

Maryland (MDPELRA)

The Past as Prologue?

A Brief History of the Labor Movement in the United States

By Joseph Adler, IPMA-CP, SPHR, MDPELRA and courtesy of Winter 2006 Issue of Public Personnel Management with permission from the publisher.

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Of the approximately 20 million public employees in the United States, more than eight million are either members of or represented by labor unions—a penetration rate of just over 40 percent. What is remarkable about this phenomenal growth is that most of the expansion of union activity in government has occurred within the last 40 years, and almost mirrors the decline of union strength in the private sector.

The rise and fall of labor in the private sector is a backdrop to the growth of public sector collective bargaining. Explanations for the dramatic increase in government union activity can be explored from a number of different perspectives. Current public policy efforts to reform civil service and allow managers greater flexibility are seen by some researchers as having the potential to impact the ability of public sector unions to represent their members effectively.

The recent split within the AFL-CIO may also have consequences affecting public sector union activity. Costly and self-defeating jurisdictional disputes can arise and subsequently lead to a decline in membership strength. On the other hand, increased competition can serve to reinvigorate the entire labor movement in much the same way that the original split between the AFL and CIO resulted in massive private sector organizing efforts and dramatic, if temporary membership gains.

Any overview of the growth of unions in the public sector of the United States must take into account the historical antecedents of private sector collective bargaining. Indeed, the history of our nation is replete with the rise and eventual fall of a number of major labor organizations. During the period as a colony of England, and continuing well after the founding of the United States, employers used legal and extra legal tactics to weaken or eliminate the power of unions to have any input in the setting of wages, hours and other employment conditions. More recently, we have witnessed the rapid decline of the strength of unions in the private sector and the almost mirror image rise in the strength of unions in the public sector. Following the enactment of the National Labor Relations Act (1935) until the early 1970s, unions represented more than one-third of the workers in the private sector; today they represent less than 10 percent. At the same time, union membership or representation in the public sector grew from less than 10 percent to more than 45 percent of local government and 35 percent of state government employees.¹ Unions that once defined the power of industrial America, such as United Auto Workers, Steelworkers, Rubber workers, etc., are shadows of their former selves, while unions

representing some or all public employees have seen robust growth. An historical analysis of the cyclical nature of labor's development in the United States places current developments in a more proper context, and begs the question "is growth and domination of public sector unions a permanent feature of public administration and public human resource management?"

I. Historical Context

A. The Emergence of National Unions in the United States.

The framers of the U.S. Constitution and the interests they represented may have wanted to "form a more perfect union," but that desire did not extend to organizations of workers and skilled trade associations. As the new country began to grow, it saw the rise of merchant capitalists and the factory system. Workers sought to protect their earning power and their marketable skills by forming worker associations, mechanic societies, and fledgling unions of skilled craft workers. Employers fought back with every method available, often finding a sympathetic ear in the halls of power and in the judiciary. English common laws against the restraint of trade were used to weaken and in many cases to eliminate these early unions and worker organizations. Confrontation between labor and management came about early in the development of industrial America. Ballot, writing about this period, states, "What is striking is that the antagonisms and adversarial spirit between the workers and merchant capitalists emerged early in the industrialization process. In protesting long hours, low pay, loss of autonomy, and inhuman working conditions, laborers organized, conducted strikes, and slowdowns, and engaged in other activities involving resistance to authority."² Employers used all available methods to crush these fledgling unions including the full weight of a hostile legal system.

Rapid industrialization and the creation of a national economy in the United States during the mid 1860s led to the efforts to create unions that were national in scope. In 1866, the National Labor Union (NLU) was formed. It was a confederation of skilled craft unions. In addition to advocating for higher wages, the NLU fought to establish an eight-hour day and to abolish convict labor, demanded equal rights for women and minorities, and wanted reforms in the nation's monetary policy. Over time, the leadership of the NLU became more interested in political reforms involving taxation, banking, and federal land policy and lost its base of skilled craft workers.³

The second national union in the United States was the Knights of Labor (KOL), formed in 1869. The Knights believed in one big union and admitted all types of workers—skilled and unskilled—including immigrants, women and minorities. Interestingly, the Knights excluded professional gamblers, lawyers, bankers, stockholders, and anyone involved in the sale and manufacture of alcoholic beverages. Tensions between skilled and unskilled workers, as well as the philosophy of the leadership of the KOL to focus on social reform, including the abolition of the wage system and its dislike toward the use of strikes as a weapon against employers eventually led to its demise. At its peak in the mid-1880s, the Knights had 700,000 members.⁴

