Collective Bargaining in the United States
By
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Introduction

The term Collective Bargaining can conjure up different images to different observers. For most workers in the United States, the presence of unions or collective bargaining in the workplace is something of a faded memory, consigned to history books or perhaps heard at family gatherings from a retired family member who remembers fondly the benefits brought about his/her union. Indeed for most private sector workers the presence of unions or collective bargaining in the workplace is practically non-existent. Not so for public employees and public human resources officials. Unions and collective bargaining are very much a presence at many state and local government worksites and significantly impact on how the work gets done, as well as how tax dollars are allocated.

What difference does a union bring to the workplace? The formal response may be short and simple, but as we will explore in this article, the changes it brings to the public worksite is profound and lasting. Some scholars of government administration defines collective bargaining as,¹

“...a bilateral decision making process in which authorized representatives of management and labor: (1) meet and in good faith negotiate such matters as wages, hours and working conditions; (2) produce a mutually binding written contract of specified duration; and (3) agree to share responsibility for administering the provisions of that contract”. (Original emphasis)

Thus once a union is selected to represent employees, it can have a major or equal role in public personnel administration. Government managers no longer have the ability to

¹ Nigro, et.al.: 199)
unilaterally act on behalf of employees. The collective bargaining agreement (CBA) becomes the guide and roadmap to interacting with their staffs.

This article will discuss the history of collective bargaining in the U.S. to bring context and understanding to the discussion. We will look at the decline of fortunes of unions in the private sector, and the almost mirror image rise to power in the public sector. Part of the discussion will focus on the complex and bewildering array of statutes, court decisions, and executive orders which regulate public sector bargaining; a phenomenon which reflects the nature our federal governing structure. Also examined will be how the public sector deals with issues of unit determination, management rights, and impasse resolution. Finally, the possibility of a revived and re-energized labor movement, both in the private and public sectors will be discussed in relation to potential legislation pending in the United States Congress.

Union History

Private Sector. During the colonial period and continuing into the mid 1800s the relationship between workers and those who employed them was adversarial, hostile, and sometimes erupted into acts of violence. Skilled and unskilled workers sought to protect their earning power and fight against long hours and inhumane working conditions by forming worker associations, mechanic societies and fledgling skilled craft unions. Employers fought back with every means at their disposal, and would use English Common Law against restraint of trade to weaken and crush these early unions. It took until the 1860s for a national organization to emerge and represent skilled craft workers. This was the National Labor Union (NLU) a confederation of skilled craft unions. NLU’s

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2 Ballot 1992: 24-27
philosophy was well ahead of its time, they advocated for an 8-hour workday\textsuperscript{3}, an end to convict labor, equal rights for women and racial minorities, and monetary reform. The NLU’s shift towards political reforms involving taxation, banking, and land policy eventually jeopardized its craft union base. Following the NLU was the Knights of Labor, espousing a philosophy of “one big union” and admitting both skilled and unskilled workers. The Knights also believed in social reform, including the abolition of the wage system, and disdained strikes as a tactic against employers. Eventually the tension between skilled and unskilled workers, as well as the focus on socio-political reforms caused a rupture in the ranks and led to its demise, though they did attain over 700,000 members at their peak.

Aiding in the eventual demise of the Knights of Labor was a decision made by over one hundred skilled trade unions to form the Federation of Organized Trade and Labors Unions (FOTLU) in 1881. Just five years later one fourth of this group, representing 140,000 members, completely severed any remaining ties to the Knights and created the American Federation of Labor (AFL) with Samuel Gompers as its first president.\textsuperscript{4} The AFL eschewed broad social issues and focused instead on bread and butter unionism, using the strike weapon if necessary, to seek better economic and working conditions for its skilled craft workers. As a federated organization, the AFL sought to maximize its monopoly over the workplace by granting exclusive jurisdiction to its member unions to represent a particular craft or trade, thereby avoiding divisive organizing disputes. Gompers and the AFL found a responsive chord among America’s

\textsuperscript{3} In 1916, Congress approved the Adamson Act giving railroad workers an 8 hour day, and in 1938 Congress enacted the Fair Labor Standards Act, making the 8 hour day the norm for most other workers.  
skilled workers and membership steadily increased, climbing to more than three million by 1917\textsuperscript{5}.

