

**Getting It Right:
Empirical Evidence and Policy Implications from
Research on Public-Sector Unionism and Collective Bargaining**

*David Lewin (UCLA), Thomas Kochan (MIT), Joel Cutcher-Gershenfeld (Illinois),
Teresa Ghilarducci (New School for Social Research), Harry Katz (Cornell),
Jeff Keefe (Rutgers), Daniel J.B. Mitchell (UCLA), Craig Olson (Illinois),
Saul Rubinstein (Rutgers) and Christian Weller (U. Mass Boston)¹*

Employment Policy Research Network (EPRN),
Labor and Employment Relations Association (LERA)

March 16, 2011

¹ We thank Ariel Avgar, Richard Block, Monica Bielski Boris, Barry Bluestone, Bob Bruno, Andrea Campbell, William Canak, Peter Feuille, Rebecca Givan, Richard Hurd, Matt Finkin, Sanford Jacoby, Richard Locke, Robert McKersie and additional contributors to public forums on public-sector collective bargaining held at Cornell, MIT and the University of Illinois. This document involves contributions from a cross section of scholars and will be further updated as appropriate.

Introduction

The United States is in the throes of a public-policy debate about public-sector unionism and collective bargaining. The ostensible trigger of this debate is the fiscal crises that state and local governments have been experiencing since 2008. The debate largely centers on the extent to which public employee unions have contributed to this crisis through the pay and benefits they have negotiated for public employees. The role of government as employer is connected in this debate to the role of government as a taxing authority and provider of public services. These roles are often claimed to be in conflict with one another — that is, governments as employers are seen as not exercising the same due diligence in setting pay and benefits as private-sector employers. The research evidence indicates, however, that these claims about public employment are based on incomplete and in some cases inaccurate understanding.

Far too much of the current debate is ideologically driven. The primary objective of this paper, which is sponsored by the Employment Policy Research Network (EPRN), is to bring evidence to bear on public-sector collective-bargaining debates. We seek to clarify the role of government as an employer and evaluate proposals for public-sector unionism and collective-bargaining reform.

Further, too little attention has been given to the roles that public-sector unions and public-sector collective bargaining can play in addressing the fiscal crises facing governments at all levels. Therefore, an additional objective of this paper is to identify innovations that can improve public-sector collective bargaining and its impact on public service. In particular, the paper addresses the following questions:

- *How does public employee compensation compare to the private sector?*
 - The existing research, much of which is very current (completed within the past two years), shows that, if anything, public employees are underpaid relative to their private-sector counterparts. While public-sector benefits are higher than private-sector counterparts, total compensation (including health care and retirement benefits) is lower than that of comparable private-sector employees. Erosion of public-sector pay and benefits will make it harder for public employers to attract, retain and motivate the workforce needed to provide public services.

While total compensation is not out of line with the private sector, the costs, funding, and administration of health and pension benefit plans merit attention. Rising health care costs characterize both the public and private sectors and need to be addressed by management and labor. The growing liabilities of retiree health care and pensions require more disciplined funding, reform of administrative rules and formulas that lead to benefit “spikes,” and changes in other features that inflate the costs of some plans. These problems are equally prevalent in states with and without collective bargaining and for unionized and non-unionized employees.

- *How has public-sector labor-management relations performed during “normal” times and crisis periods?*

- The dispute-resolution processes (mediation, fact-finding, and arbitration) put in place as substitutes for the right to strike have performed well in avoiding work stoppages and producing contract settlements that reflect the criteria included in state statutes. However, the length of time required to complete arbitration processes appears to have grown considerably. Newer “interest-based” approaches for increasing the problem-solving potential of bargaining have been tried in a number of public (and private) sector settings, and offer opportunities for further improvements in negotiations and day-to-day contract administration.

There are a number of visible examples where unions and employers have worked together to adapt to changing technologies, new models of service delivery, and prior fiscal crises. Some of these required formation of new union coalitions and consolidated management-government leadership. The current fiscal crises suggest similar coalition and consolidated approaches may be called for.

- *What lessons can be learned from recent innovations in private-sector labor-management relations?*

- Private-sector labor-management partnerships in service and manufacturing sectors have developed innovative models for jointly addressing issues such as quality, cost, training, outsourcing, and adjustments to changes in budgets. New, more problem-solving oriented approaches to negotiations hold promise as models for collective bargaining that are efficient and take into account the public interest.

- *What are the relevant underlying roles of collective bargaining in civil society?*

- Challenges to the freedom of association and the right to bargain collectively places the United States out of sync with established international human-rights principles. Collective bargaining has historically served to increase consumer purchasing power, assure voice in the workplace, and provide checks and balances in society. Models for collective bargaining in the public sector have incorporated alternative dispute-resolution mechanisms to protect the public interest. While unions and collective bargaining are core institutions in society, the way they function does need to be updated to match 21st century realities.

At the conclusion of the paper, we offer a three-step process for a new type of policy engagement with public-sector collective bargaining. This process includes:

- I. Assessing relevant state-level evidence on pay, benefits, process improvements, and other relevant factors;

- II. Convening state-level “summit meetings” with broad stakeholder representation; and
- III. Identifying and implementing process improvements and other innovations to enhance the ability of labor and management simultaneously to have constructive employment relations and effective public services.

Our aim with this three-step process is to channel the current polarized debate toward a period of review, reflection and potential renewal of the way collective-bargaining functions in the public sector.

How Does Public-Employee Compensation Compare to the Private Sector?

Wages

One of the central issues in the current debate is how public-sector employee compensation compares to private-sector compensation. Public employment has historically been viewed as a sector in which individuals traded lower wages than they might have received in the private sector for higher benefits and greater job security. The financial crisis that many states have been struggling with since 2008 has raised the question: Are public employees getting higher compensation than private-sector employees with similar training and background? Public employees would inappropriately drain public resources if this were indeed the case. Rutgers University professor Jeffrey Keefe has addressed this issue, both at the national level and within a range of states, and concluded that public employees receive total compensation that is equal to or less than that of private-sector employees.²

It is necessary to account for differences in the level of education of public and private employees in this type of analysis. State and local governments typically employ a much higher percentage of college graduates than private-sector employers do because of the many specialized state services that involve the work of social workers, public health experts, environmental biologists, economists, agricultural experts, and others. If we don't take educational differences into account, the average wages of public-sector employees can't properly be compared to the average wages of private-sector employees. In fact, Keefe found that, nationally, public employees earn 11.5 percent lower base pay (i.e., wages and salaries) than their private-sector counterparts, once education and other relevant human-capital variables (such as age) are taken into account.

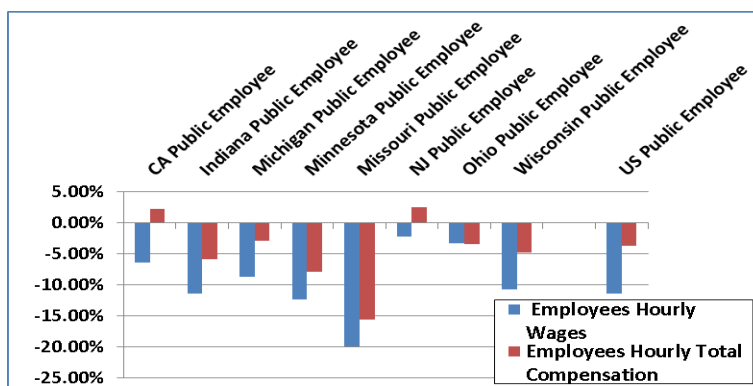
Public employees do receive significantly better benefits than their private-sector counterparts. Specifically, they have maintained high levels of employer contributions for health insurance and

² This study and some of the other evidence cited in this paper are in various stages of peer review, which may result in adjustments to the models and the reported estimates. The similarity in findings across multiple studies gives us confidence in the overall conclusions as to whether public sector workers are or are not overpaid.

retained their defined-benefit pension plans through collective bargaining and legislative processes, while apparently foregoing wage increases comparable to private-sector workers. When Keefe added health, retirement and other benefits to his analysis, the difference between public and private employee compensation shrinks to 3.7 percent — that is, private employees still receive a little higher total compensation than public employees.

The same pattern of relatively lower public-employee base pay and narrower but still relatively lower total compensation exists across states, even though there is some variation from state to state. Figure 1 shows these estimates for California, Indiana, Michigan, Minnesota, Missouri, New Jersey, Ohio, Wisconsin and for the nation as a whole.

Figure 1: Public Sector Hourly Wages and Hourly Total Compensation Compared to Private Sector Employees of Equal Education



Source: Jeff Keefe, 2011, utilizing Integrated Public Use Microdata Series (IPUMS) of the March Current Population Survey (CPS).

These data also suggest that weaker public-employee collective-bargaining rights are associated with lower public-employee compensation relative to the private sector, as illustrated by the states of Missouri and Indiana. Public-employee compensation is at parity with comparable private-sector employees in states with strong collective-bargaining laws and high levels of unionization, as illustrated by the states of California, New Jersey, and Ohio. Hence, this analysis indicates that, at best, public employees can expect to receive compensation that is similar to that of comparably qualified private-sector employees.

