Public Sector Collective Bargaining and the Distortion of Democracy: Do Public Sector Unions Have “Too Much” Power?

United States

*251 A RECONSIDERATION AND EMPIRICAL EVALUATION OF WELLINGTON'S AND WINTER'S, THE UNIONS AND THE CITIES

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Until 1959, labor legislation in the United States largely excluded public employment from collective bargaining. One reason for this exclusion was the principle of sovereignty that a democratic government could not delegate matters of budget to managers in the executive branch or share public authority with private external parties. [FN1] Even after overcoming constitutional obstacles, there was still a widely shared belief that public employment was different and not the same as private employment. This premise was thoroughly explored by Wellington and Winter in The Unions and the Cities. [FN2] Their treatise critically investigated whether private sector collective bargaining policy should be extended to public employment. In particular, their greatest concern was whether public sector collective bargaining based on the private sector model may result in distortions of democracy that would shift governmental resources disproportionately toward public employee compensation and result in the over employment of economically and politically advantaged and powerful groups of public employees. This concern rested on their analysis that the demand for public sector workers was inelastic because public employers provided essential services that were vulnerable to strikes and other types of job actions. Yet while they recognized there were alternatives to strikes--arbitration, fact finding, mediation, or bargaining without some final resolution mechanism--these processes may prove illegitimate and ineffective and they also risked the overdependence on third parties in shaping the outcomes of bargaining. Another concern addressed by Wellington and Winter was the scope of bargaining. What subjects could be appropriately bargained by the public employer? The relatively broad scope of bargaining in the private sector, they feared, that if applied to the public sector, might distort and disrupt the democratic processes and procedures *252 established in local governments, thwarting democratically decided policy through a labor dispute with an organized minority.

While Wellington and Winter carefully analyzed their concerns, there was little if any empirical evidence available to them. [FN3] Instead, they largely relied on theoretical analyses, case studies, and legal decisions. In contrast, today we can rely on fifty years of evidence to evaluate the concerns they raised and the advice they provided. The research presented in this Article empirically investigates some of their conjectures about alternative legislative frameworks, procedures, and policies that the states adopted to address the public employee collective bargaining. This research will show that the most important decision made by each state was whether the public employer has a duty to bargain with a public employee labor organization and that any decisions about which dispute resolution procedure, if any, were of secondary importance to whether they accepted or rejected the duty to bargain.
Each state government that was confronted by the stirrings of public employee unionism in the 1960s, faced the same question: Should the legislature apply the private sector law to public employers and employees? Each state answered: No. However, some states imported most of the private sector law, for example, Illinois in 1983, whereas others completely rejected the framework and prohibited collective for all public employees, for example, North Carolina. The result was a pattern of political outcomes in which states with relatively high levels of private sector union density, traditions of enacting progressive reforms in other areas of public policy, and high and rising per capita incomes were especially likely to enact public sector bargaining legislation. [FN4]

Part I of this Article summarizes the concerns and recommendations of Wellington and Winter. Part II reviews the prior research that sought to evaluate the potential benefits and problems created by alternative legal frameworks for public sector collective bargaining. Part III introduces the unique data set that relies on five decades of Census cross sections from 1960 to 2010 that are merged with the NBER Public Sector Collective Bargaining Law Data Set that has been updated to evaluate public sector collective bargaining policies and procedures. Part IV presents the results of the data analysis, and Part V discusses the results of the analysis to reconsider The Unions and the Cities. Part VI reaches some conclusions *253 about the legal frameworks and policies for collective bargaining and their implications for the current U.S. debate about the future of public employee collective bargaining.

I. Wellington and Winter: Their Concerns and Remedies

Wellington and Winter in The Unions and the Cities helped to inform the policy debate and legislation about public sector collective bargaining, while at the same time, their insights and advice aided many courts in shaping the law through their influence on precedent setting cases. [FN5] Their analysis rested on the widely accepted assumption of the postwar period prior to 1978 that collective bargaining in the private sector was a valid public policy. They questioned, however, whether all four claims commonly made on behalf of private sector collective bargaining applied equally to the public sector. [FN6] Those claims included first, the accepted goal of collective bargaining as a way to achieve industrial peace, and second, that collective bargaining was a way of promoting industrial democracy, that is, participation by workers in their own governance. Third, unions have a role in politics to serve as an interest group that represents workers; since interests represented by an organized group is one of the most important types of political representation, that is because government at all levels acts in some part in response to demands made upon it by citizen interest groups; unions serve a useful role in representing their members' employment interests in the political process.