In 1881, a coalition of more than 100 loosely associated skilled trade unions formed the Federation of Organized Trade and Labor Unions (FOTLU). They rejected the Knights' philosophy of one big union and radical social reform and focused instead on the needs of skilled workers and "bread and butter" issues. In 1886, a group of 25 unions in FOTLU went a step

further and created the American Federation of Labor (AFL) and elected Samuel Gompers as its first president.⁵ The AFL believed that skilled workers were easier to organize and since there was a much smaller supply of skilled than there were unskilled workers, the union could control the labor supply and have monopoly power. The AFL was guided by Gompers' five principles: (1) Autonomy of national unions within the federation, (2) Each national union within the federation had "exclusive jurisdiction" to represent a particular craft or trade, (3) Avoidance of long term reformist goals in favor of gains in wages, hours and other "bread and butter" issues, (4) No permanent alliances with existing political parties "reward labor's friends and punish labor's enemies," and (5) Use of strikes and work stoppages as a legitimate tool in fighting for workers.⁶ In contrast to earlier labor organizations and structures, Gompers' AFL was pragmatic in its approach to management and the capitalist system. They sought not to destroy the system but to have more of its gains trickle down to the average skilled worker. In 1886, the AFL had 140,000 members, and in 1889 that number jumped to 278,000. By 1897 the AFL had 447,000 members, and by 1904 that number had increased to more than two million. By 1917, more than three million workers were members of the AFL.⁷

Not everyone shared the AFL's faith in the capitalist system or "business unionism." In 1905, a group of radicals formed the Industrial Workers of the World (IWW or "Wobblies"). They believed that unions should abolish capitalism and the political state. The IWW appealed to textile workers, miners, migrant farm workers, lumberjacks and dock workers. At the same time the IWW preached revolution it also sought through strikes and militant action to better the conditions of the workers it represented and had some success for its unskilled members.⁸

Echoing the earlier dispute with the Knights of Labor, the leadership of the AFL was conflicted over organizing unskilled workers in mass production industries. The "old guard" at the AFL believed that organizing mass production workers would weaken and eventually destroy the advantages enjoyed by skilled workers in the labor movement. The more militant union leaders disagreed though, and in 1935 a number of unions headed by the United Mine Workers formed the Committee for Industrial Organization (CIO) to organize workers in America's industrial core. Three years later, the split became official when the AFL expelled 32 national unions in the CIO—now renamed the Congress of Industrial Organizations, for practicing "dual unionism."⁹ Far more aggressive and militant than the AFL, these industrial unions engaged in "brass knuckles unionism" and successfully organized and won the right to represent employees in the major industrial sectors of the economy.¹⁰ Not to be outdone, the AFL shelved its policy of organizing skilled craft workers and chartered rival industrial unions to compete with the CIO, while the CIO modified its policy and made accommodations for skilled workers within the industrial union framework, thus blurring the sharp differences which led to the separation in the first place.¹¹ Perhaps verifying the sentiment that competition is good for everybody, workers joined unions in record numbers and by the end of 1941 both labor groups together had more than 10 million members—an increase from just less than three million in 1932. At the end of World War II in 1945, union membership had increased by another four million members.¹²

In 1955, the AFL and CIO with a combined total of 15 million members merged into one organization, though from time to time major unions have either been expelled for corruption or have withdrawn from the labor federation as a means of protesting federation policy. In 2005, the latest year for which data is available, union membership—including public sector employees—stood at 15.7 million. Removing public employees drops this number to 8.2 million.¹³ Stated

another way, despite the historical economic expansion and the addition of millions of jobs to the economy during the last 50 years since the AFL-CIO merger, labor in the private sector has declined in absolute numbers and the percentage of workers represented has decreased from more than one-third of the workforce to less than nine percent.

B. Major Private Sector Laws Affecting Unions and Collective Bargaining

In pre-industrial United States, the law governing workers was based on English common law of the time. Groups which formed in an attempt to improve wages or working conditions were subject to being charged as criminal conspiracies. From 1806 to 1842, 17 trials were held where labor unions were charged with conspiracies. Ironically, later in our country's development the laws passed to regulate the monopoly practices of businesses were used against labor unions. The Sherman Antitrust Act's provisions (1890) were especially favored by employers. Other laws, including the Clayton Act and the Federal Trade Commission Act, which had provisions mitigating the use of the Sherman Act for labor disputes, were interpreted by the federal judiciary in such a way as to continue to use it as a club against labor unions.¹⁴

The more "enlightened" employers sought to limit the spread of unions by implementing policies known as "welfare capitalism" which improved the economic conditions of workers. A number of large industrial employers also followed the lead of John D. Rockefeller, Jr. and established company unions to allow workers to discuss issues related to production. These organizations were controlled by management and major issues such as wages, hours, discipline, etc. were off limits for discussion.

