

PUBLIC SECTOR LABOR LAW

In the private sector, collective bargaining has a healthy tension between employers and unions that usually leads to a financially reasonable outcome. Employers wish to control their labor costs while unions seek to maximize their wages and benefits. As a result of this necessary adversity, wage and benefit raises in the private sector are often the result of a company's increase in productivity and sales, allowing an employer to further invest in his or her employees.

In the public sector, however, there is much less of this adversarial back-and-forth. Since civil servants are employed by the citizens of the government they work for, elected officials play the role of management in labor relations. As a result, unions make large contributions to electoral campaigns to grease the wheels for favorable collective bargaining climates that bloat state budgets. Since the costs of their fiscally reckless negotiations are diffused among thousands or even millions of taxpayers, there is hardly any objection to this political machine.

PUBLIC SECTOR LABOR LAW IN THE FEDERAL GOVERNMENT

While labor unions in the United States have existed ever since the 18th century, collectively bargaining with the government is a relatively new idea. For decades, even progressive heroes like President Franklin Roosevelt and former AFL-CIO President George Meany staunchly opposed it in the public sector, reasoning that civil servants had no right to disrupt the vital functions of government that citizens are entitled to (4). Nevertheless, President John F. Kennedy signed Executive Order 10988 into law on January 17, 1962, bestowing the right to collectively bargain on federal labor unions (5).

Sixteen years later, the process of collective bargaining in the federal government was formalized with the Civil Service Reform Act of 1978 (6). The Act created three bureaus to oversee federal labor relations: the Office of Personnel Management (OPM), which oversees health benefits and security clearance for employees; the Merit Systems Protection Board (MSPB), which adjudicates cases alleging unfair personnel decisions; and the Federal Labor Relations Authority (FLRA), which oversees collective bargaining, arbitrates negotiations in cases of an impasse, and adjudicates unfair labor practices.

PUBLIC SECTOR LABOR LAW IN THE STATES

Because of the United States' federalist structure, public sector labor relations vary from state to state. Some states, such as Illinois, grant government unions generous rights to collectively bargain, strike, and exclusively represent their workforce so that they can collect payroll deductions from every employee. Other states, such as Virginia, reject these practices and only allow government unions to lobby for higher wages.

Despite their lack of collective bargaining and striking rights, public sector unions in states like Virginia are still successful at achieving higher wages for their members. For example, as of 2008, unionized public sector workers in Virginia receive an average wage of \$28.81 per hour, while nonunion public sector workers receive \$27.29 – both rates being higher than those of Illinois (7).

QUICK FACTS

- In Jan 2015, public servants had a union membership rate of 35.2%, more than five times higher than that of private-sector workers at 6.7% (1).
- According to research from the Beacon Hill Institute, increasing a state's public sector union membership rate by just one percentage point causes an increase in debt of \$78 per resident (2).

NOTABLE & QUOTABLE

"All Government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service... Upon employees in the Federal service rests the obligation to serve the whole people, whose interests and welfare require orderliness and continuity in the conduct of Government activities."

- **President Franklin D. Roosevelt** (2)

Thus, civil servants still enjoy great freedom to organize and lobby with their employers for better wages and working conditions without collective bargaining. Restricting collective bargaining serves as a fiscally responsible check on reckless spending. States with the most lax labor laws often have colossal pension and health benefit liabilities, while more restrictive states enjoy less of a burden. For example, Illinois's unfunded liabilities are more than \$287.3 billion as of 2012, amounting to more than \$22,800 per resident, while Virginia's is \$79.3 billion or \$9,600 per resident. While both fiscal situations are rather bleak, it is clear that restricting public sector collective bargaining is a smart move to slow the growth in state debt.

CONCLUSION

While the profit and loss motive in the private sector incentivizes companies to reach responsible bargaining agreements with unions, the diffused costs of labor negotiations in the public sector make governments more vulnerable to fiscally dangerous demands. After decades of experiencing these perverse incentives in action, states are not paying the price. Today, states owe a total of \$4.42 trillion in unfunded pension and health benefit liabilities (8). Limiting the power of public sector unions would be one step towards lightening this unmanageable burden.

Endnotes:

1. BLS <http://www.bls.gov/news.release/>
2. Paul Bauchman and Ryan Murphy, "The Public Sector 'Union' Effect: Pushing Up Unfunded Pension Liabilities and State Debt," The Beacon Hill Institute (May 2013) (online at <http://www.beaconhill.org/BHISTudies/PublicSectorUnions2013/P-SU-2013-0521-FINAL.pdf>)
3. Franklin Delano Roosevelt, "Letter on the Resolution of Federation of Federal Employees Against Strikes in Federal Service," (August 16, 1937) (online at <http://www.presidency.ucsb.edu/ws/index.php?pid=15445>)
4. John F. Kennedy, "Executive Order 10988" (January 19, 1962) (online at <http://www.presidency.ucsb.edu/ws/index.php?pid=58926>)
5. "Civil Service Reform Act of 1978" (October 13, 1978) (online at http://www.opm.gov/biographyofanideal/PU_CSreform.htm)
6. Ann C. Hodges, "Lessons from the Laboratory: The Polar Opposites on the Public Sector Labor Law Spectrum," CORNELL LAW SCHOOL (2008) (online at <http://www.lawschool.cornell.edu/research/jlpp/upload/hodges.pdf>)
7. "State Debt Profiles 2013," STATE BUDGET SOLUTIONS (online at <http://www.statebudgetsolutions.org/publications/-detail/state-budget-solutions-fourth-annual-state-debt-report>)
8. "Union Members Summary," BUREAU OF LABOR STATISTICS (January 24, 2014) (online at <http://www.bls.gov/news.release/union2.nr0.htm>)

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