The need for industrial peace, industrial democracy, and effective political representation, according to Wellington and Winter, all pointed toward support for collective bargaining in public employment. [FN7] That is to say that three of the four arguments that support collective bargaining in the private sector support similar arrangements in the public sector. However, the fourth, and possibly the most important claim, rests on the analysis that unequal bargaining power between employers and employees, can be remedied by collective bargaining, replacing or supplementing individual bargaining. This claim, they suggested may be untrue in the public sector, particularly when collective bargaining and the right to strike are coupled with labor's interest group activity. This combination of economic and political power may shift the balance too far in favor of public employees and distort the allocation of resources in the democratic process. [FN8]

*254 With regards to the fourth claim, Wellington and Winter doubt that the governmental employer exercises monopsony power and even if government has monopsony power, its market outcomes will be attenuated by questions of fairness, as political criteria that may be more important than economic considerations. [FN9] Second, the unequal bargaining power argument probably does not apply to the public sector since government provides services without close
substitutes and the demand for them is relatively inelastic. Such market conditions are too favorable to unions since they permit the acquisition of benefits without the penalty of unemployment. They predict that a union will bargain hard for as large a share of the budget as it thinks it possibly can obtain, even forcing a tax increase if necessary. [FN10] This argument, however, does not serve as a refutation of employer monopsony power. The public employer could still face an upward sloping labor supply curve that it could readily exploit. This claim, instead, indicates that there may be issues in the balance of power between the government as employer and a labor organization. If this is an issue, the question of balance could be addressed by law and regulation, if not by the market for substitutes.

Wellington and Winter were doubtful that privatization or the threat of privatizing government services could significantly alter the favorable bargaining position of unions. [FN11] Nevertheless, the record of empirical research does indicate that there may have been substantial savings arising from privatization in the 1970s and 1980s, and the proportion of employees engaged in government employment peaked in 1975 at 19.2% and then declined to 15.7% by 1999. [FN12] Evaluations of privatization projects undertaken since 1990, however, emphasize that the evidence is mixed and a systematic relation between private provision of public services and cost savings cannot be demonstrated. [FN13] These recent studies of privatization of public services are less likely to find cost savings from privatization, possibly because the projects that were going to yield the most benefit were already privatized. In other words, the low-hanging fruit may have already been picked for privatization. On average, local governments have privatized between one-quarter and one-third of their public services. [FN14] *255 Both the privatization and the reverse privatization of services remain normal parts of government service decisions. [FN15]

Furthermore, Wellington and Winter were dubious about the public's ability to resist tax increases to fund overly generous collective bargaining agreements. Because government budgets are complex and the sources of revenue for a municipality are many--federal, state, local taxes, transfers, and fees, they incorrectly forecasted that the citizenry will prefer stable and uninterrupted services rather concern themselves with costs, tax increases, and budgetary discipline. Wellington and Winter asked:

Why be more concerned about strikes in public employment than in private? The answer to the question is simply that, because strikes in public employment disrupt important services, a large part of a mayor's political constituency will, in many cases, press for a quick end to the strike with little concern for the cost of settlement. This is particularly so where the cost of settlement is borne by a different and larger political constituency, the citizens of the state or nation . . . . [FN16]

They were clearly writing before California's Proposition 13 was enacted by referendum in 1978, capping property tax increases for counties and municipal governments in California.

Wellington and Winter concluded that a transplant of the private sector would institutionalize the power of public employee unions in a way that would leave competing groups in the political process at a permanent and substantial disadvantage. [FN17] Because collective bargaining in the private sector is believed to be a system of countervailing power that provides a means by which the power of employees is increased to offset that of employers, they argued, one could readily see that its establishment in the public sector may be an infringement on governmental power and the sovereignty of the state itself. Thus the question that preoccupied Wellington and Winter is the issue of whether the power of unions will prevail in their contests with public employers. [FN18]

