

Symposium Articles & Essays

PUBLIC SECTOR LABOR RELATIONS: WHY IT SHOULD MATTER TO THE PUBLIC AND TO ACADEMIA

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No topic has more importance for millions of people yet has recently received such short shrift by academia than public sector labor law.¹ In a country where approximately twenty-one million people work for public sector entities,² 37.4% of public sector workers are union members,³ and upwards of 60-70% of city expenditures go toward covering labor costs,⁴ one wonders why he or she must search far and wide for recent scholarship

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1. The footnotes of this article reveal that much more was written about public sector labor law in the 1970s and 1980s than is written today. For other works treating public sector bargaining generally see, PUBLIC SECTOR BARGAINING (1988); WHEN PUBLIC SECTOR WORKERS UNIONIZE (1988); THE EVOLVING PROCESS – NEGOTIATIONS IN PUBLIC EMPLOYMENT (1985); M. LIEBERMAN, PUBLIC SECTOR BARGAINING: A POLICY APPRAISAL (1980); PUBLIC WORKERS AND PUBLIC UNIONS (1972); PUBLIC EMPLOYEE UNIONS: A STUDY OF CRISES IN PUBLIC SECTOR LABOR RELATIONS (1976); S. SPERO & J. CAPOZZOLA, THE URBAN COMMUNITY AND ITS UNIONIZED BUREAUCRACIES (1973).

2. BUREAU OF LABOR STATISTICS, U.S. DEP’T. OF LABOR, MONTHLY LAB. REV. 56 (Oct. 2002).

3. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, UNION MEMBERS SUMMARY FOR 2001 [hereinafter UNION MEMBERS SUMMARY]. Only 9% of private sector employees are unionized. *Id.* In at least fifteen states, over 50% of government employees are union members. Richard Kirschner, *Labor Management Relations in the Public-sector*, in A.L.I. – A.B.A. COURSE OF STUDY MATERIALS, BASIC EMPL. & LAB. L. IN-DEPTH 271, 275 (1998).

4. Clyde W. Summers, *Bargaining in the Government’s Business: Principles and Politics*, 18 U. TOL. L. REV. 265, 266 (1987).

on public sector labor relations, but can easily find volumes on private sector labor law, a field which has experienced declining significance.⁵

Public sector labor relations deserve far more attention than it has received in recent years from academic journals and in classrooms. This article will demonstrate that full comprehension of public sector bargaining in its different forms, specifically at the municipal level, is imperative for anyone who wishes to understand how local government operates. Furthermore, the study of public sector labor law provides students with a rich education not only in this particular field, but also a greater appreciation of private sector labor law, constitutional law, negotiations, and policy implementation.

This article is primarily concerned with municipal unions, as they lend themselves best to the points I seek to raise. These points, however, apply to public sector unions at all levels of government: municipal, state, and federal.

This article will first set forth a brief history of public sector labor relations in order to present a context. Next, it will examine the importance of public sector labor relations to cities. Finally, this article suggests that public sector labor relations should be offered as part of law school curricula since it provides insights into several areas of law and provides an excellent opportunity to evaluate the effect these areas have on the real world.

This article concludes that public sector labor relations must be taught consistently with the unique issues that it raises. It is not simply a law class, an economics class or a political science class. Public sector labor relations encompasses all of these fields and thus, in order to fully comprehend its significance, must be taught in a way that concisely blends the three. This article attempts to do just that.

I. A BRIEF HISTORY OF PUBLIC SECTOR UNIONIZATION IN THE UNITED STATES

The history of public sector unionism in the United States is interesting as well as relatively young. Although private sector unions received the statutory ability to organize and bargain collectively in the 1930s, the only public sector union in existence at that time was the post office union.⁶ Both ideological and practical reasons delayed the advent of public sector unions. The traditional American notion of governmental

5. UNION MEMBERS SUMMARY, *supra* note 3.

6. Charles M. Rehmus, *Labor Relations in the Public-sector in the United States*, in PUBLIC EMPLOYMENT LABOR RELATIONS 19, 22 (1975). For a general discussion of this point, see *Labor Relations in the Public Service: Exploration and Experiment*, SYRACUSE L. REV. 184 (1959).

