup> Jacqueline Tempera, "Providence to Pay Nearly \$6M to Firefighters to Settle Shift Dispute," *Providence Journal*, November 3, 2017, <https://www.providencejournal.com/news/20171103/providence-to-pay-nearly-6m-to-firefighters-to-settle-shift-dispute>.

<sup>126</sup> "Providence Fire Tentative Agreement," Rhode Island Division of Municipal Finance, September 12, 2016, <http://www.municipalfinance.ri.gov/documents/contracts/Providence-Fire-Exp-6-30-22.pdf>.

## **D. CONCLUSION**

Public sector unions have a significant impact on both employees and the government entities they work for. Negotiated benefits are of value to the employees, but some negotiated items can become costly over time and difficult to control. The right of unions to collectively bargain with their employers allows labor and management to escalate conflicts or collaborate toward a shared goal. The collaboration may result in a positive or negative outcome, or a mixed result with unintended consequences. The positive effects of collective bargaining for the unionized employees are clearly significant in terms of pay and benefits, but the same tactics that can bring about conflict in the workplace can extend beyond personnel matters and into the operational side of the job. The case examples in this chapter show the impact unions can have on the municipalities they serve. Positive collaboration toward a shared goal can yield positive results. However, if one side chooses to subvert the proper negotiation process, the unintended consequences can be worse than the problem the party was looking to solve.

The next chapter looks at the dynamics of labor-management relations and how both sides can conduct themselves in a manner that is beneficial to the citizens they serve.

## **IV. THE DYNAMICS OF LABOR-MANAGEMENT RELATIONS**

Both positive and negative effects can come from unions and their relationship with the government entities their members work for. The relationship between the parties and their conduct during negotiation is critical to reaching a union-approved labor contract, but the contract should allow the operational flexibility needed for the agency to provide services most effectively. Both sides should also consider the long-term financial impacts to ensure they can function viably for the community through the terms of the contract.

This chapter first explores the dynamics of the labor-management relationship by reviewing the negotiation process and factors that can affect the outcome. It then looks at some successful examples of unions from the private sector in the United States as well as from the European military, and concludes by examining a theoretical model of negotiation called game theory that could lead to successful negotiation outcomes based on an analysis of both sides' concerns.

### **A. NEGOTIATIONS**

The contract forms the basis of the labor-management relationship. Union membership and the governing body that employs the union members are the parties that negotiate and ratify the contract. Once the contract is voted on and approved, it becomes legally binding.

#### **1. Labor-Management Negotiations in Collective Bargaining States**

In collective bargaining states, contract negotiation and the method for dispute resolution are formal processes that unions and government entities use to establish and modify labor contracts and resolve disputes. The state government's labor laws and case law set forth the process that must be followed; in New York, as noted earlier, this is the Taylor Law. New York's process starts when the elected negotiating committee of the union meets with government representatives. Both sides present their proposals and attempt to reach an agreement. If no agreement is reached within 120 days of the end of the fiscal year, the two parties are at an impasse. At this point, the government uses an

impartial arbitrator to reach an agreement. If no agreement can be reached, either side may petition the New York State Public Employees Relations Board (PERB) for interest arbitration. In this case, both sides present their cases before an arbitration panel. The panel then issues a ruling on the contract dispute which becomes legally binding for both parties.<sup>127</sup>

The negotiation process under the Taylor Law is designed to minimize labor disputes and encourage local resolution of disagreements. However, bringing in PERB to resolve a contract dispute takes the final ruling out of the hands of the union and government, and the resulting contract terms may not be in the best interest of either side.<sup>128</sup> Ultimately, protecting both sides' best interests require resolving labor issues at the local level, but doing so can be complicated.

## **2. Lack of Standards and the Associated Difficulty at the Local Level**

Like other unions, firefighters unions negotiate for basic items such as pay and benefits; one predominant point of contention is staffing. In contract negotiations, having a standard or norm to use as justification for a staffing request is helpful. It can be particularly difficult to establish this standard in the fire service due to a troubling lack of uniformity over department capabilities and staffing levels. The fire service in the United States has typically been regulated at the local level, with minimal oversight from state and federal entities. Why it developed this way is not known, but author Bruce Hensler proposes that the problem lies in the origins of fire departments. He writes:

Fires are mostly local and rarely become a regional or state problem. In colonial times, citizens banded together to fight fires and thus performed a vital and necessary civic function.... A newly organized fire department took its form according to local need, thus meeting a vital function. Form followed function with the creation of thousands of independent local fire companies throughout the United States, and thus a culture of independence was born.<sup>129</sup>

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<sup>127</sup> New York Public Employment Relations Board, "The Taylor Law."

<sup>128</sup> Swarengen, "Tailoring the Taylor Law."

<sup>129</sup> Bruce Hensler, *Crucible of Fire: Nineteenth-Century Urban Fires and the Making of the Modern Fire Service*, 1st ed. (Washington, DC: Potomac Books, 2011), 87–88.

Fire departments' independence has made it difficult for unions to negotiate for staffing levels. Though the National Fire Protection Association (NFPA) has set forth standards for staffing in paid departments, these standards are merely a suggestion unless they have been adopted by a particular state.<sup>130</sup> This has created a difficult situation for firefighter unions and the municipalities that employ them. In the United States, fire departments can be fully paid, part time or paid on call, a combination of paid and volunteer, or totally volunteer.<sup>131</sup> With such a variety of staffing models, when a union advocates for increased staffing, the municipal government may question the need when alternatives exist. The confusion goes beyond staffing numbers and can also include hours of work. The Fair Labor Standards Act makes provision for firefighters to work in excess of forty hours per week, and, as discussed, a large part of the country employs firefighters on a fifty-six hour workweek.<sup>132</sup> As described in the Providence, Rhode Island, case study in the previous chapter, the city government attempted to change the fire department's work schedule from a forty-hour workweek to a fifty-six-hour week; as the forty-hour week was negotiated in the firefighters' contract, however, the change was ruled as an illegal unilateral change in working conditions.