Other researchers report similar results. For example, University of Massachusetts researcher Jeffrey Thompson and John Schmitt of the Center for Economic Policy Research in Washington, D.C., found that Massachusetts public employee base pay is approximately 2.3 percent lower and total compensation is approximately 1.4 percent lower than that of their equivalently educated private-sector counterparts.³ Bender and Heywood report that state employee base pay is 11.4 percent lower and local government employee base pay is 12.0 percent lower than comparable

³ See their study at www.peri.org.

private-sector workers, using a slightly different specification in their empirical analysis than Keefe, Thomson, and Schmitt.⁴

There is another clear pattern to the empirical research results. The differences between public- and private-sector employee pay are greater for more highly educated professional employees than for less educated employees. This is consistent with the patterns observed over many years in unionized parts of the private sector. Unions and collective bargaining tend to raise the pay of less educated employees in lower-paid occupations, thereby reducing pay differentials and income inequality within industries and across the economy.⁵ More highly educated employees, though, enjoy less of a union premium than their less educated counterparts, which also contributes to lower-income inequality and helps to keep the overall costs of collective bargaining to employers in check.

Craig Olson at the University of Illinois analyzed changes in public school teacher salaries and compared them to changes in salaries of college graduates working in the private sector. He found that that, for more than a decade, Wisconsin teacher salaries have fallen behind both private-sector wage growth and cost-of-living increases. Specifically, from 1995 to 2009, the average private-sector college graduate saw his/her weekly earnings increase by 10 percent after accounting for inflation. During about the same period (i.e., 1995 to 2010), by contrast, the average Wisconsin teacher salary (without fringe benefits) declined by 10 percent after accounting for inflation. In other words, in 1995 the average college educated U.S. private-sector employee earned 17 percent more than a Wisconsin teacher, but by 2009 this difference had increased to 36 percent.

We conclude from this evidence that public employees are paid less than comparably educated private-sector employees. This conclusion takes into account both base pay and fringe benefits. But because benefits are such an important part of the current debate, we examine them more fully below.

Benefit Levels, Costs, and Funding

⁴ Bender, Keith A. and John S. Heywood. 2010. "Out of Balance? Comparing Public and Private Sector Compensation over 20 Years." Center for State and Local Government Excellence and National Institute on Retirement Security. April. The public-private sector pay differential may be due in part to inter-sector differences in the uses and magnitudes of incentive compensation. See D. Lewin. 2003. "Incentive Compensation in the Public Sector: Evidence and Potential." *Journal of Labor Research*, 24, 4, spring, pp. 597-619, who found that incentive compensation (through merit pay, bonuses, and equity ownership) constituted approximately 6.5 percent of public employees' pay compared to approximately 19 percent of private employees' pay.

⁵ By establishing a higher compensation floor, however, relatively low-skilled unionized employees are vulnerable to cost-cutting initiatives, such as privatization. See T. Chandler. 1994. "Sanitation Privatization and Sanitation Employees' Wages." *Journal of Labor Research*, 15, 2, spring, pp. 137-153, who found that increases in threats by public employers to contract with private-sector sanitation service providers reduce union-nonunion sanitation employee pay differentials. Similar findings are reported by G. Hoover & J. Peoples. 2003. "Privatization of Refuse Removal and Labor Costs." *Journal of Labor Research*, 24, 2, spring, pp. 294-305.

The debate focuses in particular on the rising costs of public-employee health insurance and the projected costs of public-employee pensions. It is important to recognize that differences in the mix of benefits provided to public-sector and private-sector employees make comparisons difficult. Many public employees are not covered by Social Security, for instance. Neither public employees nor their employers pay Social Security taxes where this is the case.⁶

Health Care: The rising costs of health care and health-insurance premiums are posing serious problems for both public- and private-sector employers and employees. Data from the Kaiser Family Foundation show that the average family health-insurance premium for private sector employees increased from \$5,742 in 1999 to \$13,770 in 2010 (adjusted to 2009 dollars). Comparable national data for public employees are (to our knowledge) not available. But a study of teacher benefits in Illinois found that between 1993 and 2008 the average inflation-adjusted premium for a family health-insurance policy increased from \$5,758 to \$10,905 (in 2009 dollars).⁷ While the rate of growth is likely to vary in different states, the implication of these numbers is clear: greater efforts are needed to control health care costs in both sectors since these growth rates are unsustainable for employees and employers alike.

On average, public employees contribute less to cover their health-insurance premiums and receive a higher proportion of their total compensation in the form of health-insurance benefits than private-sector employees. This follows from our earlier discussion of the evidence comparing public- and private-sector compensation, which found that public employees trade off lower salaries for higher benefits.

The national average, though, masks important trends. Some states, such as Massachusetts, have statewide plans that are less costly than those that have been in place for many years or that can be negotiated on a bargaining-unit by bargaining-unit basis at the local level. That is, larger health-insurance plans tend to benefit from economies of scale and offer governments an opportunity to use their bargaining power in the health-insurance market to negotiate for lower premiums.

There is also a growing recognition that employee-wellness programs and other on-going preventive health and education efforts pay dividends in the form of greater cost control and healthier lifestyles. There is a greater incidence of these programs in the public sector, according to the Kaiser Family Foundation. And governments can be trend setters for health care practices and health insurance premiums.

Consequently, there is considerable room for negotiating creative solutions to this problem of high and rising health-insurance costs in the public sector. These solutions can be fair to

⁶ At present, an employer and an employee covered by Social Security each pays the tax at a 6.2 percent rate up to a maximum of \$106,800 of annual wages and salaries.

⁷ C. Olson. 2011. "The Battle Over Public Sector Collective Bargaining in Wisconsin and Elsewhere," EPRN (www.employmentpolicy.org/topic/402/op-ed/battle-over-public-sector-collective-bargaining-wisconsin-and-elsewhere)

employees and taxpayers, engage all parties in ongoing efforts to control health care costs and share the resulting gains, and set the pace for better health care cost control in the private sector.

The problem of high and rising health-insurance premiums, though, is not limited to current workers. The costs of retiree health insurance are also rising and have received considerable attention in both the private and public sectors. A large number of private-sector employers have either increased retiree co-payments or eliminated retiree health care benefits altogether since the late 1990s.⁸

Public-sector employers are now facing similar pressures. A common concern is that most governments pay retiree health-insurance benefits on a pay-as-you-go basis and consequently face very large increases in the future costs of these health-insurance benefits.⁹ This is a difficult issue particularly for police officers and firefighters who are encouraged to retire early — usually a decade before they become eligible for Medicare — because of the physical demands of their occupations.

Pensions: Retirement savings typically come from three sources: Social Security, defined-benefit pension plans, and defined-contribution pension plans. Current policy debates reflect pressure to change the type of coverage presently provided to many public-sector employees.

Most public employees are covered by defined-benefit pensions as their primary source of retirement income. Defined-benefit plans, in fact, take the place of Social Security for the majority of public employees in 14 states.¹⁰ These defined-benefit plans promise an eventual lifetime monthly retirement benefit based on a formula that typically includes an employee's age, tenure, and earnings history. Most of these plans predate collective bargaining, are present in states with and without collective bargaining, and cover union and non-union employees, managers, and public officials alike.

Public employees contribute part of the money necessary to finance the promised benefits in most jurisdictions. The employer is supposed to contribute the rest of what is necessary to a pension plan. The pension plan invests the trust fund monies appropriately so as to finance the promised benefits in the future. Occasionally, laws require governments to regularly make the necessary employer contributions to these plans, but often it is at the discretion of policymakers, (i.e., state legislatures and governors) to decide how much to contribute year to year to these plans. These decisions can, in turn, depend on the extent to which pension plans are well or

⁸ Weller, C., Wenger, J., and Gould, E., 2004, "Health Insurance Coverage in Retirement: The Erosion of Retiree Income Security," Washington, D.C.: Center for American Progress and Economic Policy Institute.

⁹ "The Trillion Dollar Gap: Underfunded state retirement systems and the roads to reform," The Pew Center on the States, February, 2010.

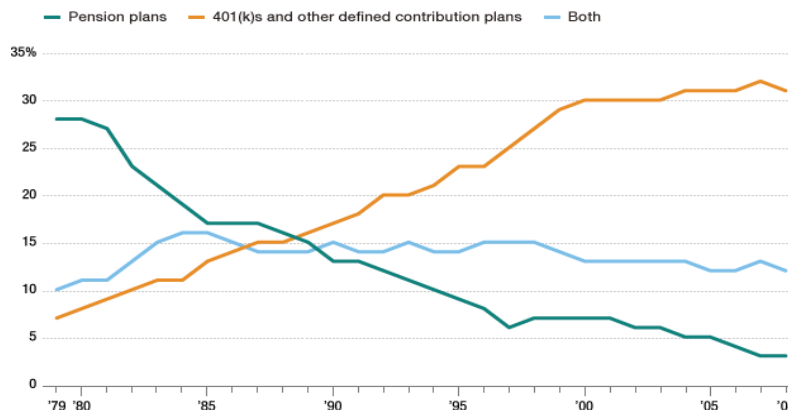
¹⁰ Munnell, Alicia. 2005. "Mandatory Social Security Coverage of State and Local Government Workers: A Perennial Hot Button, CRR Issue in Brief No. 32" Boston: Center for Retirement Research at Boston College.

poorly funded. Some public employers may prove reluctant to contribute to plans that are already well funded and instead use the funds for other purposes.

Defined contribution plans, such as 401(k) and 403(b) plans (numbered based on relevant tax-code sections) are at the other end of the retirement spectrum. Employees and employers make financial contributions to these plans, but employees decide how to invest the plan monies and how and when to withdraw the funds.