supremacy rejected the idea that the government should collectively bargain with its employees.⁷ To illustrate just how firmly entrenched this principle was, consider this statement by President Franklin Roosevelt, a friend to the private sector unions:

All government employees should realize that the process of collective bargaining as usually understood, cannot be transplanted into the public service The employer is the whole people, who speak by means of laws enacted by their representatives in Congress Accordingly officials and employees alike are governed and guided, and in many cases restricted, by laws which establish policies, procedures, or rules in personnel matters.⁸

In the 1960s, proponents of public sector unions began to win some collective bargaining rights. At that time, roughly one million workers were members of public sector unions such as the post office, the American Federation of Teachers (“AFT”), and the American Federation of State, County and Municipal Employees (“AFSCME”).⁹ New York City, as well as Wisconsin, granted public employees “modified” collective bargaining rights. In 1962, President Kennedy issued Executive Order 10988, giving all federal employees the right to join organizations of their choosing and to bargain collectively on non-economic issues.¹⁰ Many states also passed state bargaining laws between 1965 and 1976.¹¹

Prior to 1967, the courts were not friendly to the public sector unionization cause. They had held that the freedom to associate did not permit the formation of public sector unions on a theory similar to the governmental supremacy notion discussed earlier.¹² Specifically, the courts held that since persons had no right to a public sector job, public employers could make non-membership in unions a condition of employment.¹³ However, in 1968 the Seventh Circuit held that dismissing two teachers because of their association with the AFT was a violation of their Fourteenth Amendment right to associate freely.¹⁴ In the same year, the

7. *Id.*

8. Letter from President Franklin D. Roosevelt to Luther C. Steward, President, Nat'l Federation of Federal Employees (Aug. 31, 1937), reprinted in Christine G. Cooper & Sharon Bauer, *Federal Sector Labor Relations Reform*, 56 CHI-KENT L. REV. 509, 511-12 (1980).

9. Kirschner, *supra* note 3, at 274. Kirschner also notes that these unions were not very large or influential. *Id.*

10. Eaton Conant & Greg Hundley, *The Status of Public-sector Bargaining Law in COLLECTIVE BARGAINING IN THE PUBLIC-SECTOR IN THE UNITED STATES: A TIME OF CHANGE* 38 (Amarjit S. Sethi et al. eds., 1990).

11. *Id.* at 39.

12. *Id.*

13. *Id.*

14. See *McLaughlin v. Tilendis*, 398 F.2d 287, 288-89 (7th Cir. 1968).

Supreme Court settled the matter by “reject[ing] the theory that public employment, which may be denied altogether, may be subjected to any conditions, regardless of how unreasonable.”¹⁵

One should note, however, that even though state employees have the right to join a union, no constitutional right requires municipalities or states to bargain with those unions.¹⁶ In order to force an employer to bargain with a public sector union, the state must pass legislation. While most states have enacted such statutes, eleven have not.¹⁷ As a practical matter, the absence of these statutes may not make much difference. Conant and Hundley note that, “[i]n the absence of bargaining statutes, public employers have often chosen to enter into bargaining voluntarily because of perceptions of union power, or because of a managerial preference for some form of bilateral relationship with an employee representative.”¹⁸

II. THE STATE OF PUBLIC SECTOR UNIONS

Although public sector unions have won the right to collectively bargain, beginning with President Ronald Reagan in the 1980s and continuing into the Republican revolution of 1996, public outcries for smaller government and less aid to cities forced mayors to reduce spending.¹⁹ Unions also began to take some of the blame for city fiscal crises. Perhaps the best summary of our government’s view of itself is provided by a task force report to Secretary of Labor, Robert Reich, in

15. See Kirschner, *supra* note 3, at 275 (citing *Keyishan v. Bd. of Regents*, 385 U.S. 589, 605-06 (1967)).

16. See *Developments in the Law—Public Employment [Part 1 of 2]*, 97 HARV. L. REV. 1611, 1618 (1984) [hereinafter *Public Employment*] (stating that “[t]he right . . . to unionize has been grounded in part on the freedom of association guaranteed by the first amendment, but the nondelegation doctrine has been used . . . to limit the scope of bargaining on the theory that the state . . . cannot delegate its lawmaking functions to union and management negotiators.”).