Pay is another troublesome issue, as pay rates for firefighters and public servants vary greatly. As noted earlier, no direct comparison can be made between the field of public safety and the private sector; comparisons can only be made between other government agencies. Since government employees' compensation often reflects the financial health of a community more than any market rate of pay for a given career, finding an appropriate comparison is a stumbling block. A *comparable*, as defined by PERB in New York state, is a community considered to be on equal footing; comparables are used as a basis for

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<sup>130</sup> Lisa Nadile, "Codes & Standards Snapshot: NFPA Journal Interviews Carl Peterson about NFPA 1710," *NFPA Journal* 102, no. 4 (July/August 2008): 16, [http://search.proquest.com/docview/216385619?rfr\\_id=info%3Axri%2Fsid%3Aprim](http://search.proquest.com/docview/216385619?rfr_id=info%3Axri%2Fsid%3Aprim).

<sup>131</sup> Hylton J.G. Haynes and Gary P. Stein, *U.S. Fire Department Profile—2015* (Quincy, MA: National Fire Protection Association, 2017), <https://www.ifsjlm.org/sites/default/files/NFPA%202017%20US%20Fire%20Department%20Profile.pdf>.

<sup>132</sup> U.S. Wage and Hour Division, "Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees under the Fair Labor Standards Act (FLSA)," U.S. Department of Labor, September 2019, [https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17a\\_overview.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17a_overview.pdf).

comparison when an arbitrator has to settle a contract or when contract talks are stalled.<sup>133</sup> While this process may appear to be fair, each comparable community negotiates its labor contracts on its own terms. This means the compensation may not match the community's overall financial health and may instead result from successful lobbying on the union's part. Regardless, once an arbitrator makes a ruling in a stalled contract dispute, the resulting contract is put in force and the community must find a way to pay for it.

For situations in which there is a viable private sector comparison, it can still be difficult to conduct successful negotiations. For example, the fire department in New York City (FDNY) comprises a fire and EMS division. EMS workers (EMTs and paramedics) make significantly less money than the firefighters, but their pay is comparable to private sector EMS workers. This disparity has not stopped the EMS workers from demanding higher wages based on the earnings of the firefighters also employed by the city.<sup>134</sup> Without standards for fire department staffing and with no consensus on adequate compensation, the negotiation process is difficult: both parties lack a defensible position as a negotiating baseline.

### **3. Trust (or Lack Thereof) as a Factor in Bargaining**

One key to successful negotiations is trust. Both sides must trust each other's intentions, especially if the union faces a possible reduction in compensation. A union ultimately depends on the employer's fiscal health for long-term viability, so at times concessions must be made. However, if trust is lacking, the union members may resist agreeing to any perceived loss. Though not a public sector example, a railroad labor dispute in 1969 demonstrates this concept. Faced with the prospect of bankruptcy, the Erie Lackawanna Railroad Company looked for concessions from the Brotherhood of Locomotive Engineers and the United Transportation Union. Unlike in the public sector, transportation unions could legally go on strike; with the railroad in a precarious financial

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<sup>133</sup> Kenneth J. Toomey, *PERB Handbook* (Albany, NY: New York State Public Employment Relations Board, April 2007), <http://www.nyspffa.org/PERB/PERBBOOK.PDF>.

<sup>134</sup> Robert Pozarycki, "Rookie EMTs in New York City Barely Getting by on Near-Minimum Wage: Unions," *amNewYork*, February 18, 2020, <https://www.amny.com/police-fire/rookie-emts-in-new-york-city-barely-getting-by-on-near-minimum-wage-unions/>.

condition, a strike could be devastating. Realizing the seriousness of the problem, the unions agreed to changes in compensation and work rules.<sup>135</sup> The unions, trusting that management was accurately portraying the financial condition of the railroad, made concessions for the good of the company—and, in effect, themselves.

However, when union members lack trust, labor unrest can result. The firefighters union in the Plattsburgh, New York, for example, engaged in a five-year battle with city government over wages. The union claimed the city could afford raises but the city claimed it could not. Thousands of dollars in legal fees were spent by both sides, and ultimately PERB ruled that the city had to give the firefighters a contract with raises after determining that the city's finances were stable enough to handle the increase.<sup>136</sup> This deal occurred after years of the city denying having sufficient funding to support wage increases and in spite of New York state law having stipulations that require “bargaining in good faith.”<sup>137</sup> According to the National Labor Relations Board, “employers have a legal duty to bargain in good faith with their employees’ representative and to sign any collective bargaining agreement that has been reached.”<sup>138</sup> Several examples of how employers may fail to act in good faith are given, one of which is “[refusing] to furnish information the union requests that is relevant to the bargaining process or to the employees’ terms or conditions of employment.”<sup>139</sup>

For negotiations to be effective, each side should be transparent in its demands and needs. When either side resorts to subversion, the negotiation process becomes difficult. And for the employees, any request for concessions will be resisted if the workers do not believe in the necessity of “giving back.” Susan Boon and John Holmes describe the

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<sup>135</sup> H. Roger Grant, *Erie Lackawanna: Death of an American Railroad, 1938–1992* (Stanford, CA: Stanford University Press, 1994), 171.

<sup>136</sup> “Plattsburgh Firefighters vs. City of Plattsburgh,” New York Public Employment Relations Board, accessed March 11, 2020, <https://www.perb.ny.gov/wp-content/uploads/2018/04/IA2013-012.pdf>.