Indifference and neglect on the part of the AFL leadership to the plight of the unskilled and semi-skilled industrial workers during the height of the 1930’s economic depression led to a major rupture in the federation. A number of AFL unions, headed by the United Mine Workers of America formed the Committee for Industrial Organization (CIO) to aid fledgling industrial unions. In turn, the leadership of the AFL voted to expel all 32 members of the CIO, who promptly became the Congress of Industrial Organizations, and unfettered by the AFL, went on a major successful campaign to organize industrial workers. In 1955, the AFL and CIO put aside their differences and once again all major unions were under one federated umbrella, a situation that lasted until 2005, when a number of unions again left the federation to form a new umbrella organization called Change to Win. At the time of the merger in 1955, the AFL-CIO represented 35 percent of American workers and had over 15 million members; as of 2008 the number of union membership remains much the same, claiming 15.7 million.\textsuperscript{6}

**Legal and Statutory Issues.** Congress made a number of unsuccessful attempts during the late 1800s to establish some semblance of order in the increasingly confrontational and sometimes violent interactions between labor and capital, but the United States Supreme Court struck them down. The Sherman Anti-Trust Act’s provisions against restraint of trade were especially favored as a weapon against unions

\textsuperscript{5} Ibid.
\textsuperscript{6} Walker, 2008 MLR: 29
and union tactics. The first successful federal incursion into matters of labor and management occurred in 1926 with the enactment of the Railway Labor Act (RLA), which established the right of unions in the railroad sector of the economy to represent its members free of management interference and required both sides to meet and negotiate in good faith. RLA also created a federal agency, the National Mediation Board, to resolve impasses. Fueled by the Great Depression of 1929, and acting outside any statutory framework, the relationship between labor and management in the low skilled sector devolved into industrial warfare and sabotage. As part of President Roosevelt’s New Deal program, Congress passed the National Industrial Recovery Act (NIRA) that granted certain rights to unions, and established the National Recovery Administration but had no penalties for non-compliance, and in any case, the Supreme Court found that Title I of the Act which regulated industry was unconstitutional. Labor’s fortunes took a turn for the better in 1935 when Congress enacted the National Labor Relations Act (NLRA) and established the National Labor Relations Board to enforce its provisions. Sometimes known as Labor’s Magna Carta, the NLRA gave unions the right to organize, the right to represent workers, the right to bargain over wages hours and conditions of work, and the right to strike. Management could not interfere with these rights, and violations would result in Board imposed sanctions. Many employers saw this as an unwarranted federal interference in the ability to operate their business and refused to adhere to its provisions, believing that the judiciary would follow its NIRA precedent and declare it unconstitutional. In a 5-4 decision, however, the Supreme Court upheld the legality of the Act, emphasizing that the federal government had the

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7 Ballott 57-60.
8 Later amended to include the airline industry.
9 Ballott, op.cit.
authority to regulate intra-state commerce as long as there was a nexus between intra-state and inter-state commerce.

Following this decision the Supreme Court also upheld the constitutionality of the Social Security Act by a 7 - 2 vote, thus upholding the power of the federal government to regulate many activities previously considered a private or a state matter. Some observers claim that the shift was so profound that it symbolized the, “constitutional revolution of 1937”\(^\text{10}\). Subsequent Congressional attempts to repeal the NLRA failed, but opponents scored a victory in 1947 when managers and supervisors lost NLRA coverage through the Taft-Hartley amendments. Security personnel in the private sector also were no longer able to be in the same bargaining unit as other employees. In a victory for states rights, the Taft-Hartley amendments also allowed states to pass legislation prohibiting the ability of unions to require union membership as a condition of continued employment, otherwise known as the “right to work” clause. Attempts by organized labor to repeal the Taft-Hartley amendments, or at least the “right to work” provisions have also been unsuccessful.