17. John Lund & Cheryl L. Maranto, *Public-sector Labor Law: An Update*, in PUBLIC-SECTOR EMPLOYMENT IN A TIME OF TRANSITION 30 tbl. 3 (Dale Belman et al. eds., 1996). To demonstrate the variety among the states in recognizing public sector unions, Lund and Maranto note that twenty-four states permit all public employees to bargain, three states permit all but state employees to bargain, two states only permit police officers, fire fighters, and educational employees to bargain, five states permit only educational employees to bargain, and four states permit only fire fighters and police officers to bargain. *Id.* Furthermore, the right to strike also differs from state to state. With respect to strikes, sixteen states prohibit all public employees from striking, while thirty-one states as well as the District of Columbia prohibit police officers and fire fighters from striking. *Id.*

18. Conant & Hundley, *supra* note 10, at 42.

19. See Morley Gunderson & Douglas Hyatt, *Canadian Public-sector Employment Relations in Transition*, in PUBLIC-SECTOR EMPLOYMENT IN A TIME OF TRANSITION 244 (Dale Belman et al. eds., 1996) (noting that “[p]reviously, the success of public-sector managers was gauged in terms of the size of their department and how fast they grew . . . [i]ncreasingly, it is now based on how much they cut . . .”).

1996. The report indicated the following:

In today's climate of taxpayer revolts and hostility toward government in general, perhaps the single most important thing that government can do is to restore faith in its ability to deliver quality services in a cost-effective manner. Clearly needed is a change from more traditional ways of planning and delivering services and the traditional roles of labor and management.²⁰

During this period, however, public sector union membership remained significant. In 1995, between 15% and 16% of employed Americans worked for the public sector and 38% of them were unionized.²¹

III. WHY MUNICIPAL LABOR RELATIONS MATTER TO THE PUBLIC

If you asked a person on the street how closely he or she follows municipal labor relations in the news, chances are that person would not have much of an opinion. However, pose the same question to a commuter during the tense days before a potential strike of transit workers or to a parent during rocky teacher negotiations and he or she would almost certainly have a strong opinion. The rest of this section articulates in more detail how municipal labor relations affect the public personally, economically, and politically.

A. *Personal Impact*

First and most basic, municipal unions directly affect the personal lives of citizens by providing necessary services that people depend upon daily. In Philadelphia,²² for example, the following are considered municipal employees: police officers, fire fighters, transit workers, sanitation workers, prison guards, and court officials.

Although this list is not exhaustive, it demonstrates the importance of public sector labor relations to the city because most people who live or work there benefit from these services (in some shape or form) daily. While some argue that many of these employees could be adequately replaced with private sector employees through privatization, the fact is

20. Letter to Robert B. Reich, Secretary of Labor, *reprinted in* WORKING TOGETHER FOR PUBLIC SERVICE, REPORT OF THE U.S. SECRETARY OF LABOR'S TASK FORCE ON EXCELLENCE IN STATE AND LOCAL GOVERNMENT THROUGH LABOR-MANAGEMENT COOPERATION (1996) [hereinafter TASK FORCE REPORT]. See also Leslie Robert Stellman, *Coping With Public School Labor Relations in the Tax-Conscious '90s*, 25 J. L. & EDUC. 673 (1996).

21. TASK FORCE REPORT, *supra* note 20, at 42, 52.

22. The author practices law in Philadelphia and is most familiar with labor relations in that city; therefore, many examples will be drawn from it. Additionally, Philadelphia's long history with public sector unions provides a rich background for understanding the issues discussed here.

that currently these jobs exist, and they are unionized.

One must also remember the vast number of public sector employees whose lives are also affected by public sector labor negotiations. In 2001, there were close to eight million members of public sector unions.²³

B. Economic Impact

The long list of public sector employee jobs illustrates the second manner in which labor relations impact the public: economically. It is important to realize that, “[l]abor costs may be seventy percent of a city’s budget,”²⁴ a very large figure. Labor’s fiscal impact makes it a reality that overspending in this area could significantly contribute to the bankruptcy of a city. Furthermore, due to labor’s large imprint on a city’s budget, labor concessions are almost always called for when cities are in a budget crunch.