<sup>137</sup> Toomey, *PERB Handbook*.

<sup>138</sup> “Bargaining in Good Faith with Employees’ Union Representative (Section 8(d) & 8(a)(5)),” National Labor Relations Board, accessed March 11, 2020, <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/bargaining-in-good-faith-with-employees-union-representative>.

<sup>139</sup> National Labor Relations Board.

concept of trust in the labor-management environment as “a positive expectation that another will not—through words, actions, or decisions—act opportunistically.”<sup>140</sup> The fear that the employer will “act opportunistically” drives the perception that a union must act defensively in its dealings with government. A breakdown in relations can make negotiations difficult and, in turn, affect the agency by refocusing energy and effort on the conflict as opposed to the mission.

#### **4. Conduct Based on a Perception of Limited Resources**

Social identity theory is a framework for analyzing group behavior, and in the presence of a limited good, such organizations have behavioral traits that may make successful negotiations difficult. Following World War II, social psychologists tried to understand the rise of the Nazi party and the atrocities it committed. This attempt led to what was known as the frustration-aggression hypothesis, a forerunner of what would become social identity theory. This hypothesis initially dealt with nationalism in Europe, and stated that “frustrated goals leave people in a state of heightened, goal-oriented arousal that can only be dissipated through aggression.”<sup>141</sup> Although the Nazis and unions are not parallel groups, the behavior of a group in the face of adversity can be applied to union activism, where aggression manifests in the form of strikes and work stoppages. The goals of a union are pay, benefits, and better working conditions for its members. In the course of contract negotiations, the frustration of the group (union) occurs when there is failure to achieve a favorable agreement. In collective bargaining states, public sector unions compete with other unions and their employer for the benefits they seek. Firefighters, police officers, clerical workers, public works employees, and teachers all battle for a share of public expenditures. Governments, wary of increasing spending and taxes, must fight back to be fiscally responsible. Because public sector unions are prohibited from striking, the result can be aggressive political involvement and the use of legal protections to force a desired outcome.

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<sup>140</sup> Rune Lines et al., “The Production of Trust during Organizational Change,” *Journal of Change Management* 5, no. 2 (June 1, 2005): 221–45, <https://doi.org/10.1080/14697010500143555>.

<sup>141</sup> Shelley McKeown, Reeshma Haji, and Neil Ferguson, eds., *Understanding Peace and Conflict through Social Identity Theory: Contemporary Global Perspectives* (New York, NY: Springer, 2016), 3.

## **B. THE ROLE OF POLITICS**

Public sector unions enter into contracts with elected officials in government, which means unions have a direct incentive to use politics to garner support for politicians who support the unions. Unions may use financial support, lobbying, and public influence as tools to elect labor-friendly politicians and influence government policy. Politicians may attack unions to show the public their commitment to fiscal responsibility and cost cutting. Both sides may use social media to sway public opinion in their favor. With contentious labor relations, the battle between unions and government may detract from the quality of the services the government provides to its citizens.

### **1. Union Support of Pro-labor Politicians**

Public sector unions, in an attempt to create an advantageous environment for contract negotiations and working conditions, may become involved in the political process to elect people who support the union's cause, or lobby politicians for favorable contract provisions. Union members can make financial contributions, work on campaigns, and engage in positive (or negative) public relations campaigns to stack the deck in their favor (provided such activity is not expressly prohibited). The International Association of Fire Fighters (IAFF) recommends that its locals form political action committees (PACs) and aggressively fund and support politicians who are in favor of increased fire department spending.<sup>142</sup> The IAFF is one of the most visible of the public safety unions through its aggressive campaigning in presidential races. Yellow-shirted firefighters flanked Joe Biden at many of his campaign events during the Democratic primary elections in 2020, and IAFF president Harold Schaitberger openly wields the financial resources of the IAFF to influence elections. "The message is clear," Schaitberger states, "the IAFF supports Joe Biden because he supports us ... the IAFF held the line for Joe when it mattered most, making it clear that our union is a force to be reckoned with."<sup>143</sup> The IAFF is the tenth largest PAC in the country, spending \$2.3 million dollars on federal candidates in the most

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<sup>142</sup> International Association of Fire Fighters, "About Us."

<sup>143</sup> Harold Schaitberger, "Standing Strong for Biden," *Fire Fighter Quarterly* 103, no. Winter 2020 (2020): 42.

recent midterm elections.<sup>144</sup> The IAFF also encourages its members to support pro-labor politicians and encourages them to run for local office themselves.

By offering material and financial support to politicians, a union may receive preferential treatment and favorable contract offers. As long as the union follows the rules for political donations, the action is legal and considered a form of free speech. Financially supporting politicians' places unions in a unique position—influencing the election of the same people who will eventually make decisions regarding employment issues—and some see this as an unfair advantage.<sup>145</sup>

## **2. Anti-union and Conservative Political Activity**

Just as unions have tools at their disposal to influence the political process, politicians and governments may also fight back to blunt the effects of the lobbying and financial influence that unions use to manipulate the political process. Some conservative Republican officials have made anti-union behavior a cornerstone of their platforms in an effort to win voters: they claim to fight the largesse that unions have enjoyed as a result of their political activities. The first major blow to the unions after years of growth occurred in 1981, when the Professional Air Traffic Controllers Organization (PATCO) went on strike and President Ronald Reagan fired all of its members and decertified the union.

PATCO was formed on January 11, 1968, after years of frustration with the Federal Aviation Administration (FAA). Air traffic controllers had been asking for additional staffing and compensation because their workload had been steadily increasing as air travel became more widespread and airports more congested. To add name recognition and legal power to their cause, the union enlisted well-known lawyer F. Lee Bailey as its first executive director.<sup>146</sup> With President Kennedy's Executive Order 10988, federal employees had been allowed to unionize since 1962. Unions formed by federal workers

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<sup>144</sup> Robin Bravender, "Firefighters Reopen Cash Spigot," *POLITICO*, December 19, 2011, <https://www.politico.com/story/2011/12/firefighters-reopen-cash-spigot-070642>.