**Public Sector Collective Bargaining.** Public Employees at the federal, state and local level were not included in the NLRA. For the next twenty-five years or so, government employees were not part of the rapid growth of organized labor, due in part to the protections and rights granted by the Act. That is not to say that they were completely left at the mercy of management in terms of protections from arbitrary treatment or lacked influence in attempting to secure economic benefits. Enactment of the Pendleton Act in 1883 began the merit system in the United States for federal, state, and local government employees, and over 90 percent of public employees eventually

\(^{10}\) (Gerston 2007: 58).
came under some form of protection against arbitrary treatment.\textsuperscript{11} Large jurisdictions with many employees also contended with civil service type employee associations utilizing lobbying and political methods to advance their members needs, since collective bargaining was illegal in most states.\textsuperscript{12} Starting in the early 1960s and continuing for the next ten years or so public employees became the beneficiaries of the social, political, and economic trends that swept the country. Arguments against public sector bargaining\textsuperscript{13} failed to stop the enactment of statutes or the promulgation of executive orders permitting public employees to form unions, negotiate with management, and make the results legally binding. Previously mild-mannered employee associations morphed into militant unions, or affiliated themselves with existing national unions such as the American Federation of State County and Municipal Employees (AFSCME), or the Service Employees International Union (SEIU). Private sector unions also began to take notice and aggressively sought to unionize non-affiliated public employees. At the national level, President Kennedy signed Executive Order 10988 in 1961 which gave federal employees a limited right to collective bargaining.\textsuperscript{14} While the tidal wave of public sector organizing slowed after the 1970s, it nevertheless dramatically transformed the political and legal landscape. In 1958, no state had a law authorizing bargaining by state and local government employees. (If there was a law on the books, it was to prohibit collective bargaining.)

\textsuperscript{11} (Berman et al. 2006:16
\textsuperscript{12} (Nigro, F. 1968 in Riccucci op.cit.: 265).
\textsuperscript{13} These arguments consisted of economic and public policy concerns. The economic issue focused on the lack of market pressures and discipline which could lead to pay increases and benefits in excess of what the labor market would pay. Public policy arguments were wrapped around the concept of government sovereignty. As a sovereign government is required to consider the interests all affected stakeholders, and a bilateral agreement with labor unions conferred additional rights to employees at the expense of other legitimate claimants.
\textsuperscript{14} The Executive Order was strengthened by President Nixon and in 1978 became law as part of the Civil Service Reform Act.
Today, in contrast, at least 40 states allow some form of union activity.\(^{15}\) Indeed, the rate of unionization for government employees is much higher than in the private sector, where the number of union members is approximately 15.7 million\(^{16}\), or 8 percent of the workforce, while public sector unions represent 36 percent of state employees and over 40 percent of local government employees.\(^{17}\)

**Lack of uniformity and consistency.** While the private sector has one law and one administrative agency, the National Labor Relations Board, which seeks to enforce the provisions of the NLRA through uniform application of its provisions, the public sector has had the opposite result. Indeed one observer of state and local government called the current situation, “A bewildering array of …state and local laws, regulations, court decisions, ordinances, and attorney’s general opinions shape government labor-relations.\(^{18}\) Example; Of the 40 states with affirmative public sector bargaining laws some follow the lead of New York State and grant all public employees, including local government workers and state university college and faculty the right to bargain. Others such as Maryland have one law for state employees, another for higher education employees, which specifically exclude faculty and management, and another for K-12 education employees. Maryland is also one of a few states where local government bargaining is left up to each jurisdiction to determine. There is no consistency or uniformity in terms of an administrative or quasi-judicial agency to determine disputes on unit determination, committing unfair labor practices, scope of bargaining or resolving bargaining impasses. Most laws allow bargaining over wages, hours, and

\(^{15}\) Patton: 110  
\(^{16}\) This is almost the same number of members the AFL-CIO claimed in 1955 when the two federations merged into one body.  
\(^{17}\) Walker op cit.  
\(^{18}\) Berman: 288
working conditions, but the definition of these terms is open to interpretation. When New York State enacted the Taylor Law, granting bargaining right to all public employees, the issues of retirement and pension benefits were specifically excluded from bargaining. Other states allow bargaining over such items but require that the legislative body approve the funding to pay for new benefits. States also have the right to not allow their employees to unionize and engage in collective bargaining. Two states, Virginia, and North Carolina, prohibit state and local governments from entering into binding agreements with employee representatives. Virginia’s courts have ruled that absent statutory enabling legislation employees may not engage in collective bargaining.