Coverage of private-sector employees by defined-benefit plans has been declining, and coverage by defined contribution plans has been increasing, as indicated in the following chart (Figure 2). Typically, private-sector employees who are still covered by defined-benefit plans are also unionized, but, as is well known, private-sector unionization has been declining since the mid-1950s and private-sector defined-benefit plan coverage has been declining with it.

Figure 2: Private Sector Defined-Benefit and Defined-Contribution Plan Coverage, 1979-2009



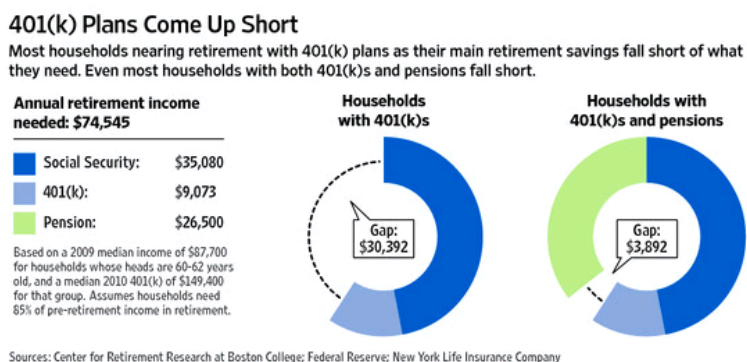
Source: Employee Benefit Research Institute. EBRI's estimates for 1998-2008 were done using Department of Labor and Current Population Survey data. Credit: Alyson Hurt / NPR
 Source: <http://www.npr.org/templates/story/story.php?storyId=124131819>

This comparison of the type of retirement benefit is critical for the retirement security of public- and private-sector employees. Defined-contribution plans, such as 401(k)s and 403(b)s, expose employees to greater financial risks. This increased risk exposure was meant to incentivize employees to save more for their retirement. Any additional savings, though, have been insufficient to compensate private-sector employees for the increased risk exposure, leaving them with less overall retirement-income security.¹¹ The following chart, drawn from a recent *Wall Street Journal* article titled “Retiring Boomers Find 401(k) Plans Fall Short,”¹² tells quite a

¹¹ Weller, C., 2010, “Did Retirees Save Enough to Compensate for the Increase in Individual Risk Exposure?” *Journal of Aging and Social Policy*.

¹² February 19, 2011.

clear and simple story. Those with defined-contribution pensions alone tend to enjoy much less retirement income security than those with defined-benefit pensions.¹³



The difference in retirement-income security follows from several factors that give defined benefit pension plans a leg up. Savings in individual-retirement accounts are, to a larger degree, voluntary and often end up being very modest. The Federal Reserve reported, based on its triennial Survey of Consumer Finances, that a typical family headed by an individual between the ages of 55 and 64 (i.e., the immediate pre-retirement-age category) had a retirement savings account balance of \$112,000 as of late 2007 — just before the economy crashed.

Defined-benefit pension plans also tend to offer a better savings strategy and result than defined-contribution plans. This is because in a defined-benefit plan employees from different cohorts are mixed together; all employee and employer contributions typically stay in the plan until someone retire, and the plan assets are pooled and professionally managed. The pooling of resources allows the funds to be managed at comparatively low costs¹⁴ and with a better risk profile less long-term financial risk exposure¹⁵ — than is the case in individual retirement savings accounts. Dollar for dollar, a defined-benefit pension plan yields more retirement benefits than a defined-contribution plan. National Institute on Retirement Security researcher Beth Almeda and actuary William Forna estimate that one dollar in a defined-benefit pension plan creates 46 percent more in retirement savings than one dollar in a 401(k) plan.¹⁶

¹³ The Center for Retirement Research at Boston College has documented similar differences in its calculations of the National Retirement Risk Index. Those families who are covered with a defined-benefit plan are much more likely to be able to maintain their standard of living in retirement than those families who are not covered.

¹⁴ Council of Institutional Investors, 2006, “Protecting the Nest Egg: A Primer on Defined Benefit and Defined Contribution Retirement Plans,” Washington, D.C.: CII.

¹⁵ Weller, C., 2010, “Did Retirees Save Enough to Compensate for the Increase in Individual Risk Exposure?” *Journal of Aging and Social Policy*.

¹⁶ B. Almeda and W.B. Forna, 2008. “A Better Bang for the Buck: The Economic Efficiencies of Defined Benefit Pension Plans,” National Institute on Retirement Security.

This does not, however, mean that there aren't problems with defined-benefit pension plans. The main reason for the nearly \$1 trillion shortfall facing state and local government pension plans in 2010 was the sharp financial market decline from 2007 to 2009. As recently pointed out by Dean Baker of the Center for Economic and Policy Research, "If [state and local government] pension funds had earned returns just equal to the interest rate on 30-year Treasury bonds in the three years since 2007, their assets would be more than \$850 billion greater than they are today. This is by far the major cause of pension funding shortfalls."¹⁷

Baker goes on to observe that only about \$80 billion of the shortfall resulted from state and local governments cutting back their pension plan contributions during the 2007-09 downturn. Clearly, some of this shortfall has been ameliorated by recent rise in the stock market, but even without that rise the total pension fund shortfall is less than 0.2 percent of projected gross state product over the next 30 years for most states, and less than 0.5 percent in states with the largest shortfalls. It is little wonder, then, that Baker concludes that the current public-sector pension shortfall is "manageable," and that "most state and local pension funds have been seriously misrepresented in public debates."¹⁸

Some structural problems, though, make it harder to manage the public-pension shortfalls. Pension experts use a concept known as the "normal cost" of a pension. The normal cost is an estimate of what needs to be put away in a given year to fund that year's incremental promise of future retirement benefits. There is no reason why a defined-benefit plan cannot be operated successfully if good pension-management practices are followed. Good practices are unfortunately not always followed. Employers in several notable cases did not make the necessary contributions to their public-pension plans and substantial funding shortfalls subsequently ensued.

There is a relatively straightforward solution to governments not making their required contributions to their pension plans. A public-policy solution to this problem proposed by researchers Christian Weller, David Margolis and Mark Price consists of legal changes to ensure that governments actually contribute the amount of money they promised to contribute to a pension plan or, in other words, the normal cost plus the cost of past underfunding.¹⁹ This small, manageable change could substantially reduce the underfunding of public employee pension plans.

Other structural problems with public-employee pension plans have recently been identified and received considerable attention. These include pension-plan formulas that base retirement benefits on total annual income earned in the last several years or even just the last year of service, not just on the base pay that a worker earned, but also on overtime and other pay. This

¹⁷ D. Baker. 2011. *The Origins and Severity of the Public Pension Crisis*. Washington, D.C.: Center for Economic and Policy Research, February, p. 1.

¹⁸ Ibid, pp. 2 and 15.

¹⁹ Weller, C.M. Price and D. Margolis. 2006. "Rewarding Hard Work: Give Pennsylvania Families a Shot at Middle Class Retirement Benefits." CAP Economic Policy Report. Washington, D.C.: Center for American Progress.

practice of pension spiking has often led to excessive amounts of overtime work that boosts earned income in the immediate pre-retirement year(s). A number of states, such as Massachusetts, have taken steps to eliminate pension spiking by basing retirement benefits solely on the base salary and not on additional pay.

Another often criticized provision of public-employee pension plans is one that allows for retirement at full or partial benefit levels after 30 years or 35 years or at ages well below the traditional standard age of 65. The assumption has been that public safety employees — police and firefighters, among others — cannot perform their duties beyond a maximum numbers of years or beyond certain ages that tend to be lower than a typical retirement age of 65. Also, some public schools have chosen to offer teachers incentives to retire after three decades of service. A number of states have gradually started to raise the retirement ages and lower the early-retirement provisions of their pension plans in response to the underfunding in the long-lasting financial crisis after 2007.

Another potential problem for public pension plans is that of “double dipping.” Managers and executives, elected officials, and/or non-management employees receive pensions earned from one public sector job while accruing benefits from another appointed or elected position. These examples have raised the skepticism, indeed, the anger of citizens, especially in light of the decline in retirement benefits for many citizens working in the private sector. Several states have recognized this problem and experts have advocated banning this practice.²⁰

The challenge of public pension-plan underfunding is largely the result of the recent financial market crash. Addressing this underfunding, though, should be readily manageable since the size of the underfunding is small compared to the size of state economies. States could address several smaller structural obstacles that make managing the current underfunding more difficult but not impossible.

The alternative to managing the problem is often seen as replacing the existing defined-benefit plans with defined-contribution plans. These plans come with substantial costs for employees and employers, many of which we already discussed. There are higher costs, larger risks, and fewer human-resource management tools available to governments with defined-contribution plans. Movement away from defined-benefit toward defined-contribution pension plans in the public sector would have one additional unintended consequence, namely, more financial volatility.

Unlike defined-benefit pension plans and Social Security, defined-contribution pension plans fuel bubbles and make recessions worse. Defined-contribution plan asset values soar and motivate people to spend more and work less when the economy is booming. These are undesirable outcomes in an expansion. Defined-contribution plan asset values decline and motivate people to put off retirement and reduce spending when the economy is plummeting. These are undesirable outcomes in a recession.²¹ Such macroeconomic consequences merit close

²⁰ See, for instance, Benefits Review Task Force, 2005, Benefits Review Report, Trenton, NJ: BRTF.