As Professor Clyde W. Summers of the University of Pennsylvania has commented, public sector unions affect the public in a special way since the taxpaying public is, in effect, the employer.²⁵ The taxpayer, through taxes, pays the wages and benefits of public sector employees. At the same time, though, the taxpayer is also the consumer. He or she is the end-user of the services that public sector employees provide. This distinction is not a matter of mere semantics, but may have a real impact on policy issues related to public sector collective bargaining. Those who view the public as consumers are probably more likely to support fewer collective bargaining rights for municipal unions and more choices for the public including privatization. After all, a consumer benefits from competition.

Regardless of whether you view the public as an employer or as a consumer, both sides must agree that the public’s taxes are affected by the collective bargaining agreements of public sector unions. Cities face the problem that residents may move out if taxes increase too much, leaving the city in a precarious financial situation. Unlike a private sector entity, which can relocate, a city or state cannot.

This basic fact means that cities and their public sector entities have strong incentives for finding ways to get along at the negotiations table and in day-to-day operations. Barring an unprecedented legislative enactment or a fiscal collapse, neither party is going anywhere. In contrast to the private sector where employers can pick up and move overseas, there is a far greater incentive for the employer to work with the union.

23. UNION MEMBERS SUMMARY, *supra* note 3, tbl. 3.

24. Summers, *supra* note 4, at 266.

25. *Id.*

C. Political Impact

The third way municipal unions impact the public is in the political realm. There seems to be general agreement that politics forms a significant part of the discussion surrounding public sector bargaining. Indeed, Professor Summers points to political power as the main reason he supports public sector collective bargaining. He writes,

Members of the public, as purchasers and users, are motivated by economic considerations; they want to maximize services and minimize costs. The public employees' interest in lighter work load and higher wages conflicts with their employers' interest in more service and lower taxes [T]he voters who share the employers' economic interests far outnumber those who share the employees' economic interest.²⁶

Summers quickly adds that public sector unions are not "politically helpless,"²⁷ but he believes they are "at a significant disadvantage when their terms and conditions of employment are decided through a process responsive to majority will."²⁸

While Professor Summers' argument makes sense, equally compelling is the argument that the political clout these unions have is actually quite great.²⁹ In labor negotiations of any sort, bargaining power is determined more by the perception of power than it is by actual power. With respect to perception of power, public sector unions command a great deal of respect. Work stoppages, or even their threat, put great political pressure on elected officials because these same officials are responsible for making sure that these services are delivered.

The argument that public sector unions require collective bargaining to protect their interests assumes that the government acts consistently with

26. Clyde W. Summers, *Public Employee Bargaining: A Political Perspective*, 83 YALE L.J. 1156, 1159 (1974) [hereinafter Summers, *Public Employee Bargaining*]. Professor Summers also believes that public sector unions are necessary because he believes that voters are often indifferent to the particular day-to-day problems public sector employees face and because unions protect these employees from arbitrary treatment by supervisors. Summers, *supra* note 4, at 269.

27. Summers, *Public Employee Bargaining*, *supra* note 26, at 1160.

28. *Id.*

29. Professor Summers put this argument forth in the 1970s when public sector unions were still relatively young. One could argue that the political power that public sector unions now enjoy would never have existed but for their right to collectively bargain. For other perspectives on the political power of public sector unions, see generally Don Bellante & James Long, *The Political Economy of the Rent-Seeking Society: The Case of Public Employees and Their Unions*, 2 J. LAB. RES. 1 (1981); Winston C. Bush & Arthur T. Denzau, *The Voting Behavior of Bureaucrats and Public-sector Growth*, in BUDGETS AND BUREAUCRATS (1977); Timi Anyon Hallen & James Remy Walther, Project, *Collective Bargaining and Politics in Public Employment*, 19 UCLA L. REV. 887 (1972).

the preferences of the electorate, who this article assumes is optimally served by minimizing costs. However, the public does not ratify the collective bargaining agreement. Assuming that an elected official makes decisions to get reelected, the question becomes whether the official believes that failing to adhere to the majority wishes of his or her constituency will still ultimately result in reelection.

The answer may very well be "yes." Although public sector employees are outnumbered by non-public sector workers, this fact does not necessarily mean that public sector employees are less politically powerful. I surmise that public sector employees are likely registered to vote at a greater percentage than non-public sector employees.³⁰ Furthermore, of those registered, I would also hypothesize that public sector employees vote at a greater rate than private sector workers. Thus, on Election Day, if a greater percentage of public sector employees are registered to vote and a greater number of those individuals actually vote, the perception that non-public workers have superior political strength may be unfounded. Furthermore, in close elections where turnout is crucial (like municipal elections), public sector unions, like any other organized group, can make a difference. In contrast, taxpayer groups are usually not as organized and are forced to rely more heavily on broad appeals.