After passing a number of ineffective or judicially flawed laws, Congress enacted the Railway Labor Act (RLA) in 1926. It mandated that employers meet and bargain with unions and it also established a mechanism to settle impasses and created the National Mediation Board.¹⁵ While the RLA was successful in reducing the hostility surrounding labor management relations in the railroad and later the airline industry, no such law existed for other workers. The economic depression, which started in 1929, further exacerbated tensions between management and workers, especially in low skilled mass production industries, resulting in violent confrontations. In order to reduce the lawlessness practiced by both sides, Congress passed a number of laws, one of which was the Norris-LaGuardia Act (1932), which restricted the use of injunctions by management in federal courts. In 1933, Congress passed the National Industrial Recovery Act (NIRA), which explicitly encouraged the formation of unions for the purpose of collective bargaining. Since there were no penalties for noncompliance, some companies refused to recognize unions. In 1935, the U.S. Supreme Court found NIRA to be unconstitutional.¹⁶

Congress now took a more direct approach and enacted the National Labor Relations Act, also known as the Wagner Act. The Act made it clear that employees had the right to organize and bargain with their employers for the purpose of improving economic and working conditions. The Wagner Act also stated that management's attempt to prevent workers from organizing or refusing to bargain once a union has been certified is an unfair labor practice. Enforcement was to be handled by a newly created National Labor Relations Board (NLRB). Its powers include issuing rules and regulations investigating unfair labor practices, prosecuting such illegal conduct and conducting secret ballot elections to determine union representations. Public sector employees as well as certain other groups of workers were excluded from coverage.¹⁷

In 1947, and again in 1958, Congress amended the Wagner Act to broaden the definition of unfair labor practices to include certain employee and union actions, as well as require unions to report their financial activities to the U.S. Department of Labor. Supervisors were specifically excluded from its coverage. It also set up protections for members who wanted to challenge actions by their union. A new Federal Mediation and Conciliation Service (FMCS) was established as an independent agency to assist labor and management to voluntarily settle collective bargaining disputes.

II. Role of Unions in the Public Sector Brief History State and Local Government Union Origins

For the most part, the gain in strength and power of unions in the public sector has taken place over the past 40 years. A number of unions and associations, however, can trace their roots back to the late 1800s or early 1900s. For example, the International Association of Fire Fighters (IAFF) started out as a group of fraternal and social clubs in the late 1880s. It became a member of the AFL in 1918 and as such is the oldest union of non-education state and local government employees. The National Teachers Association (later the National Education Association or NEA) was formed as a professional organization in the early 1860s.

The year 1916 saw the founding of the American Federation of Teachers (AFT) to represent the interests of classroom teachers. Associations of police officers also started out as social clubs in the late 1880s. A disastrous strike by police officers in 1919 led to a parting of the ways between the AFL and unions or associations representing police officers. The Boston, Mass. Police Commissioner refused to meet with the Boston Social Club—the representative of the police officers—to discuss wages and working conditions, resulting in a walkout by 1,200 officers. The AFL had granted a charter to the Boston Social Club on the promise that they would never strike. All of the strikers were fired. The governor of Massachusetts and later President of the United States Calvin Coolidge stated, “There is no right to strike against the public safety by anybody, anywhere, anytime.”¹⁸ The strike was crushed and the cause of police unionism was set back for many years. (Ironically, an earlier police strike had a much different ending. In 1918, 450 police officers walked off the job in Cincinnati, Ohio. City officials agreed to meet with the police and the strike ended with the officers returning to work.¹⁹) While outright police unions became a rarity, fraternal and benevolent associations grew in numbers—the most important being the decentralized lodges of the Fraternal Order of Police (FOP), which attempted to “secure improved police welfare and pension benefits through legislative lobbying.”²⁰

Reflecting the sometimes blurred lines between labor and management in the public sector, the nation’s largest non-education public sector union, the American Federation of State, County, and Municipal Employees (AFSCME), got its start from management. In 1932, a group of white collar Wisconsin state employees, led by Col. A.E. Garey, the director of the state’s civil service system, formed the Wisconsin State Administrative, Clerical, Fiscal and Technical Employees Association. They were concerned that the potential change in the legislature to Democratic control would lead to the dismantling of merit system protections and a return to political patronage.²¹ The group soon changed its name to the Wisconsin State Employees Association (WSEA) and applied for and received a charter from the AFL. WSEA was successful in defeating legislation to weaken the merit system. Arnold Zander, a personnel examiner for the state, became WSEA’s leader and promoted the idea of a national union of public employees and

by 1935 had established employee associations in several states.²² At the May 1935 AFL convention, Zander's national union—by then called the American Federation of State, County, and Municipal Employees—was made a “department” of the American Federation of Government Employees (AFGE). In September, 1936, AFGE officers recommended a separate AFL charter for AFSCME. That charter was granted and Zander was chosen as AFSCME's first international president.²³

Growth of Public Sector Collective Bargaining

Given the absence of any affirmative legislation or regulation granting public employees the right to organize and engage in collective bargaining, most public employee activities consisted of social clubs, civil service associations, or in some instances, AFL chartered unions to meet and confer with management, or as the above AFSCME example illustrates so well, used the political process to lobby for protections and improvements for their members.