²¹ J. Wenger & C. Weller, 2009. Integrated Labor and Financial Market Risks: Implications for Individual Accounts

attention in the continuing debate about and in assessing proposals for the reform of public-employee pension benefit levels, costs and funding.

In summary, public employers across the country face significant pressures to reduce the rate of growth in health care costs, better fund and/or share the costs of retiree health care, and improve the funding, design and administration of retirement programs. The nature and depth of these problems vary considerably among states and therefore require state-specific analyses of these issues and state-specific approaches to addressing them.

How has Public Sector Labor-Management Relations Performed During “Normal” Times and Crisis Periods?

During the 1960s and 1970s, many (but not all) U.S. states enacted laws supporting public-employee unionism and collective bargaining. They did so in response to the upsurge in public-employee unrest in the midst of other sources of conflict in the country over civil rights, war, and poverty. Those new laws were closely patterned after the private-sector National Labor Relations Act (the Wagner Act) with the exception that public-employee strikes were partially or totally banned and substitute procedures were often allowed or required. These procedures include mediation, fact-finding with recommendations, arbitration or a mix thereof. Because there was little prior experience with these procedures, much debate and considerable research ensued aimed at documenting and evaluating their effects. The key findings from this research are summarized below.

Strikes: Most of the research on public-sector strikes was carried out in the 1970s and early 1980s as public-sector collective bargaining and the statutes governing bargaining were still in their formative years. Indeed, strike rates in the private and public sector have declined considerably since that time. Therefore, the evidence we draw upon here comes mainly from those earlier decades.

Olson’s 1988 review of the accumulated evidence on public-sector strikes reached the following conclusions:²²

- Interest arbitration provides the most effective deterrence of strikes. The most systematic analysis of this issue was carried out by Columbia University professor Casey Ichinowski. He compared the rate of police strikes under no bargaining law, under a law providing meet-and-confer rights only, under laws providing bargaining without arbitration, and under laws providing bargaining with arbitration.

He also looked at the effects of changes in these statutes in selected jurisdictions. He found that strikes were most likely to occur in states without a bargaining law and least

for Retirement. *Journal of Aging and Social Policy*, 21, 2, pp. 256-276.

²² See C. Olson. 1988. Dispute Resolution in the Public Sector. In B. Aaron, J. M. Najita, and J. L. Stern (Eds.), *Public Sector Bargaining*, 2nd Ed. Madison, Wis.: Industrial Relations Research Association, pp. 161-162.

likely to occur in states with a bargaining law that provided for binding arbitration. He also found that changing from a bargaining law that did not provide for arbitration to one that did reduced the probability of a strike from 0.084 to 0.005. These results were consistent with findings from an earlier six-state (Wisconsin, Illinois, Indiana, New York, Ohio and Pennsylvania) study carried out by Professor Olson.

- Strike penalties, when enforced, deter strikes. This finding comes from studies comparing the low strike rates of teachers in New York, where employees lose two days pay for every day on strike, to strike rates in Pennsylvania, Ohio, Illinois, and Indiana, where strikes were either legal (Pennsylvania) or illegal but penalties were weak or not enforced.
- Policies, such as whether days lost to strikes are made up at the end of the previously scheduled school year outside of collective bargaining, can affect the number of strikes.

Ability to reach agreements: Early on there was considerable concern that the lack of discipline of a strike deadline and/or the existence of a third-party process, such as fact-finding or arbitration, would reduce the incentive to reach negotiated agreements. A specific aspect of this concern was that there would be what some called a “narcotic effect” such that once arbitration (or fact-finding) was invoked in a particular negotiation, the parties would continue to rely on it in future negotiations. The evidence suggests that, over the long haul of public-sector bargaining, these worries were overstated.

- The rate of reliance on arbitration (where it exists) has declined from between 10 percent to 30 percent in the early years of public-sector bargaining to below 10 percent in most states today. In New York State, for example, 31 percent of police units went to arbitration in 1974-76, the initial years of the arbitration statute, compared to 9 percent between 1995 and 2007.

Similar declines occurred for firefighter bargaining units during this time.²³ In most cases, the parties appear to have learned how to predict what an arbitrator will award and, with this understanding in mind, have been able to negotiate agreements on their own (or with the help of mediators) without having to go through the formal arbitration process. There are notable exceptions to this, however. Some jurisdictions, particularly large, politically complex jurisdictions, are heavier users of arbitration than smaller jurisdictions.

- Mediation has proved to be remarkably effective in assisting the parties in reaching negotiated agreements. Although evidence on this is limited, more than 70 percent of the cases referred to mediation in New York State police and firefighter negotiations were resolved voluntarily during this process.²⁴

²³ T.A. Kochan, D. B. Lipsky, M. Newhart & A. Benson. 2010. “The Long Haul Effects of Interest Arbitration: The Case of New York State’s Taylor Law,” *Industrial and Labor Relations Review*, 63, 4, July, p. 570.

²⁴ *Ibid*, p. 572.

While the use of mediation and arbitration emerged as an alternative to strikes for many uniformed service employees, there are many other public employees in the federal government and in state and local governments who engage in collective bargaining and who work in such highly sensitive jobs as guarding nuclear arsenals and operating municipal water supplies. There is no evidence of these employees putting the public at risk through collective action. Therefore, even in the absence of mandated arbitration the collective- bargaining process does not appear to have imposed risks on the public.

Effects on outcomes: One of the most hotly debated yet least understood aspects of public-employee bargaining concerns the effects of arbitration on pay outcomes. A recent nationwide study examined the effects of arbitration on police and firefighter wages using U.S. Census data from 1990 and 2000.²⁵ The findings replicated the results of studies conducted during earlier decades:

- Wages of police and firefighters covered by arbitration statutes are not significantly different from wages for police and firefighters in states in which collective bargaining does not include arbitration (but that typically includes mediation and/or fact-finding).
- Wage growth for police and firefighters in arbitration states with bargaining laws that include arbitration did not differ from wage growth in states with bargaining laws that do not include arbitration.
- There were no significant differences between wage increases awarded to police and firefighters in arbitration and wage increases resulting from negotiations without the use of arbitration.

These results are not surprising because most arbitration statutes require arbitrators to compare wages and other terms of employment among comparable jurisdictions, together with cost of living, ability to pay, and other objective factors, in shaping their awards. Nevertheless, arbitration is not a panacea for all public-sector labor problems. Two specific limitations of arbitration include:

- Arbitrators tend to be very conservative. There is a strong norm in the labor relations profession (shared by arbitrators as well as management and labor representatives) that arbitrators should not break new ground or award new benefits (or take away benefits) that they believe might be warranted but that the parties were unable to negotiate on their own. The norm is grounded in the belief that the parties to negotiations know their unique needs better than arbitrators. If the parties want to introduce a new concept into negotiations or bring about a major restructuring of pay, benefits or other terms of employment, they should negotiate over them directly rather than leave such potentially complicated changes to an outside arbitrator. Consequently, arbitration tends toward a *status quo* bias. It is therefore not a tool for introducing major changes in employment

²⁵ See Kochan, et al., “The Long Haul Effects of Interest Arbitration.”

practices and outcomes in times of fiscal adversity, let alone deep crisis, when the environment has changed or when new employment practices are being developed for other reasons.

- The time required to complete negotiations when arbitration is invoked appears to have risen over the years. While systematic data that provide for the arbitration of public-sector labor disputes are not available across all states, in New York State the median length of time from contract expiration to an arbitration award increased from 300 days during 1974-76 to 790 days during 2001-06.
- Delays of this length pose three serious problems: (1) economic conditions may have changed considerably such that what may have appeared to be a fair, affordable pay and/or benefit increase at the time of contract expiration looks out of line with prevailing economic conditions when an arbitration award is issued; (2) employees may suffer economic hardship and become dissatisfied with the arbitration process; and (3) negotiations on a successor agreement may have begun before an arbitration award is issued and thus the parties find themselves engaged in perpetual negotiations.

Bargaining Structure. The structure of public-sector collective bargaining is fundamentally shaped by the structure of state and local governments. The deep-seated norm of local control that created and maintains independently operated school districts, municipalities, and counties typically leads to each of these entities managing their employee relations separately and independently. Collective bargaining mirrors these organizational arrangements as well as the occupational division of labor within government employment, meaning that unionized police, firefighters, teachers, health care employees, prison guards, social workers, sanitation employees and others negotiate separately with their public employer.

Over time, pay relationships among public-employee groups, including relationships that predated collective bargaining (such as pay parity between police and firefighters²⁶), are carried forward. The stability of these structural and pay relationships is reinforced by legal requirements for and/or the tendency of negotiators and arbitrators to consider comparability with similar jurisdictions in reaching negotiated pay agreements and in rendering pay awards, respectively. There are notable exceptions to these structural arrangements, however, especially during times of fiscal crisis.

One example is provided by the mid-1970s fiscal crisis in New York City municipal government, which was able to avoid bankruptcy through negotiation with a coalition consisting of several major and some smaller municipal employees unions that collectively enrolled about 80 separate bargaining units representing more than a quarter-million employees.²⁷ Those

²⁶ See D. Lewin, 1973. "Wage Parity and the Supply of Police and Firemen." *Industrial Relations*, 12, 1, February, pp. 77-85.