Technical and Administrative Issues

Despite the differences between collective bargaining in the public and private sectors there are certain concepts and legal factors present in both spheres. These include the creation of a agency or office to supervise the process; the determination of who will be included on the bargaining unit; how to resolve claims of bad faith bargaining or unfair labor practices; the rights given to management, employees, and the union; and what steps can be taken if union and management negotiators cannot come to terms. Each of these issues will be examined in brief.

The Administrative or Labor Relations Agency. Imagine for a moment that your favorite major league team is playing in an arena or stadium but without umpires, referees, or other officials. It might be exhilarating for a short time, especially if your

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19 It needs to be noted that these states are “right to work” jurisdictions.
20 (Nigro et al.: 209)
The team is taking advantage of the absence of monitors and is ahead. But it would not be sustainable to continue playing in this manner. Collective bargaining can be defined as a contact sport and it too cannot be sustained without having a neutral and authoritative body to make sure that both sides observe the rules. Thus the reason why an administrate agency is often included in state laws establishing public sector labor activity. In the private sector for the most part, one agency, the NLRB serves this role. In the federal sector that agency is the Federal Labor Relations Authority. Many states have established a Public Employment Relations Board or Commission to administer and interpret the collective bargaining statute and to act as quasi-judicial body to adjudicate claims from management and labor when they believe that the other side has violated the process. The more comprehensive statutes give these Boards or Commissions the power and ability to issue binding rulings and penalize consistent violations of the labor law.

**Unfair Labor Practice Charges.** Management and unions both can commit actions, unknowingly sometimes which the other side considers to be an unfair labor practice, or ULP. Once a union is selected to be collective bargaining agent, management cannot interfere with its functions, nor can they refuse to meet and negotiate with the duly elected representatives of the employer. Another ULP is bad faith bargaining, either going through the motions of attempting to reach a settlement, or reversing course and denying approval to a request previously approved. In situations where collective bargaining is relatively recent, management can inadvertently create an unfair labor practice by continuing to directly discuss wages, hours, and working conditions with employees or continuing to take actions which may violate provisions of
the collective bargaining agreement. Either side can accuse the other of engaging in an unfair labor practice but in reality, unions tend to use this weapon more often.

Determination of bargaining units. Who should be in the proposed bargaining unit? Should correctional officers be in the same bargaining unit as nurses and fiscal specialists? What about supervisors and managers? Can (or should) they be represented by the same union as the employees who report to them? Answers to these questions and their variations can have a critical short and long term impact on the union representing employees, the public managers and leaders who must interact with the union, and the nature of the relationship itself. In a representation election, for example, if union strength is focused and present only in a few work areas, departments or classifications, the union may want to represent only that group to the exclusion of others, and management may ask for a larger unit in the hopes that the election results in no union being selected. The reverse would also be true. Due to the fragmentation of public sector laws there is no uniform set of rules and processes to follow. One jurisdiction can adopt a policy of having only a few units comprised of many different occupational groupings and classes, while a neighboring jurisdiction favors the creation of many bargaining units limited to a few job groupings, or limited to a single agency or department. Having many small bargaining units can be an administrative burden on management and can lead to union whipsawing—demanding better terms than given to another bargaining unit. Concentrating employees to a few large units, while easing the workload of management negotiators may give the larger bargaining unit additional leverage in terms of threatened work actions or access to political actors.
Three different approaches to determine bargaining units have emerged;\(^{21}\) (1) allowing the administrative agency to make a case by case decision, (2) allowing the administrative agency to make the determination using pre existing rules and processes, and (3) carve out bargaining units in the legislation enabling collective bargaining to take place. Of the three methods, the case by case approach is the most popular, using the *community of interest* criteria in each unit by looking at job classifications, the type or work and geographical proximity. In terms of bargaining rights for supervisors the public sector does not have the same restriction which the Taft-Hartley amendments imposed on the private sector. States such as New York, New Jersey, and Hawaii have granted supervisory personnel the right to engage in collective bargaining.\(^{22}\) Part of the reason may be due to the complexity of accurately determining just who is a bona-fide supervisor and manager in government.

**Impasse Resolution.** What happens when management and labor are negotiating in good faith but cannot agree on certain items? Should employees have the right to strike when this happens? Can management, exercising its power as a sovereign government to all stakeholders and residents, be allowed to impose a solution? In the private sector under the NLRA the answer is relatively uncomplicated; employees can strike once the collective bargaining agreement expires and a new agreement not been adopted. Management under the same circumstances can prevent workers from being on the worksite, or as is commonly referred to *lock-out* the employees. It becomes an economic struggle as to which side can better withstand either the lack of salary or the lack of business revenues.