Union membership in the public sector was not a significant portion of either the labor movement or of government employees in general during the time private sector unions dominated the labor movement. Starting in the 1960s however, there was an unprecedented expansion of membership in unions and collective bargaining activity among government workers. Nigro and Nigro characterized the growth of unionization that took place in state and local governments from 1962 to 1972 as “...a tidal wave.”²⁴ In 1973, public sector union membership rates surpassed the private sector and continued to increase sharply so that by 1979 public union membership rates stood at 38 percent.²⁵ In stark contrast to their private sector counterparts, by 2005 at least 34 percent of state and more than 45 percent of local government employees were either members of or represented by unions.²⁶ Unions and associations representing public employees now have membership numbers that surpass most if not all private sector unions in the United States. NEA claims 2.7 million members; AFSCME is at 1.4 million; AFT at one million. The Service Employees International Union (SEIU) claims 1.5 million members.²⁷ (The SEIU, which is the leading force behind the recent split of the AFL-CIO, has a mix of public and private members.)

Although the right to organize and join unions is constitutionally protected through the First Amendment of the U.S. Constitution, it does not extend to the “right” to be recognized and engage in collective bargaining. Thus, each state and, in some instances, each local government within the state has been able to fashion laws and regulations affecting their employees. The result is a patchwork of state statutes, attorney general opinions, gubernatorial executive orders, court decisions and local ordinances. Southern and Southwestern states are generally unsympathetic to labor in any venue, and at least three states—North Carolina, South Carolina and Virginia—explicitly prohibit state agencies and local governments from recognizing and negotiating with unions.²⁸ At least 40 states, however, do have laws allowing some form of bargaining for teachers, firefighters, police, or other state or local government employees.²⁹

Many plausible theories are offered to explain this phenomenal and unprecedented shift in public sector labor relations. The AFSCME, in its Web site, gives the following rationale³⁰:

In 1961, President John Kennedy issued Executive Order 10988, which legitimized collective bargaining for federal employees and helped create a favorable atmosphere for similar demands from all public employees.

At the 1964 AFSCME convention, Jerry Wurf, director of District Council 37, was elected the new International President. Wurf campaigned on a platform of more aggressive organizing, pursuit of collective bargaining rights for public employees, and union reform/union democracy. A year later, a special convention rewrote AFSCME's constitution and included a 'Bill of Rights' for members, a first in the American labor movement.

AFSCME began pushing hard for collective bargaining laws in states across the country. By the end of 1965, several states had enacted such laws and the union's membership soared to over 250,000. AFSCME and other unions achieved notable success at the bargaining table. They gained break-throughs in living standards which greatly exceeded those achieved by nonunion workers.

In the mid-1960s, American society as a whole was shedding its inhibitions. Militant demands for change became more acceptable. Students and Southern civil rights activists led the charge, and many other groups followed in their tracks. AFSCME was no exception. Leaders and members alike pressed the demand for collective bargaining rights for public employees. In city after city, AFSCME members took action to gain recognition of their union. Responding to the union's insistent call for fair and equal treatment, several states passed general collective bargaining laws.

Other observers (as cited in Nigro & Nigro, 2000) also credit the rapid increase in public sector jobs coupled with the gap between public and private sector wages and benefits as one of the causes of union growth. During this period a number of traditionally private sector unions also began to organize government employees as a means to avoid decline in strength, revenues, and influence.³¹ Farber attributes four economic and structural factors that stand out among many variables as potential causes for public sector union growth: (1) differences in the dynamics of employment, (2) differences in the nature of products, (3) differences in the roles that unions can play, and (4) differences in the incentives employers face.³²

Differences in the Dynamics of Employment

Employment growth in the private sector is the result of the expansion of existing firms and the creation of new firms. Older firms sometimes shrink and/or go out of existence and some of these are unionized. The new firms are "born nonunion"³³ and require "fresh organization" if they are to become unionized. In contrast, public employment growth is the result of population growth and subsequent demand for new services. Since many jurisdictions are already unionized any new employees hired will be unionized with little or no effort by the union, "...unions in the public sector can maintain membership levels with less organizing than is required in the private sector."³⁴

Differences in the Nature of the Products Produced

Farber said the influence of the global economy is another reason membership rates in the private sector continue to decline. “Unions in the private sector thrive when they can ‘take wages out of competition’ by ensuring that all firms in an industry face the same wage structure. Within the United States, this can be done through a vigorous effort to organize all firms, a strategy that is not feasible in the global economy.”³⁵ Most public sector goods are not able to be traded and cannot be off-shored. Even with the more recent trend to outsource certain functions, unions can raise wages without the loss of employment, thereby making union membership more attractive.