In addition to affecting politics by voting, public sector unions, like their private sector counterparts, play significant behind-the-scenes roles in political campaigns provided that they are not statutorily prohibited from doing so. During these campaigns, they donate money, participate in phone banks, and march in demonstrations. Additionally, by endorsement or otherwise, these unions can portray candidates as "union-friendly" or not, which can make significant differences in cities where union members dominate the workforce in both the private and public sectors. Though they may not have all of the same interests as private unions, public sector unions share a common bond of "brotherhood."

Political motivations are also relevant to contract negotiations. Because states grant public sector unions the right to bargain collectively, the state legislature ultimately decides final contract terms. Observers have referred to an "end-run" problem where a union or a city that is dissatisfied with a contract will appeal to the state legislature to pass a statute, which will effectively give the entity the right (or benefit) that it could not obtain during collective bargaining.³¹ Although employers and unions in the

30. There is also the issue of whether the public sector employee is registered to vote in the jurisdiction where she works. Obviously, if the employee is registered in a different jurisdiction, her political ability to affect the outcome of the vote is weakened. This point raises the question of residency requirements. For an examination of such requirements, see Hager, *Residency Requirements for City Employees*, 18 URB. L. ANN. 197 (1980).

31. DONALD H. WOLLETT ET AL., COLLECTIVE BARGAINING IN PUBLIC EMPLOYMENT 17-

private sector could also lobby Congress, the likelihood of success there is much less than in state legislatures where these groups have significant clout.

As one can see from the foregoing discussion, public sector unions impact the common citizen's life in personal, economic and political ways. Thus, negotiators must find a way to address all of these issues.

IV. WHY PUBLIC SECTOR LABOR RELATIONS SHOULD MATTER TO ACADEMIA

Having outlined the importance of public sector labor relations to the lives of so many people and to the existence of cities, it should be a fruitful topic for academics. Although the 1970s and 1980s witnessed a flood of articles on public sector unions, little has been written in law journals within the last decade. Furthermore, this subject gets very little attention in law school curricula. By contrast, law journals are replete with private sector labor articles and law schools readily provide course offerings covering private sector labor law.

There may be reasons for these omissions. Public sector labor law is certainly complicated and, due to wide variations in the law from state to state, is not easy to compile into a usable format. Additionally, more than in other areas of law, the subject of public sector labor relations requires an understanding of economics and politics. This fact, however, should not deter professors from teaching it to law students. Indeed, the teaching of public sector labor law brings with it the opportunity to teach students legal concepts and policy issues. Furthermore, it forces students to analyze situations from legal, economic, and political perspectives.

For those who argue that such a course belongs in a public policy classroom instead of a law school classroom, I completely disagree. Many law schools now recognize the value of interdisciplinary study in order to more fully understand particular subjects. The argument that economic and political analysis should not find their way into a law school classroom strikes me as absurd. Additionally, teaching public sector labor law allows for the integration of different bodies of law such as civil service law³², collective bargaining law, and constitutional law.³³

As a practical matter, professors should teach this subject to their students with an emphasis on economic and political considerations because some of those students will likely be called upon to advise cities or

18 (1993).

32. For a discussion of the conflict between civil service and collective bargaining laws, see Comment, *Civil Service-Collective Bargaining Conflict in the Public-sector: Attempts at Reconciliation*, 38 U. CHI. L. REV. 826 (1971).

33. See *Public Employment*, *supra* note 16.

unions on a variety of matters that touch upon public sector labor law. Lawyers play an integral role in these negotiations. Although their legal opinions will not change based on economic or political considerations, the choice of legal strategy will certainly be impacted. Since lawyers advising either side must be sensitive to the implications of their opinions, they must understand both political and economic forces.

This section begins by examining how public sector labor law encompasses other areas of the law and then discusses lessons it teaches in areas related to the law. In order to convince law professors of the virtues of public sector labor relations, I must effectively demonstrate the legal concepts that this subject invokes. The first part of this section address that issue. The second part discusses other areas relevant, yet tangential to the law such as negotiations and policy implementation.