\(^{21}\) See Nigro et al. 2008: 210-211  
\(^{22}\) Nigro, et al.: 213
Resolving contractual impasses in the public sector is somewhat more complicated. Strikes or work stoppages by government employees, while not unheard of, were and are considered to be threats to public safety and therefore most of the laws authorizing bargaining have provisions banning strikes as well as management lockouts. In recent years, these restrictions have eased somewhat, and ten states now allow some of their employees to engage in a work stoppage. Public jurisdictions have also embraced a continuum of methods to resolve stalemated negotiations, ranging from mediation to fact finding to advisory arbitration and final and binding (or interest) arbitration.

Traditional mediation is a first step in getting contract talks moving. The mediator can be a trusted figure agreed to by both sides, or an expert in conflict resolution or labor relations from national agencies such as the Federal Mediation and Conciliation Service (FMCS), the American Arbitration Association (AAA), etc. Many state labor relations boards carry a roster of neutrals who can be summoned to attempt to move both sides closer to settlement. Mediators have no legal authority to get either side to compromise or accept a contract demand, their success depends upon his/her powers of persuasion and the willingness of both sides to settle the conflict.

Fact-finding or advisory arbitration is the next step if the talks are still deadlocked. Unlike mediation, which tends to be informal and somewhat loose, fact finding is much more structured and process oriented. Both sides present evidence and selective facts to make their case, and can attempt to discredit their opponent’s data. At the end of this phase, the fact finder, or a panel of fact finders, will issue a report with a suggested settlement, which either side is free to accept or reject.

23 Kearney, R. C. (2003): 310
At this point some states allow their employees to strike, but for most employees this is not a realistic option. To prevent strikes by public safety workers, at least 20 states have enacted legislation requiring binding arbitration as the “last” step in impasse resolution. The process resembles fact finding but with a major difference—the arbitrator’s decision is final and binding on both sides. Interest arbitration has taken on many forms in the public sector. Some allow the arbitrator the flexibility to fashion a contract as long as it does not exceed the outer parameters or each side’s submission. That is to say if management offers a 2 percent cost of living adjustment and the union counter proposes with a 6 percent increase, the arbitrator can decide on a number as long as it is between the two offers. Other arbitration laws tend to restrict the discretion of the arbitrator to the last best offer of labor or management by entire package. In such cases the arbitrator cannot split the difference, but has to choose between two competing proposals. The idea behind mandatory last best offer arbitration is that both sides will attempt to pare down their unresolved issues and move closer to narrow the gap. Some jurisdictions also allow the mediator to change hats and become the arbitrator if voluntary persuasion is insufficient to get the parties to settle. This form of impasse resolution is also known as mediation-arbitration or med-arb for short.

Management Rights and the Scope of Bargaining. In pre-collective bargaining relationships management may have been constrained by civil service restrictions or legislative interference. In some jurisdictions management may have been able to hire, discipline or discharge employees with a relatively free hand. Once a union becomes the certified bargaining agent the relationship changes and the jurisdiction no longer has an unfettered right to manage its employees. Does this mean that the union can

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24 Nigro, et al.:222
negotiate about every facet of the workplace and that management has no authority? The answer is a qualified no. Drafters of public bargaining laws look to the private sector for guidance. The NLRA requires good faith bargaining over wages, hours, and working conditions. In practice the NLRB has divided the issue into three parts: (1) mandatory subjects of bargaining,--both sides must discuss and attempt to settle, (2) discretionary subjects if bargaining—management must agree first to discuss these items, and (3) prohibited or non-negotiable issues which cannot be bargained.25 As an example, when New York State enacted the Taylor Law, a comprehensive statute allowing all public employees in the state to unionize and negotiate, the issue of retirement benefits was made a non-negotiable item.