Differences in the Role that Unions can Play

This line of reasoning has been advanced by many observers and researchers and is one of the arguments used by those who oppose (or who have opposed) the introduction and subsequent growth of unions and collective bargaining in government. Farber points out unions in the private sector focus on collective bargaining as the method to improving their members’ economic status and to gain some measure of control over the workplace in terms of seniority and a grievance procedure to equitably resolve contractual disputes. They do not use the political process to further affect their members’ wages and other benefits. Public sector unions, on the other hand, “have additional incentives and functions. In particular, the payoff to unions in the public sector of involving themselves in the political process can be substantial,”³⁶ leading to increased benefits for members, which also makes union membership attractive to public employees.

Differences in the Incentives Employers Face

This is a classic economic argument and it was also advanced as a reason to oppose public sector collective bargaining. Farber notes that the rules of the marketplace govern the behavior of both management and labor in the private sector. Significant improvements in wages and benefits, which translate to higher costs and process for one firm, can lead to a decline in the demand for those goods and services as long as other firms can step in and supply a substitute product. In the public sector, this bottom line discipline does not exist. Increases in wages and benefits can be met by increased taxes or cuts in employment which are usually not as severe as in the private sector. Additionally, “... employers and unions can work together through the political process to push through tax increases. Essentially, government taxing authority allows the financing of union compensation in a way that is not possible in a competitive market.”³⁷

Traditional microeconomic theory does support the above position, given the fact that the demand for public goods is said to be “inelastic.” Consumers, or in this case taxpayers, will pay for these services no matter what the price because they are essential and there are no substitutes in the marketplace. Experience in the past 30 years has shown that the public sector is not totally immune from market forces. Private sector firms offer services that were once the exclusive province of government. Additionally, taxpayer revolts, starting with California’s Proposition 13, have demonstrated that there is a limit as to what the public is willing to pay to finance increases in employee pay and benefits.

Arguments Against Public Sector Collective Bargaining

During the period of explosive growth of unionization in government (1962-1972), some voices were raised against the introduction of a private sector model of labor relations into the public sector. The violent confrontations and pitched battles that shadowed much of the private sector gains were absent from the public sector. What resistance existed came more from academics concerned with public policy issues, public administrators and from those who opposed unions on ideological grounds. Their arguments can be divided into three areas: (1) public sector collective bargaining diminished governmental sovereignty, (2) public sector collective bargaining lacks the economic discipline of the private sector marketplace, thereby extracting large increases in wages and benefits and (3) public sector collective bargaining is a zero-sum game whereby union gains come at the expense of other groups with an interest in policy outcomes (see “Arguments Against Public Sector Collective Bargaining,” by David Denholm, president of the Public Service Research Foundation). For the most part, these arguments have not been persuasive in halting or reversing the spread of unions and collective bargaining in the public sector.

Arguments Against Public Sector Collective Bargaining

Taken from “Beyond Public Sector Unionism: A Better Way,” by David Y. Denholm of the Public Service Research Foundation. (Online at <http://www.psrf.org/issues/beyond.jsp#art1>)

Argument 1: Sovereign vs. Free Contract

Government—the public sector—is sovereign, and no other institution or enterprise in our society is sovereign. Sovereignty is the power to use force—to compel. Under our democratic system only government is sovereign. Governmental sovereignty is derived from popular sovereignty which we as citizens give to government, within constitutional limits through our elected representatives, in the interest of order, security, and the public good.

Government’s sovereignty is obvious in such things as compulsory school attendance laws, in its power to collect taxes and in its power to violate personal and property rights in the public interest.

All economic and social activity in the private sector is governed by free contract. You only have a free contract when both parties want one. You cannot be compelled to buy the product of a particular company. Businesses cannot be compelled to join a business or trade organization. Support of churches is entirely voluntary. The list goes on and on.

Sovereignty is misunderstood. Many think of it in terms [sic] of the “divine right of kings.” It is useless to argue that sovereignty [sic] is an outdated concept. Sovereignty [sic] is not something that government can choose to have. A government which is not sovereign is a contradiction of terms. No matter how pluralistic our society becomes, it is the sovereign nature of government which guarantees the order necessary for the participation in that pluralism by the individual citizens.

It may be argued that there are compulsory public sector bargaining laws in many states and that public order has not broken down. This also misses the point. Every time that we elect

representatives to run the public's business and they cannot carry out their programs because of opposition from public sector unions, sovereignty has broken down and we have all lost.

Argument 2: Political vs. Economic

Public sector decisions are political decisions no matter how great their economic impact. Government makes decisions every day that have profound economic consequences, but these decisions are based on political, not economic, considerations. In the public sector, decisions that are politically popular but economically ruinous can get you reelected. Decisions that are economically sound but politically unpopular are ruinous.

Private sector decisions are economic decisions no matter how great their political impact. In the private sector, economic decisions that have bad political consequences can make you unpopular, but decisions that are politically popular and have bad economic consequences can put you out of business

Argument 3: The Public Interest

In order to fully appreciate the case against public sector unionism, it is important to understand why public sector collective bargaining is contrary to the public interest.