<sup>145</sup> Malanga, *Shakedown*.

<sup>146</sup> James A. Calabrese, "The Patco Dispute—A Need for Change in Public Employee Labor Settlements," *DePaul Law Review* 20, no. 3 (1971): 699–728.

had the right to collectively bargain with the government but were prohibited from going on strike.<sup>147</sup> After the formation of PATCO, a majority of air traffic controllers joined the union. In 1973, in discussing negotiations with the government, union president John Leyden stated that “PATCO will not attempt to obtain unrealistic and unobtainable objectives; but with your support will pursue legitimate, realistic objectives.”<sup>148</sup> This conciliatory tone of cooperation did not last; by 1980 the union was at an impasse in negotiations with the FAA. Taking a risk to exploit the coming election, PATCO publicly endorsed Ronald Reagan, hoping to benefit should he win the election. Reagan won, but his administration rejected PATCO’s demands.<sup>149</sup> Though prohibited from striking, PATCO members nonetheless walked off the job on August 2, 1981. Reagan issued an ultimatum to the union: return to work in forty-eight hours or be fired. The union held out, and Reagan promptly fired nearly 12,000 PATCO members.<sup>150</sup> As a result, the union was decertified.

After nearly twenty years of growing power and influence, the PATCO strike was a major blow to the public sector labor movement. Reagan’s bold move was not illegal, as PATCO members broke the law when electing to strike. However, the union’s refusal to settle and the drastic reaction set a political tone that reverberates to this day with some conservative and Republican lawmakers. But the game is far from over. On January 24, 2019, ten air traffic controllers called in sick. On that day, the thirty-fifth day of the longest federal government shutdown in history, those ten controllers—who happened to fill critical roles in the flow of air traffic on the East Coast—effectively shut down New York’s LaGuardia Airport and caused major delays at other locations.<sup>151</sup> Within hours of the “sick out,” President Donald Trump ended the shutdown. The ten controllers were members of

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<sup>147</sup> Storch, *Working Hard for the American Dream*, 97.

<sup>148</sup> Joseph A. McCartin, *Collision Course: Ronald Reagan, the Air Traffic Controllers, and the Strike That Changed America* (New York, NY: Oxford University Press, 2011), 145.

<sup>149</sup> Calabrese, “The Patco Dispute,” 714.

<sup>150</sup> Joseph A. McCartin, “Reagan vs. Patco—The Strike That Busted Unions,” *New York Times*, August 2, 2011.

<sup>151</sup> Ellie Kaufman and Rene Marsh, “The Government Shutdown Ended after Only 10 Air Traffic Controllers Stayed Home,” CNN, February 6, 2019, <https://www.cnn.com/2019/02/06/politics/ten-air-traffic-controllers-shutdown/index.html>.

NATCA—the National Air Traffic Controllers Association, the union that succeeded PATCO.<sup>152</sup>

### **C. A SUCCESSFUL PRIVATE SECTOR UNION IN THE UNITED STATES**

Unions and government officials could seek to emulate successful collaboration in the private sector to achieve a better labor-management environment. While fundamental union rights under the National Labor Relations Board are universal across the workforce, in the private sector an employer may close, relocate, or move offshore completely. Governments, on the other hand, are rarely dissolved, and if consolidations or workforce modifications take place, protections usually ensure the displaced employee can find work elsewhere. This distinction puts more pressure on a private sector union to act not only in the best interest of the union members but also for the fiscal health of the employer.

When employees have a stake in the fiscal health of a company, the result can be more labor flexibility. For example, the Harley-Davidson company had a resurgence in the late '80s and early '90s after nearly going bankrupt. As part of the company's restructuring, the major unions representing Harley-Davidson employees were involved in the process, forming a partnership called the Joint Partnership Implementation Committee. The unions agreed to nontraditional labor agreements in return for job security provisions and financial incentives. The unions received incentives to help the company stay agile in an expanding and changing market, and in return the company benefitted from a loyal workforce that had the best interest of the company in mind.<sup>153</sup> Partnerships between labor and management form a bond between the two, and the relationship can prove beneficial when both sides respect each other's needs. In particular, empowerment of employees through financial investment and involvement in company operations is an important factor in overall labor relations. Empowerment and shared goals increase employee satisfaction and lessen the time and effort spent on negotiations and the grievance process.<sup>154</sup>

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<sup>152</sup> NATCA, accessed April 3, 2020, <https://www.natca.org/>.

<sup>153</sup> Rich Teerlink and Lee Ozley, *More than a Motorcycle: The Leadership Journey at Harley-Davidson* (Boston, MA: Harvard Business School Press, 2000), 256–57.

<sup>154</sup> Susan L. Manring and Amanda Brailsford, "Collaboration toward Service Excellence: A Union-Management and Empowered Employee Partnership," *Hospital Topics* 79, no. 3 (Summer 2001): 25–29.

In the public sector, an important part of the above concept, profit motive, would be difficult to implement. However, the concept of employees having a greater stake in the organization could apply. Whether it occurs in the form of shared decision-making or greater involvement in the decision-making process, having employees involved and engaged with the inner workings of their agency would provide a degree of ownership. Also, greater knowledge of the municipality's financial situation might provide a more realistic view of what can be expected during the negotiation process.