A. *Legal Concepts*

Although public sector labor law at first glance appears to address a relatively discrete area of the law, a deeper analysis reveals that the field actually incorporates fundamental constitutional law principles. By virtue of its relation to private sector labor law, public sector labor law also lends itself to a comparative law course. Finally, studying public sector labor law, which is nearly exclusively statute-based, familiarizes students with reading and interpreting statutes, and provides students with an opportunity to appreciate the diversity of approaches that states have taken in this field.

The constitutional questions that public sector labor relations raise include those fundamental to the operation of democracy. As Professor Summers notes, “[t]he crucial difference [between public sector and private sector collective bargaining] is that in the public sector the collective agreement is not a private decision, but a governmental decision; it is not so much a contract as a legislative act.”³⁴ As illustrated earlier, this concern over sovereignty played a key role in retarding the growth of public sector unions. Although this particular issue has been all but resolved, the history and analysis of these court cases provides insight into the legal processes that a democracy utilizes to govern itself.

In addition to the constitutional principle of sovereignty, public sector labor law also sheds light on how constitutional principles play out in the employment context. Because public employees have constitutional

34. Summers, *supra* note 4, at 266. For further examinations of the impact this legislative aspect of public sector bargaining has on democracy, see Sanford Cohen, *Does Public Employee Unionism Diminish Democracy?*, 32 *INDUS. & LAB. REL. REV.* 189 (1979); Thomas M. Love & George T. Sulzner, *Political Implications of Public Employee Bargaining*, 11 *INDUS. REL.* 18 (1972); Harry H. Wellington & Ralph K. Winters, Jr., *The Limits of Collective Bargaining in Public Employment*, 78 *YALE L. J.* 1107 (1969).

protection, issues such as free speech, due process,³⁵ unreasonable search and seizure, and the right to assemble peacefully are implicated. While some may think that one could learn such lessons in other courses, the employment relationship offers a unique perspective. Consider, for example, the Hatch Act, which limits political participation by public employees.³⁶ One may intuitively believe that public employees would have (if anything) more of a right to express themselves (and to a large extent this is true), but this act actually prevents federal employees from participating in political campaigns.³⁷ Many states have followed suit.³⁸ This legislation nicely illustrates the inherent conflict that arises when citizens are the employees of their representative government; a conflict that simply does not exist in other employment contexts.

Not only does the study of public sector labor relations provide insight into the application of constitutional law, but it also helps one better appreciate private sector labor law.³⁹ As Professor Summers has noted, the work of public sector and private sector employees hardly differs.⁴⁰ There is no difference between the types of individuals employed in the public versus the private sector. Indeed, public and private sector labor law both confront the same issues: bargaining unit determinations;⁴¹ treatment of and

35. For an examination of this issue, see Gerald E. Frug, *Does the Constitution Prevent the Discharge of Civil Service Employees?*, 129 U. PA. L. REV. 942 (1976); Richard Wallace, Comment, *Union Waiver of Public Employees' Due Process Rights*, 8 INDUS. REL. L.J. 583 (1986); Note, *Public-sector Grievance Procedures, Due Process, and the Duty of Fair Representation*, 89 HARV. L. REV. 752 (1976).

36. See 5 U.S.C.S. §1502 (2003). For an examination of the Hatch Act and its implications, see generally *Public Employment*, *supra* note 16, at 1651-60. See also *Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548 (1973)(upholding the constitutionality of the Hatch Act); *Broadrick v. Oklahoma*, 413 U.S. 601 (1973)(upholding the constitutionality of an Oklahoma statute similar to the Hatch Act); JAMES R. ECCLES, *THE HATCH ACT AND THE AMERICAN BUREAUCRACY* (1981); THOMAS I. EMERSON, *THE SYSTEM OF FREEDOM OF EXPRESSION* 563-92 (1970); ROBERT P. DWOSKIN, *RIGHTS OF THE PUBLIC EMPLOYEE* (1978); Phillip L. Martin, *The Constitutionality of the Hatch Act*, 6 U. TOL. L. REV. 78 (1974); Dalmas H. Nelson, *Public Employees and the Right to Engage in Political Activity*, 9 VAND. L. REV. 27 (1955); Henry Rose, *A Critical Look at the Hatch Act*, 75 HARV. L. REV. 510 (1962); Robert G. Vaughn, *Restrictions on the Political Activities of Public Employees*, 44 GEO. WASH. L. REV. 516 (1976); Note, *Freedom of Political Activity for Civil Servants*, 41 GEO. WASH. L. REV. 626 (1973).