To do this, we must determine what is the public interest in public employment. This may prove to be many things to many people, but there should be universal agreement that it includes the following:

- A peaceful, stable employer-employee relationship;
- Protection of the rights of all public employees;
- Protection of the right of the people through their elected representatives to control government policy and the cost of government;
- Providing governmental services in the most efficient and orderly manner possible.

Based on any objective standard, collective bargaining, as it has developed in the industrial or private sector of America's economy, does not enhance any of the above in the public sector.

Future of Public Sector Unionism: Growth, Status Quo, or Retrenchment?

Having achieved if not surpassed the membership rates of private sector unions at their most powerful period, what does the future hold for public sector unions? Will they suffer the same fate as the private sector unions and see a steady erosion of members, power and influence? Predictions have been made at various times that the movement was poised to suffer setbacks and worse: during the 1980s, government unions were faced with a national recession, cuts in federal aid and the imposition of tax limits, starting with Proposition 13 in California. The most critical incident occurred early in the decade when Pres. Ronald Reagan took an action that was reminiscent of Gov. Calvin Coolidge during the Boston police strike discussed earlier and fired

all members of the Professional Air Traffic Controllers (PATCO) for engaging in an illegal strike. PATCO was decertified as a bargaining agent and most if not all of the striking union members were barred from returning to work. There was a spillover impact on local and state employees in that some public executives became emboldened and sought concessions from the unions. For the most part public employee union leaders were put on the defensive and focused their energies on preserving their membership base and preventing cuts in salaries and benefits.³⁸ Yet the percentage of the public sector union membership rate did not dip below 35 percent during this entire period.

Indeed, two major industrial states—Illinois and Ohio—enacted comprehensive collective bargaining laws for their public employees during this time period.³⁹

A more ominous warning in the form of contracting out or “privatization” appeared during the 1990s, threatening the strength and clout of government employee organizations. All levels of government began to turn to the private sector to perform services traditionally viewed as within the scope of public sector. Unions were advised to “reinvent” themselves in order to stave off decline and elimination.⁴⁰ It was argued that unions need to adjust to new realities and discard the adversarial nature of collective bargaining in favor of new employee participation scenarios borrowed from the private sector, such as quality circles and process improvement teams.⁴¹ They were also advised to supplement the grievance representation of public employees in the workplace by aggressively using the legal system and to “market public unionism.” Unions were also told to refocus their efforts on public policy questions and to offer solutions to questions of public sector efficiency and economy, instead of merely opposing change, and to adopt “interest based” bargaining, which focuses on joint problem solving efforts. Sulzner predicted that, “Public unions will likely maintain a steady state of well being in the short term. Reinvention is still, however, a necessity for the long term future of public unionism.”⁴²

Anecdotal evidence suggests that a number of public unions did make efforts to reach out to a broader nonunion audience. Affinity memberships, research into public policy issues, public relations campaigns and local use of interest based bargaining, as well as some efforts at reorganization were tried as a means of overcoming the effects of the recessionary economy and the loss of membership through layoffs and/or contracting out of services. Union membership rates, however, stayed fairly constant from 1990 to 2000. There was a spike in 1993 when they reached nearly 40 percent, followed by a period when they were constant at 36 percent, plus or minus a percentage. This appears to validate Sulzner’s prediction of maintaining a short-term, steady state of well being.

Has the last five to 10 years brought about any discernable change to the public sector movement? The rigorous research and analysis needed to be able to answer with some certainty is not available, but inferences can be drawn from a number of trends.

Trend 1: Losing Power at the Federal Sector

Upon taking office, Pres. George W. Bush issued an executive order rescinding an earlier executive order promulgated by Pres. Bill Clinton, which set up labor-management partnerships in federal agencies—sending a signal that the prominent role played by unions under Clinton was a thing of the past. The unprecedented terrorist attack on the United States on September 11,

2001 provided additional momentum to reshape the federal bureaucracy and reduce the influence of unions in the federal sector.⁴³ Employee rights and protections provided by the Civil Service Reform Act of 1978 and existing collective bargaining agreements were further modified by the creation of the Department of Homeland Security and allowed the Department of Defense to create its own personnel system. While these actions are limited to federal employees, they can provide momentum and motivation to state and local government leaders to take similar steps, much as Reagan's firing of PATCO members.