#### **D. A SUCCESSFUL EUROPEAN MILITARY UNION**

Historically, Europe has been more receptive to unions than the United States. The European labor movement, which began in the mid-1800s, wanted to further the interests of the working class by gaining political power.<sup>155</sup> Whereas labor parties in Europe have been among the more powerful political factions, in the United States, political organizations with a clear focus on labor and unionism have been relegated to the fringe and been associated with socialist agendas and communism.<sup>156</sup> Also, with unionism more accepted as part of the European political landscape, one concept, military unionism, is present in several nations. The fire service is considered a paramilitary organization and thus parallels can be drawn between a unionized military and a fire or police department.

European military unions focus on representation and support of soldiers and cannot legally strike or engage in other activities that would undermine the strength of the country's armed services.<sup>157</sup> In Germany, the concept of *mitbestimmung* (co-determination) is a guiding principal for labor-management relations. Under this model, union members have guaranteed representation in both the workplace and at higher levels

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<sup>155</sup> "Labour Movement," Palgrave Macmillan Dictionary of Political Thought, accessed April 16, 2020, [https://search.credoreference.com/content/entry/macpt/labour\\_movement/0](https://search.credoreference.com/content/entry/macpt/labour_movement/0).

<sup>156</sup> Robin Archer, *Why Is There No Labor Party in the United States?* (Princeton, NJ: Princeton University Press, 2008), 220–21.

<sup>157</sup> Richard Bartle, "Placing Military Unionism in a Comparative Perspective," in *Military Unionism in the Post-Cold War Era*, eds. Richard Bartle and lindy Heinecken (London, UK: Routledge, 2006), 216.

of management.<sup>158</sup> The Bundeswehr-Verband (the German military union) also applies this concept. Author Jean Callaghan explains the union's role as follows:

Consider, for instance, these situations: in a dispute, a Bundeswehr-Verband member on active duty may simultaneously play the role of dedicated and obedient soldier while serving in the role of a negotiator (via the Bundeswehr-Verband) or a veteran (and Bundeswehr-Verband member) may simultaneously serve as a bureaucrat writing regulations or a member of parliament drafting legislation related to defence matters.<sup>159</sup>

The military model offers an interesting hybrid of public and private sector union concepts found in the United States. A military union, like a public sector union, cannot utilize profit sharing or stock options as an incentive to work for the health of the company. However, the principal of co-determination is similar and could be applied to public sector unions in this country.

## **E. GAME THEORY APPLIED TO NEGOTIATIONS**

Game theory is an economic principal that was developed by John von Neuman and Oskar Morgenstern. The premise is that an "optimum solution" to a conflict between two rational actors, with each having stated goals and the opportunity to benefit from the other's choice, can be successfully modeled mathematically.<sup>160</sup> Game theory is commonly described using the prisoners dilemma: In this example,

the police have arrested two people whom they know have committed an armed robbery together. Unfortunately, they lack enough admissible evidence to get a jury to convict. They *do*, however, have enough evidence to send each prisoner away for two years for theft of the getaway car. The chief inspector now makes the following offer to each prisoner: If you will confess to the robbery, implicating your partner, and she does not also confess, then you'll go free and she'll get ten years. If you both confess,

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<sup>158</sup> Thomas Fetzer, "Defending Mitbestimmung: German Trade Unions and European Company Law Regulation (1967–2000)," *Economic and Industrial Democracy* 31, no. 4 (November 2010): 24–39.

<sup>159</sup> Jean Callaghan, "Unions and the German Armed Forces: The Citizen in Uniform," in *Military Unionism in the Post-Cold War Era*, eds. Richard Bartle and lindy Heinecken (London, UK: Routledge, 2006), 22.

<sup>160</sup> Layman E. Allen, "Games Bargaining: A Proposed Application of the Theory of Games to Collective Bargaining," *Yale Law Journal* 65, no. 5 (April 1956): 660, <https://doi.org/10.2307/794152>.

you'll each get five years. If neither of you confess, you'll each get two years for the auto theft.<sup>161</sup>

The two prisoners (players) are assigned “utility functions,” as illustrated by Figure 5.

		Player II	
		Confess	Refuse
Player I	Confess	2,2	4,0
	Refuse	0,4	3,3

Go free = 4   2 years = 3   5 years = 2   10 years = 0

Figure 5. Prisoner’s Dilemma<sup>162</sup>

Using this model, the optimum solution for this situation is for both prisoners to refuse to implicate the other and receive a two-year sentence.

A simple example of the use of game theory in a collective bargaining situation is illustrated by Professor Michael Pettus using the following example, which is a representation of modeling a single-issue negotiation between two parties and using the model to find the optimum solution, as seen in Figure 6.

Labor’s negotiating range consists of:

1. The pay rate (\$28) that labor would like to receive;
2. The lowest rate (\$24) at which union members would ratify a new contract.

Management similarly examines the labor market to determine its own range:

3. The highest rate (\$26) management will agree to;

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<sup>161</sup> Don Ross, “Game Theory,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Stanford, CA: Stanford University, 2019), <https://plato.stanford.edu/archives/win2019/entries/game-theory/>.

<sup>162</sup> Adapted from Ross.

