

Public Employees and Collective Bargaining: A Literature Review **Michael Wasser, American Rights at Work**

While the literature on collective bargaining is ripe with information on the private sector, less is known about public sector collective bargaining. Whereas most private sector collective bargaining occurs under the auspices of the National Labor Relations Act, public sector collective bargaining is subject to varying federal and state laws. What follows is a review of the literature on collective bargaining at the local and state level.

Similar Budgetary Issues for States With and Without Collective Bargaining Laws

A Policy Matters Ohio review of data from the Center for Budget and Policy Priorities indicates that budgetary shortfalls are not limited to states permitting public sector collective bargaining.

- The nine states banning collective bargaining by all state and local public employees face an average budget deficit of 16.5% in the current fiscal year. This compares to an average budget deficit of 16.2% for the 15 states (and District of Columbia) allowing collective bargaining for all public employees.
- When expanded to the 42 states (and District of Columbia) allowing some or all collective bargaining by public employees, the average budget deficit for 2011 is 16.6%.
- For the 31 states (and District of Columbia) that allow only state workers to collectively bargain, the average 2011 budget deficit is 17.6%, minimally higher than the average budget deficit of 15.1% for those banning collective bargaining rights for state employees.¹

Public Employees' Wages Lower Than Wages of Counterparts in Private Sector

Despite rhetoric to the contrary, studies indicate that, on average, public employee compensation is less than private sector compensation.

- A Center for Economic Policy Research study noted that the compensation differences amount to a “wage penalty” for public sector workers.
 - State and local government workers make 4% less on average than similar private sector workers.
 - When looking at gender, women in the public sector make 2% less and men make 6% less than private sector equivalents.

¹ Patton, Wendy. (2010). *Press briefing on unions, working families, public employees, and public budgets*. Columbus, OH: Policy Matters Ohio.

- When looking at type of work, a middle-wage earner makes approximately 4% less in the public sector and high-wage workers make about 11% less than private sector equivalents.²
- Jeffery Keefe of Rutgers University conducted another study to compare the hourly rate of public and private sector employees, controlling for education, experience, hours of work, organizational size, race, gender, ethnicity, and disability. It found that local and state government workers are undercompensated compared to their private sector brethren.
 - On average, public sector workers are paid 3.7% less than similarly situated, full-time private sector employees.
 - The comparison is closer for local public employees (1.8%) than state workers (7.6%).³
- Keefe's study also found other differences discussions about public sector compensation often fail to take into account.
 - State and local governments pay a higher percentage of employee compensation in the form of benefits (34.1%), as opposed to the private sector (26.1-33.1%). The forms of benefits vary between the two sectors:
 - Health insurance: 11.2% of public sector compensation; 6.3-8.3% of private sector compensation.
 - Retirement benefits: 8.1% of public sector compensation; 2.8-4.8% of private sector compensation.
 - Differing pay levels between the public and private sector are affected by education differences amongst the workforce: 54% of full-time state and public workers earned at least a four year college degree; only 35% of private sector workers have the same.⁴

Interest Arbitration an Effective Part of Public Sector Collective Bargaining

Twenty-five states and the District of Columbia have laws encouraging public sector employers and unions to voluntarily negotiate collective bargaining agreements, with the possibility of an arbitrated settlement as a fallback when they are unable to resolve disputes on their own.⁵ In most states, arbitration is compulsory for police or firefighters (where one side can initiate the process without the agreement of the other side, or where a third party can initiate the process), while it's voluntary for other types of public employees. There is general acceptance of the laws by employers, employees, and citizens. In response to problems that have arisen with these statutes, legislators have merely amended the laws rather than fully repealing them.

² Schmitt, J. (2010) *The wage penalty for state and local government employees*. Washington, DC: Center for Economic Policy Research.

³ Keefe, J. (2010, Sept. 15). *Debunking the myth of the overcompensated public employee* (Briefing Paper #276). Washington, DC: Economic Policy Institute.

⁴ Keefe, 2010

⁵ States with voluntary or compulsive arbitration include: AK, CT, DE, DC, HI, IL, IN, IA, ME, MA, MI, MN, MT, NE, NV, NH, NJ, NM, NY, OH, OK, OR, PA, RI, TX, VT.