37. 5 U.S.C.S. § 1502.

38. See sources cited *supra* note 36.

39. For an excellent examination of the theoretical differences between public and private sector labor relations and their implications, see Summers, *supra* note 4, at 265.

40. *Id.*

41. For examinations of how to make determinations of bargaining units in the public sector, see generally Curtis L. Mack, *Public-sector Collective Bargaining*, 2 FLA. ST. U. L. REV. 281 (1974); Eli Rock, *The Appropriate Unit Question in the Public Service*, 67 MICH. L. REV. 1001 (1969).

by supervisors;⁴² scope of bargaining;⁴³ grievance arbitration;⁴⁴ strikes;⁴⁵ and resolution of bargaining impasses.⁴⁶ However, one cannot simply graft private sector labor law onto the public sector.⁴⁷ Their histories are very different. Therefore, as in all comparative courses, students of labor law have the opportunity to compare public versus private solutions to parallel

42. For examinations of the treatment of supervisors in public sector bargaining, see generally Joel M. Douglas, *Collective Bargaining and Public-sector Supervisors: A Trend Toward Exclusion?*, 47 PUB. ADMIN. REV. 485 (1987); Stephen L. Hayford & Anthony V. Sinicropi, *Bargaining Rights Status of Public-sector Supervisors*, 15 INDUS. REL. 44 (1976); Charles T. Schmidt, Jr., *The Question of the Recognition of Principal and Other Supervisory Units in Public Education Collective Bargaining*, 19 LAB. L.J. 283 (1968); Hoyt N. Wheeler & Thomas A. Kochan, *Unions and Public-sector Supervisors: The Case of Fire Fighters*, in MONTHLY LAB. REV. 100-12, at 44-48 (1977).

43. For examinations of the scope of bargainable issues, see generally JOAN WEITZMAN, *THE SCOPE OF BARGAINING IN PUBLIC EMPLOYMENT* (1975); Patricia M. Blair, *State Legislative Control Over the Conditions of Public Employment*, 26 VAND. L. REV. 1 (1973); William L. Corbett, *Determining the Scope of Public-sector Collective Bargaining*, 40 MONT. L. REV. 231 (1979); Murray L. Sackman, *Redefining the Scope of Bargaining in Public Employment*, 19 B.C. L. REV. 155 (1977); June Miller Weisberger, *The Appropriate Scope of Bargaining in the Public-sector*, 1977 WIS. L. REV. 685; Harry H. Wellington & Ralph K. Winter, Jr., *Structuring Collective Bargaining in Public Employment*, 79 YALE L.J. 805 (1970).

44. For examinations of public sector grievance arbitration, see generally Charles B. Craver, *The Judicial Enforcement of Public-sector Grievance Arbitration*, 58 TEX. L. REV. 329 (1980); John C. Dempsey & Wendy L. Kahn, *Is Public-sector Grievance Arbitration Different from the Private Sector*, 7 J. L. & EDUC. 555 (1978).

45. For examinations of public employees' abilities to strike, see generally Benjamin Aaron, *Unfair Labor Practices and the Right to Strike in the Public-sector*, 38 STAN. L. REV. 1097 (1986); Merton C. Bernstein, *Alternatives to the Strike in Public-sector Labor Relations*, 85 HARV. L. REV. 459 (1971); *Public Employee Strikes: Legalization Through the Elimination of Remedies*, 72 CAL. L. REV. 629 (1984); Bernard D. Meltzer & Cass R. Sunstein, *Public Employee Strikes, Executive Discretion, and the Air Traffic Controllers*, 50 U. CHI. L. REV. 731 (1983).

Of related interest is whether public employee unions can be held liable for damages that occur during a work stoppage. See generally Gail Appleson, *Is Striking Union Liable for Fire Deaths*, 91 HARV. L. REV. 1309 (1978); Note, *Damages Liability of Public Employee Unions for Illegal Strikes*, 23 B.C. L. REV. 1087 (1982); Note, *Private Damage Actions Against Public-sector Unions for Illegal Strikes*, 91 HARV. L. REV. 1309 (1978); Note, *Statutory and Common Law Considerations in Defining the Tort Liability for Damages Inflicted by Illegal Strikes*, 80 MICH. L. REV. 1271 (1982).