4. Management's preferred (\$23) wage rate.

Thus, labor's negotiating range is between \$24–\$28; management's negotiating range is between \$23–\$26.<sup>163</sup>

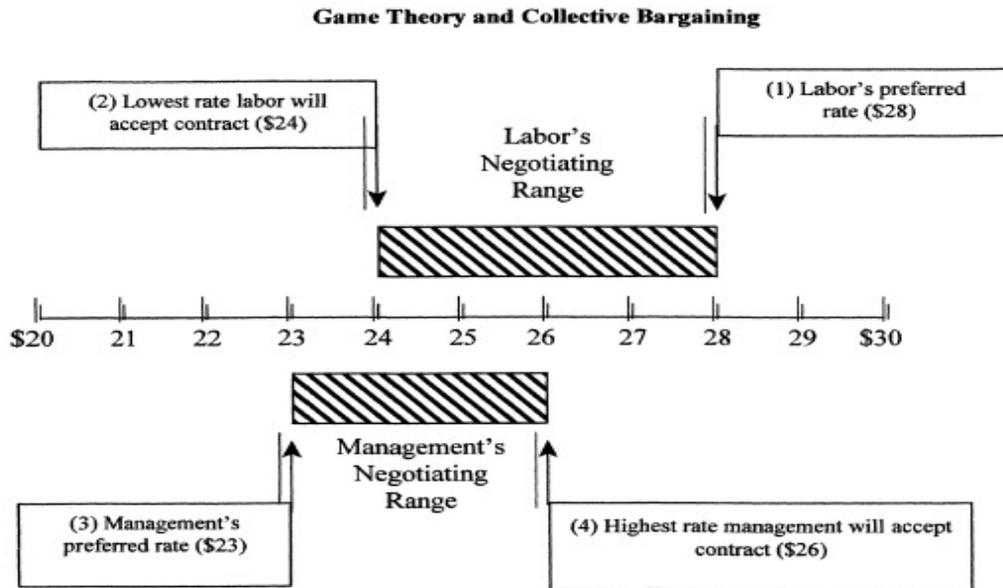


Figure 6. Game Theory and Collective Bargaining Example<sup>164</sup>

Using this model, the median overlap (and optimal solution) between the opposing parties is \$25 per hour.

This is a simple illustration of a single issue with two players. In reality the bargaining environment is far more complex, with more players. Contract terms in a public sector contract involve the expenditure of public funds, which may cause a tax increase that would introduce another angle to the negotiation. Similarly, items in a contract may benefit certain members of the union more than others and alter their motivation to approve

<sup>163</sup> Michael P. Pettus, "Applying Game Theory to Collective Bargaining," *Journal of Transportation Law, Logistics & Policy* 73, no. 1 (First Quarter 2006): 96–101, <http://libproxy.nps.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=20203350&site=ehost-live&scope=site>.

<sup>164</sup> Source: Pettus.

or disprove the final agreement. This complexity can be addressed in an expansion of game theory introduced by mathematician John Nash, who developed what became known as the Nash equilibrium. Whereas von Neumann and Morgenstern's definition of equilibrium for noncooperative games deals with "zero sum situations, where one party's gain is another's loss," Nash proposes a wider notion of equilibrium that applies to a wider range of players and places no restrictions on the payoff structure.<sup>165</sup>

The Nash formula incorporates the inherent variables in bargaining. Policy formation, such as the direction and desired results of negotiations, is a process of political interaction between groups. Even if there are some shared interests, the political preferences of other involved participants may diverge and thus conflicts of interest are unavoidable.<sup>166</sup> The Nash model incorporates multiple variables for both sides in a negotiation that produces multiple curves, and within the intersection of those curves lies the area from which an optimal solution may be found.<sup>167</sup> This may be a more effective tool, as negotiations may not be as straightforward as two sides negotiating over a single issue. For example, if a union requests a wage increase and the municipality agrees to the increase but desires a longer term in which to phase in the increase, the union may concede to increases in pay steps (which would only benefit certain members at that point in time). Depending on the tenure of the employees, the majority may protest a pay step increase that would not be of immediate benefit. Likewise, the government representatives conducting negotiations may face political backlash for an increase in spending. Use of mathematical modeling to direct negotiations may be a way to predict the most desirable outcome in negotiations.

Elements of game theory are being used at the University of Singapore to develop automated negotiating using artificial intelligence, where programs using algorithm-based

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<sup>165</sup> Charles A. Holt and Alvin E. Roth, "The Nash Equilibrium: A Perspective," *Proceedings of the National Academy of Sciences* 101, no. 12 (March 23, 2004): 3999–4002.

<sup>166</sup> Camille Antinori, "The Nash Solution to the Bargaining Problem," accessed May 9, 2020, <https://are.berkeley.edu/~cmantinori/prclass/RZ2.pdf>.

<sup>167</sup> Maria Paz Espinosa and Changyong Rhee, "Efficient Wage Bargaining as a Repeated Game," *The Quarterly Journal of Economics* 104, no. 3 (1989): 565–88.

learning are able to learn strategies to effectively conduct negotiations.<sup>168</sup> Although ceding control of negotiations to an algorithm is not currently an accepted practice, artificial intelligence and computer modeling are becoming more widespread in many areas, and in the future could also be applied to contract negotiations, even if only in an advisory capacity for negotiators or arbitrators. In the case of arbitrators, computer-aided modeling could provide a defensible rationale when rulings must be made on contract disputes.

## **F. CONCLUSION**

Interaction between labor and management should act as a system of checks and balances, with both parties acting in good faith. Labor defends its own interests while management must be fiscally responsible yet provide services to the public effectively and efficiently. When disingenuous behavior on either side interrupts this process, it sets off a negative feedback loop that pits both sides against each other in a manner that detracts from the provision of services. The Harley-Davidson example in this chapters shows an instance in which the two sides have cooperated with positive outcomes, and European militaries likewise demonstrate that labor organizations can exist within a structure as strict as the military. Whatever the situation, the relationship between the parties is critical to reaching an agreement that is flexible enough to suit the mission and also acceptable to both parties.

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<sup>168</sup> Jim R. Oliver, "A Machine-Learning Approach to Automated Negotiation and Prospects for Electronic Commerce," *Journal of Management Information Systems* 13, no. 3 (December 1, 1996): 83–112.