Researchers have examined the impact of these public sector arbitration laws, many of which have been in place for over 30 years. There are some conclusions that can be drawn from these nearly 60 sources, including the following:

- **The passage of an arbitration law has little to no effect on wages or benefits.**⁶ For instance, a 2001 study of police officer salaries from 32 states and the District of Columbia found that there was no statistically significant evidence that the presence of an arbitration statute systematically affects wages.⁷
- **Wage increases and contract terms resulting from arbitration tend to be very similar to those won through voluntary negotiations.**⁸ Arbitrators are normally bound to base their decisions on factors outlined in the law, such as the comparability of wages with similar jobs in the region, as well as the public employer's ability to pay.
- It's more the threat of arbitration, not the actual use of the procedure, which encourages parties to voluntarily settle.
- Arbitration has significantly reduced the number of public sector strikes.⁹

⁶ Ashenfelter, Orley and Dean Hyslop. 2001. "Measuring the effect of arbitration on wage levels: The case of police officers," *Industrial and Labor Relations Review*, Vol. 54, No. 2, pp. 316-328; Bloom, David E. 1981. "Collective Bargaining, Compulsory Arbitration, and Salary Settlements in the Public Sector: The Case of New Jersey's Municipal Police Officers." *Journal of Labor Research*, Vol. 2 (Fall), pp. 369-84; Feuille, Peter, John Thomas Delaney, and Wallace Hendricks. 1985. "Police bargaining, arbitration, and fringe benefits," *Journal of Labor Research*, 6: 1-20; Feuille, Peter, John Thomas Delaney, and Wallace Hendricks. 1985. "The impact of interest arbitration and police contracts," *Industrial Relations*, 24: 161-181; Ichniowski, Casey, Richard B. Freeman, and Harrison Lauer. 1989. "Collective Bargaining Laws, Threat Effects, and the Determination of Police Compensation," *Journal of Labor Economics*, Vol. 7, No. 2, pp. 191-209; Katz, Harry C. and Thomas A. Kochan. 2004. An introduction to collective bargaining and industrial relations (3rd ed.) p. 347 (Boston, MA: McGraw Hill Irwin); Lipsky, David B. and Harry C. Katz. 2006. "Alternative Approaches to Interest Arbitration: Lessons from New York City," *Public Personnel Management*, Vol. 35, No. 4; Weitzman, J.S. 1980. "Attitudes of arbitrators towards final-offer arbitration in New Jersey," *Arbitration Journal*, 35, 33.

⁷ Ashenfelter, 2001.

⁸ Ashenfelter, Orley, James Dow, Daniel Gallagher, and Dean Hyslop. 1997. "Arbitrator and Negotiator Behavior under an Appellate System." Unpublished manuscript, August, cited in Ashenfelter, 2001; Benjamin, E. 1978. "Final-Offer Arbitration Awards in Michigan, 1973-77," unpublished manuscript, Institute of Labor Relations, The University of Michigan-Wayne State University, cited in Johnson, Brian R., Greg Warchol, and Kathleen Bailey. 1997. "Police-Compulsory Arbitration in Michigan: A Logistic Model Analysis of Environmental Factors," *Journal of Collective Negotiations*, Vol. 26(1) 27-41; Bloom, 1981; Delaney, John Thomas. 1983. "Strikes, Arbitration, and Teacher Salaries: A Behavioral Analysis," *Industrial and Labor Relations Review*, Vol. 36, No. 3, pp. 431-46; Doherty, Robert E. 1986. "Trends in Strikes and Interest Arbitration in the Public Sector," *Labor Law Journal*, August; Feuille, Peter, John Thomas Delaney, and Wallace Hendricks. 1985. "The impact of interest arbitration and police contracts," *Industrial Relations*, 24: 161-181; Feuille, Peter and John Thomas Delaney. 1986. "Collective bargaining, interest arbitration, and police salaries," *Industrial and Labor Relations Review*, 39:228-240; Kochan, Thomas A., Mironi Mordehai, Ronald G. Ehrenberg, et al. 1979. *Dispute Resolution under Fact Finding and Arbitration: An Empirical Evaluation*, New York: American Arbitration Association.