²⁷ See D. Lewin & M. McCormick. 1981. "Coalition Bargaining in Municipal Government: The New York City Experience," *Industrial and Labor Relations Review*, 34, 2, January, pp. 175-190.

negotiations, which occurred over a series of bargaining rounds, resulted in new agreements that included multi-year wage freezes, deferrals and cuts, fringe benefit givebacks, and productivity enhancements. Most important and notable, these negotiations also resulted in substantial new investments and a multi-year rollover of prior investments of municipal employees' pension funds in New York City paper (that is, bonds and notes). It is no exaggeration to say that New York City was "saved" by these agreements, though it is also fair to say that certain prior collective-bargaining agreements between the city and municipal employee unions contributed to the fiscal crisis.

Another notable historical example of public-sector labor and management's response to fiscal adversity as well as technological changes is provided by collective bargaining in municipal sanitation (i.e., refuse pick-up and disposal) service. During the early 1980s, New York City and the Sanitation Workers Union negotiated a productivity bargaining agreement that reduced truck crew size from three to two and included a shift bonus for crew employees. Reducing the crew size created an incentive to adopt labor cost-saving technologies, such as standardized trash containers, automated side-loading refuse equipment, and rear bin trash compactors, as well as a new requirement (for "customers") that trash bins be placed at curbside. This agreement substantially reduced the amount of labor required to perform refuse pick-up and disposal.

Similar collective bargaining agreements were reached in other U.S. municipal sanitation departments, some of which resulted in a one-person "crew." They also included new or modified provisions dealing with productivity, that is, the frequency and quantity of refuse pick-up and removal and with the quality of refuse pickup and removal, measured, for example, by a street-cleanliness index.²⁸ These agreements led to improved sanitation service and lower sanitation labor costs, with fewer though better-paid sanitation employees. Furthermore, most of these agreements did not limit city management's authority to subcontract sanitation service to private firms if a more favorable productivity-cost nexus was determined to exist therein. In yet another 1980s example, the unionized engine-repair facilities in the Detroit public transit system benchmarked their performance against private-sector diesel engine-repair operations, thereby illustrating an attempt to have public employees match and even exceed the performance of their private-sector counterparts.

The recent merger of multiple transportation agencies, workforces, and unions, into a single integrated department of transportation in Massachusetts is another example of the potential of coalition bargaining for achieving significant change and innovation in public services. The transportation-reform law creating the new agency called for large wage cuts (more highly paid Massachusetts Turnpike employees would be placed on the state schedule and receive its considerably lower pay). Implementing the statute as written would have violated basic norms of fairness to these employees, bypassed collective bargaining, and saddled the management of the new agency with a divided, angry, ill-motivated workforce and triggered a battle among state

²⁸ See D. Lewin. 1987. "Technological Change in the Public Sector: The Case of Sanitation Service." In D. B. Cornfield Ed., *Workers, Managers, and Technological Change: Emerging Patterns of Labor Relations*. New York: Plenum, pp. 281-309.

government and former Turnpike unions over who, if anyone, would represent employees of the new agency.

To address these issues a new union coalition was formed and agreed to bargain as a single entity, and management agreed to negotiate with the coalition in return for full freedom to integrate the workforce without regard to traditional jurisdictional boundaries and work rules. A multi-party negotiation process then ensued that produced an agreement that “red circled” (froze in place) the wages of the higher paid employees in return for the right to hire new employees on the lower state salary schedule.

The agreement also created an operations-improvement program in which 10 percent of the workforce savings achieved will go to into an equity fund to help close the wage gaps between employees doing similar work. Joint labor-management committees were created and chartered to address the myriad of issues that will come up as the integration process moves forward and to further rationalize and modernize the job structures inherited from the state system. In short, this negotiations process established the structures, processes, and alignment of interests needed to build a model public-transportation system and organization.²⁹

Still another example of how public-sector labor-management relations can respond to change is provided by municipal police and fire departments. The structure of unionism and collective bargaining in these departments is especially notable, perhaps unique, because of the long-standing, widespread presence of managerial unionism in these departments. This means that except for the top ranks (such as chief, commissioner, deputy chiefs and deputy commissioners), all ranks of police and firefighters are unionized. In a medium- to large-size police department, patrol officers belong to one union, sergeants to another, lieutenants to another, and captains to yet another. The same union structure prevails in medium- to large-size fire departments, and each union (or bargaining unit) negotiates a separate collective-bargaining agreement with its respective municipal government.

Despite such pervasive structural arrangements, or perhaps because of them, municipal police departments have in recent years (i.e., 1995-2010) contributed substantially to declining crime rates through the adoption and diffusion of precinct-based computerized statistical crime reporting and weekly monitoring, community-targeted policing, increased use of single-officer driven patrol cars and scooters, greatly enhanced use of handheld personal digital devices and smart phones, and improved police academy training programs and techniques for new police officers. Some of these same practices have emerged and spread in municipal fire departments, which have also adopted new technologies for increasing the speed at which water is pumped through fire hoses (known as “slippery water”), used smaller, more-flexible fire trucks and related fire-suppression equipment, and improved the monitoring and reporting of firefighting events and quality of service. While some of these developments resulted from or were pursued through collective bargaining, more of them were initiated by police and fire department top management and in certain instances by elected officials.

²⁹ T.A. Kochan, “How Massachusetts can Stop the Public-Sector Virus,” available at www.employmentpolicy.org/topic/402/op-ed/how-massachusetts-can-stop-public-sector-virus-learning-its-own-experiences and www.rappaportinstitute.org.

These examples show that highly unionized public-service work forces and collective bargaining do not stand in the way of service-enhancing innovations and may in fact positively contribute to them. It is therefore especially notable that these developments also occurred during certain periods of fiscal adversity that featured hard, sometimes adversarial bargaining over police and firefighter pay and conditions of employment, including instances of pay freezes and cuts. Nevertheless, the parties to these labor-management relationships have not allowed short-term fiscal adversity to deter them from the longer-term goal of improving protective services provided to the citizenry, whether achieved through or apart from collective bargaining.

Education Reform. It is now widely recognized that America's education system is in need of improvement and reform. The Obama Administration has taken steps to achieve reform by providing "Race to the Top" and other school-improvement grants, each of which requires active plans to improve the quality of teaching by holding districts and teachers accountable for improving student achievement. These programs call for significant changes in teacher-contract provisions governing such things as teacher evaluations, seniority, pay for performance, continuing education and professional development, etc. This aggressive policy builds on an approach focused on standards that was established under the (G.W.) Bush administration's "no child left behind" policies, which mandated state testing and other provisions.

The question going forward is whether teacher unions and the collective bargaining process will be brought into the reform effort as partners or will be impediments to achieving reforms. Examples of both resistance and partnership can be found around the country. To illustrate, when faced with the difficult choice of whether to accept pay and benefit cuts or layoffs, teachers in New Jersey chose layoffs. This resulted in larger class sizes, which angered parents in many communities. In a very different but perhaps more telling illustration, the recent documentary, "Waiting for Superman," portrayed public-employee unions as unwilling to deal with underperforming colleagues and resistant to change more broadly.

While negative examples and portrayals such as these have received considerable attention, there also are positive cases of union-management partnerships that have fostered reform, in some cases occurring well before current education policy initiatives were adopted. In a recent study of six school districts — Cerritos, Calif.; Toledo, Ohio; Hillsborough, Fla.; Plattsburgh, N.Y.; Norfolk, Va.; and St. Francis, Minn. — where teachers are represented by the American Federation of Teachers (AFT), Rutgers University Professor Saul Rubinstein and colleagues analyzed long-term collaborative partnerships between school administrators and local teachers' unions that focused on school improvement, student achievement, and teacher quality.³⁰

They found that in these school districts, a culture of collaboration has been established that promotes trust and individual integrity, values union leadership, and respects teacher

³⁰ S. Rubinstein. 2010. *Collaborating on School Reform: Creating Union-Management Partnerships to Improve Public School Systems*. October. New Brunswick, N.J.: Rutgers University. In addition to being geographically widely distributed, these six school districts represent both rural and urban locations and range in size from small to large. Funding for this study was provided by the Bill and Melinda Gates Foundation.

professionalism. Each district has established a district-level joint planning and decision-making forum in which union officials and school administrators work together to develop joint understanding and alignment of the strategic priorities of the district. This initiative is accompanied by school-specific building-level teams, improvement committees, steering committees, and/or advisory councils that meet regularly.

They found that each district focused on teacher quality as a core goal for collaborative reform and improvement. This included professional development, teacher evaluation, teaching academies, peer-to-peer assistance, and mentoring programs — with very low levels of voluntary teacher turnover and both parties making difficult decisions to not retain ineffective teachers.

The researchers also found that teachers and administrators in these school districts work together to analyze student performance and to develop data-based improvement plans at the district and school levels. Teachers were also organized into teams at grade and department levels to use student-performance data in directing improvement efforts. The districts report high levels of student achievement and improved performance during the course of these labor-management partnerships, including in schools with high percentages of students on reduced-cost or free lunch programs.

Most of these districts have also negotiated contract language, or memorandums of understanding, that support their collaborative efforts. In this way, real change is integrated into collective bargaining and institutionalized in concrete language. In some cases, the contracts call for the assumption of collaboration in district-level decision making by requiring union representation on key committees. In other cases, contractual provisions have resulted in expanded opportunities for union involvement in decision making through board policy.