Management Rights is an issue which fits between prohibited and discretionary bargaining. Almost all state and local government laws, as well as collective bargaining agreements, have clauses or sections enumerating the rights of management. They cover areas such as having the right to determine the means methods and amount of services provided to residents. Other management clauses may allow the jurisdiction to terminate employees for lack of work. Still others state that management has the ability to discipline and discharge workers. In reality the picture is more complicated. Management may have the right to discipline or discharge employees, but unions will always seek contract clauses to temper this right by requiring due process, just cause, and third party review of management’s actions. Some unions will also agree to management having right to take certain actions but, either through the contract or through law, require management to negotiate the impact or effects of the decision on the employees. This clause can then be used by unions to blunt management

25 Nigro, et al.:216
decisions which it disagrees with. Thus having a robust list of the rights of management in the contract or in the bargaining law may give the appearance that managements has certain powerful tools at its disposal but, as illustrated by the above examples, it may not give a true and accurate representation.

Employee and Union Rights. Most public sector collective bargaining laws allow employees the right to join or refrain from joining a union. Employees may also be allowed to exclude the union from representing them in certain disciplinary proceedings. Some states give employees the right to refrain from paying dues even if they are represented by the union and receive the benefits of the collective bargaining agreement. Unions have the right to represent their members without management interference and can demand access to the workplace in order to communicate to their members. Unions can also have access to economic and financial information used by management in collective bargaining situations. Once a union becomes the certified bargaining agent it can limit management attempts to communicate to employees on matters involving wages, benefits and working conditions. Unions also have a right to be notified in advance, and give its views on, changes in the workplace being considered by management. In general the union becomes the advocate for employees seeking workplace improvements, and attempts by management to unilaterally make changes in these areas, whether positive or negative, can lead to unfair labor practice charges on the part of the union.

Type of Union: Does it really Matter?

There was a time in the not too distant past when a clear differentiation existed between unions representing private sector employees and those representing public sector employees.
government employees. Indeed, as mentioned earlier, one of the founding principles of the American Federation of Labor (AFL) was the concept of exclusive jurisdiction; each union would represent a particular craft or trade and would not go after members under the jurisdiction of another union.\textsuperscript{26} The split between the AFL and the Congress of Industrial Organizations (CIO) breached the concept of exclusive jurisdiction but, for the most part, government workers were not actively sought after by private sector unions. During the beginning of public sector organizing (early 1960’s) the American Federation of Strait, County, and Municipal Employees (AFSCME) pretty much had the field to itself. This began to change in the late 1970’s and early 1980’s when number of private sector or single professional public sector unions began to see the potential of organizing and adding to their membership the hundreds of thousands of public employees who were either members of independent civil service associations or were not represented at all.\textsuperscript{27} An aggressive organizing campaign ensued which consisted of either head to head organizing/election activity or a program of wooing the independent associations to affiliate with one of the national unions, thereby being able keep their structure and leadership intact.\textsuperscript{28} Thus the fact that a particular union may have a preponderance of private sector members, or bargaining history that lacks substantial public sector depth, is no longer a significant factor in the effort by organized labor to staunch membership losses by going after government workers.

As of the end of 2008, AFSCME retained its status as the largest public sector union for non-education employees in the United States, claiming 1.6 million members. The next largest union with mixed occupational units is the Service Employees

\textsuperscript{26} Sloane and Witney 1991: 59-60
\textsuperscript{27} This is also about the time when private sector unions started to shrink in terms of members.
\textsuperscript{28} Personal experiences of the author.
International Union (SEIU) with a total membership of 2 million, of which 850,000 are state and local public employees. The International Brotherhood of Teamsters (IBT) claims 200,000 public employees as part of its membership of 1.4 million. Also claiming a significant number of public sector presence is the Communications Workers of America (CWA), with 140,000 members out of a total of 700,000, and the American Federation of Teachers (AFT) which started out as a union for large school district classroom teachers, and has branched out into higher education, healthcare and state and local government employees, claiming 100,000 public employees out of a total membership of 1.2 million.

Summary and Future Implications

Modern collective bargaining for most private sector workers in the United States can be traced to the enactment of the National Labor Relations Act in 1935. The Act gave legal protections to workers attempting to organize the workplace, and required management to engage in good faith bargaining over wages, hours, and other conditions of employment. Agricultural and public sector workers were excluded from coverage. An administrative agency, the National Labor Relations Board, was also created to administer and enforce the NLRA’s provisions. Motivated by the severe economic crisis which gripped the country in the 1930’s, and the statutory protections of the NLRA, workers in mass production industries and others, banded together and became unionized in record numbers, reaching over one third of all private sector workers by the early 1960’s. From this high point union influence began to a steady decline and by the end of 2008 less than nine percent of workers were represented by unions. Stated another way, in 1955 at the time the AFL and CIO merged into one
organization they had over 15 million members. Despite the growth of the civilian labor force during the next 53 years, the number of union members today is less than 16 million.