Trend 2: Merit System "Reform" and Outsourcing: Losing Power at the State Level

The state of Georgia, under Gov. Zell Miller, was successful in removing merit protections from all state employees hired after July 1, 1996. As a "right to work" state, unions had very little formal presence in state government and were not major players during the legislative debate over the provisions of the bill.⁴⁴ Gov. Jeb Bush of Florida was successful in limiting the power of unions in state government despite a history of collective bargaining since 1973 through a civil service reform effort called "Service First." Some 16,000 state employees were removed in 2001 from Florida's merit system and placed into an at-will category. Additionally, many in-house staff functions and services were outsourced to a private sector firm.⁴⁵ The union representing state employees—the American Federation of State, County, and Municipal Employees—went to court and sued the state and Gov. Bush for impairing the collective bargaining rights of state employees, which is guaranteed by the Florida Constitution. AFSCME eventually lost the court battle, but ironically the threat of losing job protections by the remaining merit system employees has resulted in increased membership for the union.⁴⁶

Hays and Sowa examined the "Grim Realities in State Civil Service Systems" and found that the movement to foster accountability in merit systems has taken root and is now a factor in many states, including ones with a history of collective bargaining. "Under the banners of decentralization, accountability, and flexibility, the due process rights of many civil servants are eroding, and at-will employment is affecting greater segments of the public labor force. Although there are very few instances of the pronounced changes that occurred in Florida and Georgia, there is a discernable drift (and in some cases a tidal wave) in the direction of at-will employment."⁴⁷

They found that out of 50 states, a clear majority of 31 saw a decline in state employee job security. One of the factors causing the decline in traditional protections of state employees was the election of "activist governors" in at least 19 states that were eager to reform the merit system and remove traditional employee protections. Some governors went further and succeeded in curtailing or weakening the power of public unions. For example, the governor of Colorado was successful in eliminating the automatic deduction of union dues by the state. Indiana's governor promulgated an executive order in his first day in office that basically eliminated public employee unions and negated all existing collective bargaining agreements. Kentucky's governor followed a similar pattern and eliminated all labor-management negotiations. The governor of Missouri was engaged in a similar pattern, while the governors of Oregon and Rhode Island sought to expand their appointing authority at the expense of employees and their representatives.⁴⁸ Actions taken in Maryland trend somewhat in the opposite direction, but there were setbacks there as well. Gov. Paris Glendening, (D) in his second and final term was successful in statutorily granting collective bargaining rights to public higher education and state employees, replacing an earlier executive order. Robert Erlich (R) was

elected governor in 2002 and he refused to fund the collective bargaining agreement signed off by the unions and Glendening during the final months of his term. Gov. Erlich was subsequently sued by the unions representing state employees but his position was upheld.

Trend 3: Slow or No Growth?

The overall unionization rate for government employees in 2005 stood at 36.5 percent for all sectors—federal, state, and local—the same as in 2004.⁴⁹ Dramatic gains in membership rates have not occurred since the late 1970s suggesting that a saturation point may have been reached and that a decline in union coverage may not be out of the question. Teachers, police and firefighters are the most heavily unionized occupations in the public sector—a distinction they have held for many decades. Farber’s research indicates that all three groups saw a long term decline in their coverage rates. Between 1983 and 2004, the union coverage rate for firefighters fell from 86 to 70 percent; for teachers it went from 74 to 66 percent; and for police the decline was from 64 percent to 59 percent.⁵⁰ The rate of penetration is still very high, but it does show that the rise in membership does not always point in an upward direction.

Trend 4: Trouble in the House of Labor?

The president of AFSCME, Gerald McEntee, wrote an article entitled “The New Crisis of Public Service Employment” (see pp. 343-346 in this issue) that summarizes the gains made by public employee unions but at the same time also recognizes the challenges they are now facing. He mentions fiscal limits, privatization, civil service reform, pension reform, and curtailment of collective bargaining as potential threats to continued effective representation. As already illustrated, and as verified by researchers, these issues are part of a broader movement to limit or reform government and give top level executives greater authority over employee concerns. They have, indeed, slowed down the growth of public sector unions and in a few cases have managed to roll back gains made earlier. There is another very recent development which may serve to further weaken the power of public sector unions: the split among the member unions of the AFL-CIO.

In July 2005, due to philosophical differences over the best course to take to regain overall membership and strength, several unions (eventually numbering seven) formally broke with the AFL-CIO and formed the “Change to Win Coalition.” Two unions with substantial public employee members—the International Brotherhood of Teamsters (IBT), headed by Jimmy Hoffa Jr., and the Service Employees International Union (SEIU), headed by Andy Stern—were the main drivers behind the split. AFSCME—the largest union of public (non-education) employees opposed the split and stayed with the labor federation. Leaving the federation meant that the Change to Win unions no longer had to abide by the rules governing election campaigns for members and they could “raid” the members of other unions. SEIU has publicly admitted that they have signed a “no raid” clause with national AFL-CIO affiliates.⁵¹ In the short time since the split occurred, however, there has been a number of instances where SEIU and AFSCME battled over the right to organize such quasi-public employees as child care workers, home health aides, and other health care workers who do not work for government per se but whose salaries are reimbursed by government. Bitter organizing disputes arose in Iowa, Colorado, Maryland and Illinois. The dispute in Iowa was characterized by one AFSCME participant as