The importance of public-sector labor and management being able to address local matters jointly through negotiations is highlighted in a letter recently sent to Wisconsin's legislative leadership by the executive director of the Wisconsin School Board Association. The letter, which was prompted by the Wisconsin Governor's proposal (since enacted) to greatly curtail teacher- (and other public-employee) collective-bargaining rights, stated the following:

Many [Wisconsin Association of School Board] members are gravely concerned that the changes in the [Governor's] bill limiting the scope of collective bargaining would wipe away the ability of local school boards to use the bargaining process in ways that enhance local control by telling local school boards they are prohibited from deciding whether to enter into a contract on any item other than wages; and would immeasurably harm the collaborative relationships that exist between school boards and teachers and may lead to job actions and other disruptions of educational services that will harm the educational quality in our public schools.

A large number of school districts and teacher unions in Wisconsin have chosen to either negotiate new or extend existing contracts to continue their bargaining relationships rather than be subject to the provisions of the new law. This will give them up to three years to demonstrate what can be achieved through collaborative efforts. High priority should be given to comparing the processes and results of these efforts with districts in which the new law is enforced.

Beyond Wisconsin, the following provision (Article 24) is included in the collective-bargaining agreement between unionized teachers and the San Juan, Calif., Unified School:

The District and the Association agree to take responsibility and be held accountable for the improvement of the quality of teaching and learning which represents an expanded role in public education. It is in the best interest of the San Juan Schools that the District and the Association cooperatively engage in activities and communication which demonstrate mutual respect for all stakeholders and results in the improvement of student achievement through development of common goals, a cooperative, trusting environment and teamwork. It is the [parties'] belief that actively and constructively involving all relevant stakeholders contributes significantly toward achieving these goals.

Shared responsibility and accountability for results are at the core of a continuous-improvement model. Joint responsibility for student success means that educators share in celebrating what works and share in identifying together areas that are not working and are in need of improvement.

Other examples of similar contract language could be provided, all of which reflect efforts by public school districts, administrators and unionized teachers to codify and advance the parties' commitments to public service. Indeed, on February 15-16, 2011, labor and management leaders from more than 150 U.S. school districts gathered to discuss how labor-management relationships can improve student achievement and school performance.³¹

In announcing this event focused on school reform, U.S. Secretary of Education Arne Duncan said, "Union leaders and administrators across the country are finding new ways to work together to focus on student success ... The leaders from these 150 districts are committed to bold reforms and are showing the country what is possible when adults come together, particularly in tough times, to do the right thing for kids."

San Juan Board of Education President Lucinda Luttgen commented, "The event focused on working together and really highlighted that we don't have the energy or fiscal resources to be divisive, we must work together." San Juan Superintendent of Schools Pat Jaurequi commented similarly: "The San Juan Teachers Association has long been a strong partner with the District to improve student performance in creative and innovative ways." San Juan Teachers Association Executive Director Tom Alves stated, "SJTA has a demonstrated history of being a ... voice at the table to improve student performance in our schools ... I am excited ... to highlight how in San Juan Unified we continue to address student outcomes while tackling the most drastic funding cuts ever seen in public education."

³¹ The event was sponsored by the U.S. Department of Education in partnership with the American Federation of Teachers, National Education Association, National School Boards Association, American Association of School Administrators, Council of the Great City Schools, and the U.S. Federal Mediation and Conciliation Service, For a school district write-up of the event, see: <http://www.sanjuan.edu/news.cfm?story=9597&school=75>

It is clear from these and other examples that education reform will require continuing joint efforts by the involved parties. Relevant to such reform is the burgeoning literature on assessing performance outcomes in schools, including a recent study with carefully controlled comparisons that demonstrated high rates of improvements in student achievement in charter schools and, to a lesser extent, pilot schools.³² Public school district leaders, union officials and teachers need to learn from all these experiences — examples and empirical studies — in collaboratively pursuing the widely shared objective of improving student and school performance.

What Lessons Can be Learned from Innovations in Private-Sector Labor-Management Relations?

The most visible trend in private-sector collective bargaining is the steady decline in coverage experienced over the last half century. Union membership peaked at approximately one-third of the private sector workforce in the mid-1950s and declined thereafter to approximately 22 percent in 1979 and to 6.9 percent in 2010. Multiple factors account for this decline, including economy-wide shifts from blue-collar to professional and managerial work and from manufacturing to service industries, increased management opposition to unions, slowness of unions to adapt to the changing economy, workforce and nature of work, and failure to reform and modernize labor law.

In the midst of this decline, however, has been considerable innovation and in some cases transformation in the nature, quality, and performance of private-sector labor-management relations. Many of these innovative efforts have been intensively studied. We review the evidence from these studies and then draw several implications for the future of public-sector labor-management relations.

Lessons from the 1980s

We start with lessons learned from private-sector collective-bargaining experiences during the 1980s because of that period's similarity to the current crisis facing public employers, employees, and unions. During the early 1980s, the U.S. economy went through a deep recession that hit unionized manufacturing industries especially hard. International competitors gained market share in such key manufacturing industries as automobiles and steel, and deregulation resulted in new domestic competitors entering such industries as airlines and trucking. The political environment became more conservative, as reflected in the election of President Reagan whose firing of striking air traffic controllers (in 1981) was widely considered a watershed event.

The confluence of these factors produced two significant changes in private-sector collective bargaining: (1) wage and benefit concessions that spread to nearly one-half of the workforce covered under bargaining agreements,³³ and (2) joint union-management innovations.

³² A. Abdulkadiroglu, J. Angrist, S. Dynarski, T. J. Kane, & P. Pathak. "Accountability and Flexibility in Public Schools: Evidence from Boston's Charters and Pilots." *The Quarterly Journal of Economics*, forthcoming.

³³ Similar concessions were made in the public sector during this period. See D. Lewin. 1983. "Public Sector Concession Bargaining: Lessons for the Private Sector." *Industrial Relations Research Association*, Proceedings of the 35th Annual Meeting. Madison, Wis.: IRRA, pp. 383-393.

Studies of these developments during the 1980s reached the following conclusions:

- Wage concessions provided temporary cost relief but were not a sufficient solution to the competitive pressures facing firms from international competition and domestic non-union competition.
- Union-management innovations (summarized more fully below) significantly improved productivity, service quality and job satisfaction in workplaces and establishments that adopted them, but proved difficult to sustain and failed to diffuse widely. Sustaining and diffusing innovative nonunion forms of worker participation was also difficult to do.
- In the absence of a fundamental reform of labor law that reaffirmed and strengthened employees' ability to join a union and gain access to collective bargaining *and* that endorsed innovative forms of labor-management relations, unions would continue to decline; the momentum for innovation in both union and non-union firms would weaken; and the adversarial side of labor-management relations would dominate.³⁴

These conclusions and predictions capture much of what actually occurred during subsequent decades. Nevertheless, labor-management innovations that emerged during the 1980s have also continued, albeit in less visible ways. For example, in 2003 a national survey was conducted for the U.S. Federal Mediation and Conciliation Service by a team of M.I.T. researchers. The survey was administered to randomly selected matched pairs of private-sector labor and management negotiators.³⁵ The results showed that approximately 70 percent of union negotiators and approximately 60 percent of management negotiators had experience with a problem-solving approach to collective bargaining. A related survey found that in the public sector 80 percent of union negotiators and more than 70 percent of management negotiators had some experience with a problem-solving approach to collective bargaining.

Use of these problem-solving approaches was associated with tangible results beneficial to both sides. To illustrate, consider the negotiation of more flexible work rules, something often sought by employers, and the negotiation of more employee-involvement in decision-making, something often sought by unions. Where the parties used a problem-solving approach, approximately 60 percent of the negotiations resulted in new language on work-rule flexibility compared to only 40 percent under a traditional approach. New language on employee involvement was negotiated in approximately 25 percent of negotiations in which a problem-

³⁴ T.A. Kochan, H.C. Katz, and R.B. McKersie. 1986. *The Transformation of American Industrial Relations*. New York: Basic Books.

³⁵ Cutcher-Gershenfeld, J. & Kochan, T.A. 2004. "Taking Stock: Collective Bargaining at the Turn of the Century." *Industrial and Labor Relations Review*, 58, 1, October, pp. 3-26; Cutcher-Gershenfeld, J., T. Kochan, B. Barrett & J.P. Ferguson. 2007. "Collective Bargaining in the Twenty-First Century: A Negotiation Institution at Risk." *Negotiation Journal*, July, pp. 249-65.

solving approach was used compared with approximately 10 percent under a traditional approach.

These findings are consistent with many studies of the effects of transforming traditional work systems originally designed for standardized mass-production industries. Such transformation, which has occurred among diverse industries and sectors, features organizational initiatives to more fully engage employees' knowledge, motivation, and ideas in order to improve productivity and customer service. The broadest study of the effects of these initiatives in manufacturing industries, conducted by Sandra Black and Lisa Lynch, found that transformed nonunion work systems were 10 percent more productive than a baseline, traditional nonunion workplace, and that transformed unionized work systems were 15 percent more productive than the baseline traditional, nonunion workplace.