## V. FINDINGS AND RECOMMENDATIONS

Unions were formed in the United States as a reaction to oppressive and unsafe working conditions. Through unions, organized labor was able to increase wages and compensation, secure pensions, and enhance workplace safety. In fact, many of the original goals of the labor movement have become law. The extension of union rights to the public sector has also promoted workplace equality and protection from political retribution. Along the way, compromises were made that reflect the unique nature of government work and its critical place in society. Prohibitions on strikes, for example, were met with rules that enforce labor contracts even when they are expired. Unfortunately, the protections offered to unions can conflict with the government agency's ability to make rapid changes in response to a crisis. And violation of labor contracts can lead to costly legal action that ultimately burdens the taxpayers.

This thesis asked the question: How can public sector unions and government entities bargain with each other in a way that satisfies the needs of the labor union without compromising public safety? Though management may see unions as obstructive or unnecessary, in collective bargaining states unions have legal standing and thus must be bargained with. Failure to do so in a manner that recognizes the status of the bargaining unit may lead to labor unrest and ultimately a reduction in services and legal expenditures. Similarly, public sector unions must respect their role as public servants who work for the people. Overreach of authority and the use of legal protections to force changes in the workplace can produce a toxic environment that makes positive collaboration difficult. Ultimately, labor and management must respect each other's roles and responsibilities, both to each other and the public they serve.

The following suggestions are designed to reduce the number and severity of labor-related conflicts in collective bargaining states. Unions and the legal protections they hold are not likely to change, but changes in the environment in which unions and employers operate may help reduce conflicts and provide more efficient, effective services to the public, provided by a fairly compensated and protected workforce.

## **A. A NEED FOR STANDARDS**

A constant source of conflict between labor and management in public safety agencies involves compensation and services provided. In collective bargaining states, contract negotiations involve bargaining for pay and benefits. Also, if items such as services provided and staffing levels are allowed, those will also be points of negotiation. At the local level this may prove difficult. In terms of salary, how much is a firefighter worth? For services provided, how many firefighters should a city have? Should a fire department provide EMS services or ambulance transport? These questions that are negotiated at the local level should be looked at from a bigger picture level in order to give both sides a standard to use as a reference point. Further adoption of federal and state standards can eliminate the need for some elements of bargaining and give both sides at the negotiation table a defensible position to argue. As evidenced in the case studies in chapter three, unions and their employers interact on issues of services provided, compensation, and hours of work. Collaboration can have a positive impact, but overreach on the part of the union or management can have unintended consequences that negate the purpose of the action taken. By using established standards, negotiations can be guided and compared to an existing baseline.

### **1. Staffing and Services**

Currently, the Occupational Safety and Health Administration (OSHA) is the only federal entity whose jurisdiction applies to the entire fire service, whether directly or indirectly, in states that mimic OSHA standards for their own occupational health programs. While there are organizations that support education and standards, compliance is voluntary. For example, the Center for Public Safety Excellence has an accreditation program for fire departments called the Commission on Fire Accreditation International (CFAI), which states, “Accredited agencies are often described as being community-focused, data-driven, outcome-focused, strategic-minded, well organized, properly equipped, and properly staffed and trained.”<sup>169</sup> Other organizations, such as the National

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<sup>169</sup> “Accreditation Overview,” Center for Public Safety Excellence, accessed May 29, 2019, <https://cpse.org/accreditation/>.

Fire Protection Association (NFPA) and the Insurance Services Office (ISO), have evaluation programs for fire departments, but they are more limited in scope.<sup>170</sup> NFPA sets standards for staffing and ISO evaluates fire departments for the insurance industry (which is used for setting property insurance rates), and staffing and capabilities are part of the evaluation. However, no matter how many methods are available for assessment of fire departments, they cannot be effective if compliance is not mandatory or there is not enough positive feedback or tangible results to make compliance worthwhile. Even the United States Fire Administration has limited authority. In its Reauthorization Act of 2008, one of the functions of the agency is listed as “encouraging” the adoption of standards for firefighter health and safety—not regulating or enforcing such standards.<sup>171</sup>

NFPA, ISO, and CFAI recommend staffing requirements that are reflective of the population served. The organizations share services between communities to achieve the staffing levels needed to respond to various emergencies. For example, the NFPA 1701 standard sets the number of firefighters needed to respond to a structure fire, but does not mandate that they be employed by one particular department. Instead, mutual aid agreements between communities may be used to achieve the desired staffing levels.

Adoption of consensus-based standards is one way to streamline the negotiation process. Fire departments throughout the country provide a wide range of services, from basic firefighting to ALS-level EMS services and ambulance transportation. While the decision about the level of service to be provided ultimately rests with the community, how that service is provided can be modeled off of industry-wide best practices. This is the mission of CFAI. The adoption of best practices and standards may eliminate questions over staffing and how to provide various levels of service. Also, national standards can give a community a better picture of the cost and staffing requirements that are associated with various levels of service. This information can serve as a guide for planning and future negotiations in any locality.

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<sup>170</sup> Hensler, *Crucible of Fire*, 65–66.

<sup>171</sup> United States Fire Administration Reauthorization Act of 2008, Pub. L. 110–376 (2008), <https://www.govinfo.gov/content/pkg/PLAW-110publ376/pdf/PLAW-110publ376.pdf>.

## 2. Fair Compensation

Compensation is another source of contention in contract negotiations. Though no national standard describes adequate compensation for firefighters, a survey of similarly sized and equipped departments regionally could help define adequate compensation. For example, a market study analysis—the study of comparable occupations in the same labor market—could be used to provide a baseline for compensation.<sup>172</sup> This method could provide justification for the demands either side may have in negotiations. In New York, PERB uses this process during arbitration proceedings. When a contract settlement cannot be reached and an arbitrator is tasked with deciding upon terms, the arbitrator abides by the section of the Public Employees Fair Employment Act that states:

[T]he public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following: comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities, the interests and welfare of the public and the financial ability of the public employer to pay, and comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.<sup>173</sup>

If a contract cannot be settled, the resulting arbitration may decide that the parties should use a process such as market study analysis; they could save time and money, however, by simply taking this step in the first place as they prepare for negotiations.