⁹ Friedman, 1984; Johnson, Brian R., Greg Warchol, and Kathleen Bailey. 1997. "Police-Compulsory Arbitration in Michigan: A Logistic Model Analysis of Environmental Factors," *Journal of Collective Negotiations*, Vol. 26(1) 27-41; Kruger, Daniel H. 1985. "Interest Arbitration Revisited," *Labor Law*

- Arbitrators tend to be conservative and shy away from imposing any innovations in an award.¹⁰ Innovations thus must be developed through mutual agreement by both sides. What’s clear from this body of research is that arbitration reduces labor strife, encourages productive collective bargaining, and levels the playing field for public employees—all with a minimal fiscal impact on the state and local governments. Robert Doherty, who examined the experience of arbitration across several states, concluded that the data “do not suggest that arbitration has done great mischief to the democratic process or put an undue strain on the public coffers.”¹¹

As 40 years of research demonstrates, the vast majority of contracts in these jurisdictions are settled voluntarily. Additionally, studies indicate that the number of voluntary settlements increase from the time the laws were enacted. The following are findings from state-level studies of public sector arbitration:

- **Iowa:** There was a very high rate of voluntary agreements during mediation; and specifically for teachers, there was a very low rate of arbitration use.¹²
- **Massachusetts:** The Joint Labor-Management Committee was effective in encouraging voluntary settlements until 1980, when it was stripped of its right to impose binding arbitration.¹³
- **Michigan:** In the six years between 1977-78 and 1982-83, an average of only 6.7% of negotiations resulted in an award.¹⁴
- **Nevada:** In 1971, the governor was granted the authority to impose a binding award. In 1973, unions relied more on voluntary settlements than during the previous year.¹⁵
- **New Jersey:** In 1996, NJ passed the Arbitration Reform Act. Voluntary settlements increased from 59% in 1996 to 80% in 1998.¹⁶

Journal, August; Lester, 1984; Loewenberg, Joseph. 1971. “Compulsory Binding Arbitration in State and Local Governments Within the United States,” in Proceedings of the International Symposium on Public Employment Labor Relations (New York: New York State Public Employment Relations Board), pp. 140-151, cited in Gilroy, Thomas and Anthony Sinicropi. 1972. “Impasse Resolution in Public Employment: A Current Assessment,” *Industrial and Labor Relations Review*, Vol. 25, Issue 4.

¹⁰ Ashenfelter, 1987; Friedman, 1984.

¹¹ Doherty, 1986.

¹² Lester, Richard A. 1984. *Labor Arbitration in State and Local Government: An Examination of Experience in Eight States and New York City* (Princeton: Industrial Relations Section, Princeton University).

¹³ Lester, 1984.

¹⁴ Lester, 1984.

¹⁵ Grodin, Joseph R. 1974. “Arbitration of Public Sector Labor Disputes: The Nevada Experiment,” *Industrial and Labor Relations Review*, 28, 1, 89-102.

- **New York:** Between 1995 and 2007, only 7% of firefighter and 9% of police negotiations required arbitration—significantly reduced from years after the 1974 law was passed.¹⁷
- **Wisconsin:** In the first eight years of the police and firefighter law, only 10% of all settlements were arbitration awards, and in the first six years of the teachers’ law, only 5% of all settlements were awards.¹⁸

Labor-Management Partnerships Working Throughout the Public Sector

- In 2005, American Rights at Work honored Douglas County School District of Castle Rock, **Colorado**, in its annual Labor Day List: Partnerships that Work, as a public agency working well with its employees’ unions to improve services and the workplace.
 - In a state that does not mandate public sector collective bargaining, the Douglas County School District chose to recognize the union of teachers and support staff, represented by the American Federation of Teachers (AFT), and school bus drivers, represented by the Amalgamated Transport Union. Both unions work in partnership with the school district, as representatives of the teachers, staff, and bus drivers hold seats in the school superintendent’s cabinet and participate in all areas of decision making.
 - The teachers and their union worked with the school district to improve student performance and increase teacher skill sets as part of one of the nation’s longest-running performance pay systems. With students in every grade level scoring higher than the state average and 64% of high school students holding a GPA of 3.0 or higher, the Douglas County School District and its teachers demonstrate that union representation is not a barrier to educational success.¹⁹
- In 2003, the Public Sector Labor-Management Committee and the John F. Kennedy School of Government at Harvard University also studied successful public sector labor-management partnerships through a case study analysis of four public services. Their findings include:
 - **Ohio:** The Toledo Public Schools and the Toledo Federation of Teachers, AFT Local 250, developed the Toledo Plan in 1981 as a way to train and develop teachers and improve student performance. In addition to

¹⁶ McGill, John R. 1997. “An analysis of the effects of the 1995 New Jersey law on compulsory interest arbitration in fire and police departments,” Unpublished report cited in Roberts, Gary E. and John R. McGill. 2000. “New Jersey Interest Arbitration Reform Act,” *Review of Public Personnel Administration*, Summer.