The additional performance increment in transformed unionized workplaces was attributed to the stability and voice provided by the union but without the limitations associated with unions in traditional workplaces. Indeed, the study found that traditional unionized workplaces were even less productive than traditional nonunion workplaces.³⁶ Industry-specific studies ranging from automobile, steel, and apparel manufacturing to airlines, health care, and telecommunications find similar positive effects from work systems that bundle investments in workforce training and development with workplace processes that engage worker ideas and skills, encourage teamwork, and coordinate efforts across occupations.³⁷

Another example of how collective bargaining can facilitate workplace innovations is provided by recent Ford-UAW negotiations. Although there are many aspects of private-sector negotiations that do not correspond to the public sector, the principle of using collective bargaining as a platform where labor is a responsive and contributing partner in an economic crisis is illustrated in this case. In 2003, the UAW and Ford negotiated the issue of quality using a problem-solving approach and developed new contract language in which both sides committed to joint accountability for quality improvement.³⁸ At the time, the quality of most of Ford's vehicles was well below the industry average. By 2007, this joint commitment produced tangible results, with Ford rising to a three-way tie with Toyota and Honda for best-in-class vehicle quality. Further, and because of improved quality, the company saved more than \$1 billion in warranty costs.

During the 2007 national UAW-Ford negotiations, the parties extended their problem-solving approach to 24 subcommittees that had been established to address such specific issues as workplace safety, retiree benefits, product sourcing, and employment security. The scale and

³⁶Black, S.E. & L.M. Lynch. 1997. "How to Compete: "The Impact of Workplace Practices and Information Technology on Productivity." NBER Working Papers 6120, National Bureau of Economic Research, Inc.

³⁷For a review, see E. Appelbaum, J. H. Gittel, and C. Leona, "High Performance Work Practices and Economic Recovery," www.employmentpolicy.org.

³⁸Cutcher-Gershenfeld, J. 2011. "Bargaining When the Future of an Industry is at Stake: Lessons from UAW-Ford Collective Bargaining Negotiations." *Negotiation Journal*, forthcoming.

subjects would not be identical in the public sector, but the process they followed is instructive. Instead of opening their discussion of each issue with traditional demands and counter demands, the parties first brainstormed a shared vision of success. Then, each subcommittee was empowered to jointly collect data, identify all stakeholder interests, and brainstorm decision options.

Only after these problem-solving processes were completed did the parties enter into formal contract negotiations. Hard bargaining subsequently ensued but with more information and broader, deeper perspectives. Consistent with the aforementioned national survey data, better results were achieved for both sides, including building on industry Voluntary Employee Beneficiary Association agreements and moving retiree health care costs off the company books, while also increasing the resources supporting retiree health care. This process also led to an agreement on a new, lower starting wage that has allowed the company to create hundreds of new union jobs but that also allows employees hired into these jobs to eventually achieve full wage levels under the national contract.

Similar transformational results have been achieved in the health care industry, specifically at Kaiser Permanente, which features a labor-management partnership anchored by employee involvement in workplace decision-making. The parties follow an “interest-based” problem-solving approach to contract negotiations, including broad-based consultation on such issues as how to best use electronic medical records technologies. Initiated in 2000, labor and management at Kaiser Permanente continued to follow an interest-based problem-solving approach during three subsequent rounds of contract negotiations.³⁹

In another example, Southwest Airlines, the most highly profitable and most highly unionized U.S. air carrier, has used a less formal but no less effective partnership approach to labor-management relations generally and contract negotiations in particular. This approach is credited with enabling the company to achieve and sustain high levels of productivity and service quality, and to reach contractual agreements with its unionized employees in one-half the average time required by other airlines and unions.⁴⁰

While some employers and unionized employees have managed to sustain their negotiations and workplace innovations, there are also numerous examples of “islands of success” that fail to diffuse and ultimately transform organizations and industries. In aerospace, for example, which spans commercial and military operations, the challenge of moving beyond islands of success is similar in both the public and private parts of this industry.⁴¹ Unions can help in this regard,

³⁹ T.A. Kochan, A. Eaton, R.B. McKersie, and P. Adler. 2009. *Healing Together: The Kaiser Permanente Labor Management Partnership*. Ithaca: Cornell University/ILR Press.

⁴⁰ J. H. Gittel. 2003. *The Southwest Airlines Way*. New York: McGraw Hill; G. Bamber, T.A. Kochan, J. H. Gittel, & A. von Nordenflycht. 2009. *Up in the Air*. Ithaca: Cornell University/ILR Press.

⁴¹ E. Murman, T. Allen, K. Bozdogan, J. Cutcher-Gershenfeld, H. McManus, D. Nightingale, E. Rebentisch, T. Shields, F. Stahl, M. Walton, J. Warmkessel, S. Weiss, & S. Widnall. 2002. *Lean Enterprise Value: Insights from MIT's Lean Aerospace Initiative*. New York: Palgrave/Macmillan.

sometimes by providing continuity of leadership in the face of high management turnover. But union internal political dynamics can also bring instability to transformational initiatives. Ultimately, the challenges to sustaining workplace innovations in the United States have many similarities across unionized and nonunion workplaces, suggesting that the extent to which such innovations emerge and spread in the public sector will have more to do with leadership and management skills, financial resources, data and measurement, and other factors separate from the union-non-union status of employees.

Two conclusions emerge from this capsulated history of private sector labor-management innovations:

- Crisis conditions often produce significant innovations in workplace practices, negotiations, and overall labor — management relationships. These innovations have resulted in significant improvements in economic performance, measured by productivity and quality improvements and labor-cost control and reduction.
- Innovations in workplace practices have not been widely diffused within industries or across the range of private-sector unionized and non-union workplaces.

A key implication of this experience for the public sector is that innovations in labor-management relations can be undertaken and are potentially valuable in terms of the outcomes they can produce for public management, public employees, and especially citizens. For such innovations to be adopted, sustained and widely diffused in the public sector, however, vigorous advocacy and support are required. The private-sector experience offers important examples of workplace innovation “leadership champions,” and there is no reason to believe that the U.S. public sector cannot generate such examples as well.

What are the Relevant Underlying Roles of Collective Bargaining in Civil Society?

Recent laws and proposed changes in the laws governing public-sector collective bargaining are out of sync with international standards valuing freedom of association and the right to bargain collectively for all employees. These rights are spelled out in Article 23 of the United Nations’ Universal Declaration of Human Rights and in other international declarations of which the United States is a signatory (such as the 1998 ILO Declaration on Fundamental Principles and Rights at Work).

In the United States, core constitutional rights, including free speech, freedom of assembly and freedom to redress grievances are all brought into the workplace through collective bargaining. While most of this paper has focused on empirical evidence, this section addresses legal and principled underpinnings for public-sector collective bargaining, as well as matters of legislative intent — all of which is also relevant to current debates on public-sector unionism and collective bargaining.

Seventy-five years ago, the United States faced a massive economic collapse and searched for long-term policy remedies, much as we are now doing. The language of the National Labor Relations Act (NLRA), enacted in 1935 as part of President Roosevelt's New Deal, encouraged "the practice and procedure of collective bargaining in order to prevent obstructions to the free flow of interstate commerce, increase consumer purchasing power, mitigate recurrent business depressions, and provide check and balance between labor and management."

At the end of World War II there was a wave of union organizing and collective bargaining under this law, which played a central role in the rise of the middle class in the United States and, for a 30-year period, reductions in wage inequality. By the late 1970s and early 1980s, the collective-bargaining model that paired wage growth with productivity growth had broken down.

Current proposals to erode or eliminate public-employee collective bargaining rights tap into what has been rising inequality in society since the 1980s. While private-sector pay and benefits have stagnated or declined (taking inflation into account), public-sector compensation has generally held steady. As Craig Olson's data indicate, public-sector employees have traded off pay growth for maintaining benefits. But rather than seeing this as a source of stability in society (or even as a way of reducing dependence on public support), some citizens who have suffered economically during the recession resent public-sector employees for not also having done so. The public policy response is, in effect, to bring the public sector down to a lower level rather than to raise standards more broadly in society.

How do the private-sector principles of checks and balances on power between employers and employees, economic stability, and the link between productivity and consumer-purchasing power translate into the public sector? Instead of uninterrupted commerce, the focus in most public-sector laws is on the uninterrupted operation of government, as well as providing public employees with certain workplace rights. In 1959, Wisconsin was the first state to enact a law providing state and local employees with collective-bargaining rights. In Wisconsin, New York, Illinois and other states there were formal commissions established to fully and carefully consider the implications of such laws.

Concurrent with the consideration and passage of laws governing public-sector collective bargaining in the 1960s, there was a spirited debate in academic circles on the very question as to what was distinct about public-sector collective bargaining. Two prominent legal scholars, Harry Wellington and Ralph Winter, put forward the argument that collective bargaining was not appropriate to the public sector due to the political nature of decision making and the absence of market forces. A rebuttal to this position was provided by John Burton and Charles Krider and others.⁴² It is telling that state legislatures did not follow Wellington and Winter's advice, as state laws permitting public-sector collective bargaining continued to spread throughout the 1970s. Until recently there were few concrete efforts to remove legislated provisions allowing for and

⁴² See H. Wellington & R. Winter. 1969. "The Limits of Collective Bargaining in Public Employment." *Yale Law Journal*, 78, 7, June, pp. 1107-1127, and J. Burton & C. Krider. 1970. "The Role and Consequences of Strikes by Public Employees." *Yale Law Journal*, 79, 3, March, pp. 418-440. Also see D. Lewin. 1973. "Public Employment Relations: Confronting the Issues." *Industrial Relations*, 12, 3, October, pp. 309-321.

regulating public-sector unionization and collective-bargaining rights. This held true even in the aftermath of New York City's mid-1970s fiscal crisis when concession bargaining (generally, and pay and benefit cuts in particular) spread to many U.S. state and local governments.