As discussed in Chapter IV, game theory can also be used for compensation negotiations. Ultimately, each side must agree to an adequate settlement; if all of the extenuating circumstances in a negotiation are known, a model could be created that

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<sup>172</sup> OECD, *Pay Flexibility in the Public Sector* (Paris, France: OECD, 1993), 15, <https://doi.org/10.1787/9789264062412-en>.

<sup>173</sup> New York Public Employment Relations Board, “The Taylor Law.”

provides the best possible solution. Such an approach might more readily reach the same conclusion as costly and time-consuming debates over contract disputes.

### **3. Barriers to Implementation**

The adoption of standards and the use of market study analysis could benefit the negotiation process by providing a framework for common points of conflict. However, local governments may resist attempts to regulate negotiations, as regulations take control away from the government and may be seen as unfunded mandates. If standards benefit unions, labor organizations could use their political influence to lobby for regulation. Ultimately, the adoption and enforcement of standards would require passing legislation, and there would have to be a perceived need in order for the effort to be successful. If labor and management want to consider using game theory to model negotiations, further research and testing should be pursued.

### **B. A NEED FOR LONG-RANGE PLANNING**

Relationships between unions and management are inherently political. Unions may support politicians in return for favorable contracts terms, or politicians may take a tough stance against unions to fulfill a conservative agenda. When politics and contract negotiations intersect, the result may not be in the community's best interest in the long run. Overly generous terms or expansions in service may result in long-term expenditures that become financially unsustainable. Likewise, unilateral contract changes and refusals to bargain in good faith may land the contract negotiations in arbitration, which is costly for both sides. Negotiations should consider long-range planning that anticipates the financial and operational impacts of a labor contract. In collective bargaining states, labor contracts remain in force after they expire and items that are in a contract must be negotiated out if needed. Before an agreement is entered into, both sides therefore must consider the long-term impact of their decisions.

## **1. Fiscal Responsibility versus Adequate Compensation**

When considering compensation for public sector employees, negotiations must strike a balance between staying affordable and attracting a competent and capable workforce; if employees are not offered a competitive wage, it is difficult to recruit quality candidates to critical public sector jobs. Contract negotiations should address the financial stability of the municipality, but with transparency on both sides so the actual finances and costs are known.

## **2. Beware of Expanding Contractual Items**

While there are topics that must be addressed in contract negotiations, care should be taken when addressing nonmandatory topics. As mentioned, once an item has been entered into a labor contract, it remains in force until it is negotiated away. This is especially important in the case of contractual items that impact operational flexibility, such as personnel deployment and job duties. For example, unions have placed a great deal of importance on seniority; however, relying on tenure as the sole factor in job assignment may end up excluding more qualified candidates from consideration.

## **C. COLLABORATION, NOT CONFLICT**

Where collective bargaining is allowed, unions and the governments their members work for must find a way to coexist. Until legislative change is made that alters the conditions under which both sides operate, they must attempt to respect each other's rights and authority. Failure to do so can result in costly legal action and can take conflict resolution of the conflict out of the hands of the parties involved and move it into the courts.

Chapter III of this thesis presented case studies that illustrate how conduct between a union and its members' employer can play out, both beneficially and detrimentally. In Troy, New York, collaboration between the firefighters union and the city resulted in an expansion of service to the community that also provided a revenue stream to offset the cost of the service. In return, the union was granted an enhanced retirement package and staffing guarantees. In the case of the Houston Fire Department pay dispute, the union wielded its political power to force the city into a pay increase that was financially

unsustainable, showing that political activism without regard to the overall stability of the city was ultimately unsuccessful. Finally, the case of Providence, Rhode Island, showed that disregard of union contracts by management can be counterproductive. Seeking to save money, the city changed the firefighters' work schedule without negotiating the change. The resulting legal fight and settlement ended up negating the projected savings with no net positive result for the parties or taxpayers.

Chapter IV showed examples of labor-management relations from the private sector and European military services. Both models found value in collaboration and a shared interest in the overall management and direction of the organization. Although it is difficult to provide a financial incentive for labor organizations in the public sector (such as stock options or performance dividends), providing some degree of shared ownership in the organization could be a means to reach greater cooperation and understanding.

Although it is unrealistic to think that either side in a labor contract will be completely satisfied, steps can be taken to ensure that both sides trust each other's motives. Modeling a workforce using accepted standards, and offering compensation in line with the average for a comparable worker, can give both sides a defensible position in the negotiation process. In times of financial difficulty, involvement of labor representatives in the budgeting process can help to acknowledge management's monetary constraints, and perhaps lead to an open dialogue for longer-range planning; high-cost items can be deferred until they are more affordable. However, both parties must take care to offer short-term fixes and settlements derived from political maneuvering, as the long-term impact may lead to problems at a later date. Labor and management in the public sector both exist to serve and protect the public. Positive collaboration between these two groups can benefit the citizens the agency serves.

#### **D. CONCLUSION**

Well-trained and motivated public safety personnel are a key component of our national security. While plans, strategies, and technology are important to the homeland security enterprise, it is the people who make it all work. The homeland security workforce is employed by various levels of government all over the country, and the diversity in

conditions of employment means there are significant differences in the conditions under which these public servants work. In areas that allow unionized public safety employees, there must be a positive working relationship between the union and its members' employer if the government is to provide the highest degree of service to its citizens. The rules may change in the future, but until then this thesis presents a potentially viable path to a positive working relationship between labor and management in the public sector.

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