Reflecting the nature of our federal governing system, public sector collective bargaining does not have the same historical timeline, or the uniformity in terms of laws or administrative agencies. Most observers trace the beginning of public sector unionization efforts to the late 1950s and early 1960s when a few intrepid jurisdictions gave their employees the right to organize for the purpose of negotiating over wages, hours and other conditions of work. Unlike the private sector, however, there is no consistency in terms of which groups of employees have the right to organize and whether the scope of bargaining is robust or narrow, thereby excluding certain employees from being represented and some subjects from being discussed. Despite the need for each state or in some cases local governments within a state to craft its own approach the idea of organized collective activity resonated among public employees. A combination of economic, social, and political factors unleashed a tidal wave of organizing in the various states and local subdivisions, so that by the end of 1972 over 30 percent of state and local government employees were unionized. The next 36 years saw additional gains and some losses, but for the most part the phenomenon of unions and collective bargaining became a permanent part of the landscape for many public sector human resource practitioners.

Two related developments may cause labor relations, in both the public and private sector, to once again occupy a prominent place in policy discussions. Unions are strongly pushing for the enactment of the Employee Free Choice Act which would
amend the NLRA to require the National Labor Relations Board to certify a union as the collective bargaining agent if a majority of the workers in a proposed unit signed cards asking the union to represent them. The current provision allowing for a secret ballot election would be modified and used only if the union failed to get more than half of the proposed bargaining unit to sign the authorization cards. Unions see this measure as restoring the balance between labor and management, claiming that management does not allow fair and free elections, but instead tries to terminate union sympathizers and spreads lies and misinformation about unions. President Barack Obama, as a United States Senator and Presidential candidate supported the measure. Expect to see a massive and widespread organizing drive in the private sector if the legislation is enacted and signed into law. This legal modification may not only halt the stay decline of labor in the private sector but with a revamped NLRB may increase the number of workers that are represented back into the double digits.

Congress is also considering the Public Safety Employer-Employee Cooperation Act. It would require states and local governments to bargain over wages, hours and working conditions with public safety employees. In effect the bill would remove oversight of public safety employee collective bargaining from local governments and/or states, and transfer it to the Federal Labor Relations Authority (FLRA), an agency created in 1978 under the federal Civil Service Reform Act to oversee the limited scope bargaining granted to federal employees. Jurisdictions with existing bargaining laws and structures in place would have to petition the FLRA for a waiver in order to continue to operate as before. Governments that do not bargain over wages, hours and working conditions would have 18 months to come up with a mechanism for recognizing unions.
representing police, fire, medical emergency and correctional officers, negotiate with them and reduce the results to a written legal document, all under FLRA supervision. States could exempt jurisdiction with fewer that 25 employees or 5,000 residents. The legislation passed the House of Representatives by a vote of 314-97 in July 2007, and was sent to the Senate where, due to procedural move, it was not brought up for a vote during the rest of the 110th Congress. The legislation is expected to surface and receive favorable treatment by the 111th Congress. If enacted and signed into law, the public safety portion of the public sector is likely to see an organizing effort similar to the one experienced in the 1960s. Public safety employees have a recognizable community of interest, often form associations in jurisdictions where they cannot legally bargaining, and rely on each other to get the job done. It is not much of a stretch to believe that unions, backed by federal law, are likely to achieve a high rate of success in an organizing drive aimed at police, fire fighters, emergency medical responders, and correctional officers.

References


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Joe began his tenure with OHR in November 2002. Previously he was Director of the Office of Personnel and Labor Relations for Prince George’s County, Maryland. He was also the Deputy Secretary, and Secretary, of the Maryland Department of Personnel during the second term of Governor William Donald Schaefer. Earlier in his career, Joe worked for the American Federation of State, County, and Municipal Employees and also served for nine years as the Executive Director of the Maryland Classified Employees Association.

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