Because current and proposed government initiatives seek not just to extract concessions in wages and benefits, but to also diminish unions and collective bargaining in the public sector, we must consider the implications for civil society. As Harvard University economics professors Derek Bok and John Dunlop observed in their 1970 assessment of the role of unions in American life (when private sector unionism was still near its peak and public-sector unionism was just beginning to grow): “Without union efforts, workers and low-income groups would have little organized political support, and their interests would be more vulnerable to the pressure of other powerful groups.”⁴³

The capacity to influence political outcomes by both corporations and unions has been heightened by the United States Supreme Court decision in *Citizens United v. Federal Election Commission*.⁴⁴ Unions, unlike corporations, wax and wane according to the size of their membership, and the diminution of unions in the public sector will diminish as will their countervailing voice in public discourse.

In considering the new public sector laws that erode collective bargaining, University of Illinois Law Professor Matthew Finkin calls for a consideration of “the longer term implications for American civil society,” noting: “I do not maintain that unions are inherently morally superior to profit-making corporations or that union leadership is less prone to short-sightedness, overreaching, or even stupidity. But I do maintain that a robust pluralist democracy requires the active participation of all of society's stakeholders, that the primary vehicle for the working class to participate in the political process is through organizations of their own choosing in which they actively participate, which means unions, and that the weakening of unions in tandem with the rise of corporate political power is unhealthy for American democracy.”⁴⁵

The core roles that collective bargaining can play in civil society — providing checks and balances in the workplace and society, increasing consumer-purchasing power, reducing economic inequality, providing worker voice (including on matters of productivity, public service and consideration for the disadvantaged in society), and advancing basic constitutional rights — remain fundamentally important. At the same time, there are innovations in both the public and private sector that indicate how unions and collective bargaining can better take into account the public interest and function more effectively. In our conclusion, we suggest mechanisms to update collective bargaining to match 21st Century realities — with the same careful consideration that accompanied the establishment of public-sector labor laws.

⁴³ D. Bok & J. Dunlop. 1970. *Labor and the American Community*. New York: Simon and Schuster.

⁴⁴ *Citizens United v Federal Election Commission*, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010)

⁴⁵ M. Finkin, 2010, address on “Unions and Future of Democracy in the United States,” University of Athens, Greece (March, forthcoming).

Conclusions

Public-sector unionism and collective bargaining are in the spotlight. At center stage is an ideological battle in which short- and long-term outcomes are highly uncertain. Less visible, but no less important, is direct empirical evidence on labor and employment relations. In sorting through the accumulated evidence, we find:

- When compared to private-sector workers matched by education, age and other relevant variables, public employees accept a lower combined pay and benefit package in exchange for presumed stability and other positive features of public-sector employment. Public employees are not overpaid relative to their private-sector counterparts.
- Health care cost increases are equally problematic and challenging in the private and public sectors. Retiree health care costs are a more serious problem in the public sector because many private-sector firms have already cut back on these benefits or shifted a higher portion of the costs of retiree health care to employees/retirees. The specific levels of costs and the options for addressing them require state specific fact gathering and offer an opportunity for public employers and public-employee unions to pursue statewide and/or coalition bargaining as others have done in response to past state- and municipal-level financial crises.
- Public-sector pension funding shortfalls vary considerably across states. The principal cause of such pension underfunding is the investment loss that occurred during the Great Recession. A secondary cause is the failure of some governments to make annual payments to cover the “normal costs” of pensions. This secondary cause can be addressed by requiring governments to make promised annual pension-fund payments. Public employers and employee unions also need to address and, where appropriate, reform certain pension-design and administrative features, such as those that increase pension benefits based on an employee’s final years or year of service. We caution, however, that putative short-term savings in pension costs achieved by shifting to 401K and other defined-contribution plans covering public employees risk imposing additional, hidden costs on the public, and are based on faulty assessment of the reasons for the public-sector pension shortfall.
- Dispute resolution procedures (i.e., mediation, fact-finding, and arbitration) variously included in public-sector collective bargaining laws have worked well in terms of reducing the incidence of public employee strikes and achieving equitable outcomes. In certain instances, however, the time required to reach arbitrated settlements of public-sector labor disputes has increased to the point where it imposes hardships on employees and excessive uncertainty on public employers and citizens. Consideration should therefore be given to setting time limits on arbitration decisions or otherwise reforming the arbitration process.

- Evidence and examples drawn from the public and private sectors show that collective bargaining and workplace innovations based on a mutual interest, joint problem-solving approach can produce positive outcomes for employers, employees, customers, and citizens, especially during fiscal crisis. Adopting, sustaining and diffusing such innovations require vigorous advocacy by and support from leadership champions; policy makers can be such champions.

In sum, the key lesson to be drawn from this analysis is that public-sector labor relations featuring unionism and bargaining have served to carry out the basic negotiations and dispute - resolution processes called for in bargaining statutes. Public-sector collective bargaining has produced pay outcomes consistent with what would be expected, resulting in more wage equality and increased purchasing power for front-line public employees. Moreover, and as the examples and empirical evidence presented here indicate, government and union leaders have worked together in times of severe economic adversity to innovate in ways that advance public goods (such as improved educational outcomes and increased public safety).⁴⁶ Nevertheless, there is room for improvement in using the negotiations process to address fiscal adversity, education reform, rising health care costs, pension underfunding, and other key societal challenges.

We view the current crisis as the equivalent of the crisis that faced private-sector collective bargaining during the 1980s; we are at a moment of challenge and opportunity. Unless government and union leaders step up to the challenge and accelerate the process of reform and improvement by working together, learning from experiences of the type reviewed here, and building on successful examples of jointly led innovation, we will likely experience a long period of protracted labor-management conflict that will further erode employee voice and precipitate a decline in the quality of public services.

Education reform will suffer at the hands of public conflict, and the school environment will be characterized by high levels of stress and pent-up tensions, splitting local communities and setting back hopes for collaboration and innovation. Beyond education, all areas of state and local public service are at a similar crossroad, with challenges to collective bargaining potentially resulting in protracted conflict or, alternatively, new workplace, organizational and labor-management innovations.

As scholars and teachers of labor and employment relations, we share the premise that collective bargaining embodies fundamental human rights that are central to civil society and that assure needed checks and balances. But we also recognize the need to update and modernize public-sector collective-bargaining law and practices, especially in light of the challenges facing government at all levels. The evidence summarized in this paper leads us to believe that with the proper leadership we can build 21st century public-sector labor-management relationships that are catalysts for improving the productivity and quality of public services through collaborative, respectful, fair methods of negotiations, and problem solving.

⁴⁶ For additional evidence in this regard, see D. Lewin, P. Feuille, T.A. Kochan & J.T. Delaney. 1988. *Public Sector Labor Relations: Analysis and Readings*, 3rd Ed. Glen Ridge, NJ: Horton & Daughters.

To pursue this objective, we propose the following three-step, state-by-state process:

- I. Get the facts right about the real costs of public-sector pay and benefits and future funding liabilities and communicate these findings to the public. There are significant differences in compensation levels, trends, costs, and funding arrangements across states; therefore it is important that the parties in each state carry out an objective, evidence-based analysis of its specific situation. The information presented and sources cited in this paper can be used as a starting point for such state-specific analysis.
- II. Use these findings as inputs into state-level “public-sector summit meetings” that clarify and better define the problems and challenges requiring immediate attention. Use the tools of interest-based negotiations, problem solving, and facilitation to negotiate a new state wide “Grand Bargain” that addresses the most critical budget challenges, while also being fair to public employees. A statewide approach is more likely to break out of the slow, incremental, conservative pace of change that has become characteristic of local, decentralized labor-management relations in many settings. Public-sector summit meetings will also signal a commitment to use modern tools and processes of collective bargaining and labor-management relations to address problems in ways that are fair to taxpayers and public employees.
- III. Use the lessons learned from this experience to carry out an evidence-based analysis of what else should be done to modernize public-sector bargaining practices to fit the needs of today’s more transparent and financially strapped environment, while remaining true to core values. Charging a broadly representative group to carry out this task and recommend modifications to current bargaining statutes and practices mirror the approaches used in many states during the 1960s to develop recommendations for their original public-sector bargaining laws.

This approach will also allow states to review and build on the lessons of innovations in labor-management relations and human-resource management practices that have demonstrated their value in the intervening years, both in the public and private sectors. The full range of innovative practices should be examined, including employee engagement in problem solving and continuous-improvement efforts, teamwork, and coordination across different groups and occupations; compensation and reward systems that better align employee, managerial, and customer (public) interests; and employee development and performance-management systems that provide employees with tools and methods to learn new skills.

New laws and/or policies resulting from these efforts should include measures to track performance improvement and to hold managers and employees accountable for meeting reasonable performance targets. New ways to promote, support, and sustain labor-management partnerships and other initiatives to improve public services should also be examined and built into the next generation of laws and policies.

These are the elements of transformed labor-management relationships that, if adapted to fit different public-sector organizational and occupational settings, hold the same potential for

achieving performance improvements that have been realized through similar transformational efforts in the private sector. The aim should be nothing less than ensuring that all public employment operates as effective work systems that deliver good jobs, quality services, and excellent governmental performance.