46. For a critique of interest arbitration (one form of dispute resolution), see Summers, *supra* note 4, at 279-81. For other articles focused on interest arbitration see Arvid Anderson et al, *Impasse Resolution in Public-sector Collective Bargaining*, 51 ST. JOHN'S L. REV. 453 (1977); Michael Fox, *Criteria for Public-sector Interest Arbitration in New York City*, 46 ALB. L. REV. 97 (1981); Joseph R. Grodin, *Political Aspects of Public-sector Interest Arbitration*, 1 INDUS. REL. L.J. 1 (1976); Joseph W. Little, *Arbitrating Public Employment Disputes*, 68 A.B.A. J. 1100 (1982); Comment, *Collective Bargaining for Public Employees and the Prevention of Strikes in the Public-sector*, 68 MICH. L. REV. 260 (1969).

47. See Summers, *supra* note 4, at 265; Clyde W. Summers, *Public-sector Bargaining*, 44 U. CIN. L. REV. 669 (1975).

employee situations, given different motivating factors.

Finally, studying public sector labor law equips students with the tools necessary to interpret statutes, while giving them a greater appreciation for the diversity of state approaches to this issue. As noted earlier, this subject is primarily statute-based and each state's legislature has taken a different approach to public sector labor relations.

B. Other Related Fields

In addition to facilitating students' comprehension of legal concepts, the study of public sector labor relations also provides an opportunity to understand topics relevant to the law such as negotiations and policy implementation.

Examining public sector labor relations provides the perfect opportunity to teach students fundamental negotiation principles.⁴⁸ Public sector labor negotiations are some of the most complex negotiations in the employment context, and illustrate the multitude of concerns that should be considered when negotiating.

First, as noted earlier, because the outcome of these negotiations directly affects the public, the public pays a great deal of attention to public sector negotiations. Consequently, such negotiations are often covered by the electronic and print media. As a result, the parties must be more careful about articulating their positions since they will find themselves at times in the white-hot glow of the television cameras instead of completely behind closed doors. The parties, thus, must be reasonably adept at relating to the media since public opinion can give one side more bargaining power than the other.

Second, public sector labor negotiations often involve large numbers of employees and large budget allocations. Thus, a great deal is at stake for both the city (or state) and the union. Third, because cities have so many bargaining units, city negotiators must always keep in mind that each unit will compare what they are being offered with prior contracts between the city and other units.

The negotiations aspect of public sector labor relations provides an excellent opportunity to use the case method system, where classes focus on individual real world cases. These negotiations often have fascinating behind-the-scenes issues and are generally fairly easy to understand. Because the negotiations take place on such a large scale, they present virtually every issue that would occur in a private sector negotiation. Furthermore, they give students a taste of what it is like to actually be a

48. For an examination into bargaining strategy, see Donald H. Wollett, *Strategies for Negotiations in an Austere Environment*, 27 LAB. L.J. 504 (1976).

lawyer, by forcing them to first understand legal concepts and then consider the implications of applying them to a very real and important situation. This approach would serve the dual function of allowing professors to train students to think like attorneys, while simultaneously providing opportunities for students to learn the practical application of legal concepts.

In addition to learning about negotiations, students can also learn about policy implementation from a course in public sector labor relations. Not only do collective bargaining agreements in the public sector set wages and benefits, they also set certain work rules. Implementation of any new city policy requires compliance with the collective bargaining agreements. Often, those unfamiliar with labor law find their projects held up by labor considerations they never contemplated.

V. CONCLUSION

I have no doubt that many law professors who read this article will criticize it on the ground that there is simply not enough time to devote to an economic and political analysis of this topic. I am not unsympathetic to these complaints. However, an understanding of public sector labor relations requires at least a basic understanding of political, economic, and legal issues. The subject is crying out for research melding all of these aspects into a single, coherent body of literature. If lawyers and city officials can *do* it, then I am quite confident that law professors can teach it. This subject is far too critical to the lives of the public for it not to receive the attention it deserves.