¹⁷ Thomas Kochan, David Lipsky, Mary Newhart, and Alan Benson. “The Long Haul Effects of Arbitration: The Case of New York State’s Taylor Law,” Draft manuscript, January, 2008.

¹⁸ Lester, 1984.

¹⁹ ---. (2005). *Labor day list: Labor-management partnerships that work*. Washington, DC: American Rights at Work.

- improving student test scores across a variety of subjects, the school district and teachers have had no disputes over teacher dismissal. The Toledo Program serves as a model for labor-management collaboration.
- **Pennsylvania:** The city of Philadelphia formed a partnership with employees represented by AFSCME, Fraternal Order of Police, and the International Association of Fire Fighters in 1996 to address budget challenges. The Redesigning Government Initiative includes both a city-level committee and individual department programs to address both strategic and day-to-day issues. The program requires labor and management to develop programs within a “Win-Win-Win” framework that seeks improvements for the city budget, workers, and citizens. An example of the program’s success is found in the police department’s forensic science laboratory: a department level labor-management committee streamlined processes to reduce costs and improve productivity, thus eliminating the backlog of cases in 2002.²⁰
 - U.S. Secretary of Labor Robert Reich’s 1996 Task Force on Excellence in State and Local Government through Labor-Management Cooperation found that for governments with labor-management partnerships, taxpayers benefitted from better service and more cost-effectiveness, while employees experienced a better quality of work life.
 - As part of the task force’s work, it commissioned a random sample survey of public sector workers, finding a strong interest in labor-management collaboration and a desire to provide input on services and workplace issues.
 - The task force highlighted several labor-management partnerships from around the country, including:
 - **Connecticut:** The state Department of Mental Retardation partnered with the New England Health Care Employees Union to reduce employee injuries by 40%, resulting in a \$5 million reduction in workers’ compensation claims.
 - **Illinois:** In 1993, Peoria city officials and union leaders agreed to settle issues related to healthcare costs outside of bargaining. From this special partnership came savings of \$1.2 million in the next budget year without needing to go to arbitration.
 - **Wisconsin:** Managers in Madison worked with city building inspectors represented by AFSCME Local 60 to improve customer service and improve safety through an updated inspection process.
 - **California:** The Los Angeles Bureau of Sanitation created a committee with the Service Employees International Union Local 47 that reduced overtime by 54% through a program that improved truck availability.

²⁰ Beach, A. & Kaboolian, L. (2003). *Public service, public savings: Case studies in labor-management initiatives in four public services*. Cambridge, MA: Public Sector Labor Management Committee and the John F. Kennedy School of Government at Harvard University.

- **Arizona:** The Phoenix fire department worked with members of Firefighters Local 493 to create a problem-solving forum. From 1986 to 1996, the city and its firefighters did not need arbitration to resolve disputes.²¹

Collective Bargaining Reduces Turnover in the Public Sector

- In an analysis of 1997 voluntary turnover amongst state government workers, retention was higher and turnover lower when state workers belonged to unions and participated in collective bargaining.²²

Public Sector Collective Bargaining Considered an International Human Right

- International human rights standards, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; and the United Nation’s International Labor Organization’s (ILO) core labor standards recognize the right of public employees, outside high-level political appointees, to organize in unions and collectively bargain.
- In a case before the ILO’s Committee on Freedom of Association, the committee found that the restrictions placed on public sector workers’ ability to organize into unions and collectively bargain in the United States is inconsistent with basic international labor standards. It rejected the argument that non-political, career-level public employees are “engaged in the administration of the State” and therefore exempt from the standards.
 - With some states in the United States banning collective bargaining in the public sector, the United States actually ranks lower than several poorer, developing countries in terms of respecting these internationally-recognized rights.
- In their *Unfair Advantage* report, Human Rights Watch recommends that legislation be enacted to grant public employees the right to collectively bargain and strike, in accordance with international norms.²³

²¹ U.S. Secretary of Labor’s Task Force on Excellence in State and Local Government Through Labor-Management Cooperation, “Working Together for Public Service: Final Report” (1996). *Federal Publications*. Paper 252. http://digitalcommons.ilr.cornell.edu/key_workplace/252.

²² Selden, S.C. & Moynihan, D.P. (2000). A model of voluntary turnover in state government. *Review of Public Personnel Administration* 20, 63-74.

²³ Compa, L. (2000). *Unfair advantage: Workers’ freedom of association in the United States under international human rights standards*. Ithaca: ILR Press, p. 15, 187-189.