“self-destructive internecine warfare that threatens the broader cause of organized labor nationwide,” and caused the winning union AFSCME to spend two or three times more money than otherwise would have been necessary to become the collective bargaining agent.⁵² The potential negative effects of this new environment for all participants are not difficult to predict. Unions may have to spend their limited resources on fighting each other instead of serving the membership. Just as in political election campaigning, the barrage of negative ads and claims and counterclaims can serve to turn off the intended audience and unions could lose the election due to voter/employee apathy. Local government officials may have to act as referees between the different unions, placing union friendly office holders in a difficult political spot. Management negotiators may find it more difficult to reach agreements with newly elected insurgent /militant bargaining agents or even with existing unions as they show that they are tougher on management. All of the above can presage a situation where union strength can stagnate or decline, especially if the combined pressures for civil service reform, management flexibility, outsourcing of government functions and modification of employee protections are overlaid on an environment of public employee unions engaging in a visible fight for new members.

There is an alternate scenario pointing to perhaps a second “golden decade” of expansion for public sector unions. Peter Francia suggests that labor as a whole enjoyed sustained growth and density during the period that the AFL and CIO were in direct competition with each other for members, and points out that labor’s long decline started right around 1955, when the AFL and CIO merged. “Francia doesn’t dismiss the myriad other factors involved in the rise and fall of organized labor, including tectonic shifts in economics and politics, both domestically and internationally. But his analysis suggests that union officials and government managers alike may do well to take the long view. ‘A little competition...never hurt anybody.’”⁵³

Conclusion

The uneven fortunes of private sector unions were examined to place public sector growth in the proper context. For much of our history as a country, the relationships between workers, their unions and the owners of capital have been peppered with occasional violence, enmity and grudging acceptance. For a brief period of time, private sector unions saw their fortunes rise as friendly legislation, and economic conditions caused millions of workers to join unions and engage in legally sanctioned collective bargaining. During this period, public sector unions were but a miniscule part of organized labor. Starting in the early 1960s due to social and economic factors, public employees shed their inhibitions about being members of “trade unions” and joined by the millions. Unions now represent 36.5 percent of all public employees, and the membership rate in certain occupations such as teachers, police and firefighters has risen to nearly 60 percent and higher. Public sector unions escaped the violence and hostility that their private sector counterparts had to face, but there was, and continues to be, opposition from those concerned with public policy issues, the lack of substitutes for certain public sector goods and the ability and willingness of public sector unions, especially at the state and local government level, to engage in political activities even to the point of electing their bosses. During periods of economic downturns, public sector unions saw a decline in their ability to deliver robust economic benefits. More recently they have witnessed a period of overt and covert hostility from activist governors and other local leaders leading to a weakening of employee protections and in some cases a rollback in union representation. These factors combined with the split in the AFL-CIO may lead public sector unions to engage in a destructive downward spiraling fight, whereby

the percentage of public employees under collective bargaining starts to recede significantly. Alternatively, the potential fight for public employee membership among different unions may trend in the opposite direction. Energized by the prospect of competition, unions can sharpen their focus, reorganize, take risks and forcefully confront the recent negative trends, thereby signing up even more members, reprising the organizing drives that took place when the AFL and CIO were two separate federations actively battling each other for new members.

An area that is not explored here, but is in need of research and analysis, concerns the relative standings of public and private sector unions and the sustainability of continued economic gains by government employees. Gaps in wages between public and private sector workers have narrowed and many of the fringe benefits enjoyed by public sector employees such as health insurance and pensions, ironically modeled after private sector industrial labor contracts, are fast disappearing in the private sector. Public sector unions will use every means at their disposal to maintain (if not expand) these benefits, arguing that they were part of the employment contract. In the past, these arguments resonated with private sector unions and they often supported the demands of their government union brothers and sisters. With a private sector union membership that is in decline, it remains to be seen how the arguments to expand or at least preserve such benefits will be seen by taxpayers and residents who in all likelihood are not union members and do not have the same benefits package enjoyed by public sector employees.

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⁴ Ibid, p. 27-28.

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⁶ Ibid, pp. 59-60.

⁷ Ibid, p. 62.

⁸ Ballot, op.cit., pp. 30-32

⁹ Sloan & Witney., op. cit., p. 69.

¹⁰ Ballot, op. cit., p. 41.

¹¹ Sloane & Witney.,op. cit., pp. 71-72.

¹² Ibid.

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- ¹³ Bureau of Labor Statistics, op. cit.
- ¹⁴ Ballot, op. cit., pp. 57-60.
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- ³³ Ibid, p. 8.
- ³⁴ Ibid, p. 11.
- ³⁵ Ibid.
- ³⁶ Ibid, p. 12.
- ³⁷ Ibid, p. 13.
- ³⁸ Nigro & Nigro, op.cit., p. 212.
- ³⁹ Ibid.
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⁵² Ibid, p. 30.

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