Because full collective bargaining by public employees may distort the political process, Wellington and Winter recommended that there was a need for additional regulations and changes in the structure of bargaining, other than those imposed in the private sector, with one goal: to ensure that one particular interest group, the public employee union, does not gain a substantial competitive advantage over other interest groups in pressing its *256 claims on government.
However, there is no state interest sufficient to justify rules that would wholly prevent membership in a labor organization. Structurally, Wellington and Winter urged that police should be in nonaffiliated separate organizations to avoid any conflict of interest when enforcing the law and all public safety occupations should be prohibited from striking. They also advised that units should be large, stable, and with a community of interest in order to avoid fragmentation, competitive bargaining, and disruptions to public services. Excluding supervisors from units that include their supervised employees and separate units for professional employees were both advisable. To implement labor policy they further recommended the creation of a specialized state agencies empowered to enforce mandatory recognition procedures with a majority representation. A certified majority representative should become the exclusive representative, with dues check off and agency shop, to enhance union stability as a key element in the goal to promote industrial peace. Additionally, they expressed concern that the public employer may not be prepared for collective bargaining and that institutions designed to enable political checks and balances may weaken an employer's ability to bargain by fragmenting managerial authority, possibly requiring public employers to consider restructuring for the purposes of collective bargaining. More importantly, they advised that the scope of bargaining in the public sector must be regulated in a manner that will limit the role of unions in the political decision-making process.

Even with appropriate regulations and structures, the distortion of the political process can still be the major, long-run social cost of strikes in public employment that result from unions obtaining too much power, relative to other interest groups, in decisions affecting the level of taxes and the allocation of tax dollars, whereby union members are subsidized at the expense of other interest groups. Appropriate dispute resolution procedures, for example, binding or advisory arbitration, that offer public employees a fair alternative to the strike, may change their attitudes and the community's sense of the propriety of strikes. In some circumstances strikes can be permitted for nonessential services depending on local conditions, where a strike ban may not work.

This research investigates several pivotal issues raised by Wellington and Winter, beginning with whether collective bargaining has resulted in a substantial shift of power toward public employees as measured by the change in their annual earnings. It will examine alternative legal labor policy regimes from the legal duty to bargain, to meet and confer, to no state policy, and to state prohibition of collective bargaining. This study will also evaluate the alternative costs of different impasse and dispute resolution procedures including the right to strike, binding interest arbitration, advisory interest arbitration (fact finding), and mediation. Lastly, union security provisions in the law will be examined to investigate the impact of dues check off, open shop requirements, and agency shop provisions on workers earnings. Before undertaking this analysis, however, the prior research, mostly done three decades ago, will be reviewed.

II. Public Sector Collective Bargaining Law and Public Employee Compensation: A Review of the Research Literature

Earlier research demonstrated the importance of the enactment of collective bargaining laws in supporting the growth of public employee unions, the transformation of public employee associations into unions, and raising public employee earnings whether they were union members or not. Duty-to-bargain laws significantly increased the probability of unionization. The rate of bargaining union formation more than doubled if states enacted a duty-to-bargain law between 1977 and 1982. State-level data for 1959-1978 indicate that the rapid growth of teacher unionism during those years was primarily a result of the enactment of duty to bargain laws, and it was the single most important cause of the growth in the proportion of teachers covered by union contracts. The 1983 enactment of public employee labor law statutes in Ohio and Illinois brought substantial increases in bargaining coverage, even though public sector bargaining had been widespread in both states for years. Union density was one-third higher where employers had a legal duty to bargain with labor unions from 1983 to 2004.
A. Union Security Legal Provisions and Prohibitions

Public sector open shop laws reduced average employee departmental unionization by 4.0% for fire services, 10% for highways, 12% for sanitation, and 15% for police based on data from the 1980 U.S. Census of Population and Housing and the 1982 Census of Governments. [FN32] Farber reports union density is almost double where unions are allowed to negotiate agency shop union security provisions, using CPS data from 1983 to 2004. [FN33]

B. Strikes and Alternative Public Sector Dispute Resolution Procedures

Strikes were at the center of Wellington's and Winter's concerns about the public employee collective bargaining. Prior research finds that strikes were highest in jurisdictions with no-duty-to-bargain legislation. [FN34] A switch from no duty-to-bargain legislation to duty-to-bargain legislation reduced police strikes. [FN35] Currie and McConnell report that compared to no legislation implementing legislation that provides for the duty to bargain reduced strikes by 11%, fact finding by 14%, binding arbitration by 21%, and the right-to-strike by 7% based on estimates using their sample of 1,005 contracts during the period of 1971 to 1986. [FN36] They conclude that “no legislation” was the worst form of public sector collective bargaining legislation since it resulted in the highest rate of strikes, all of which were illegal.

Access to interest arbitration provides the most effective deterrence of strikes. [FN37] Strike penalties, when enforced, deterred strikes, however, poorly enforced prohibitions against public sector strikes (Ohio) had no effect, and the legalization of public sector strikes (Pennsylvania) increased strike frequency. [FN38]

C. Wages and Alternative Legal and Dispute Resolution Frameworks

Using data on 800 police departments from 1965 and 1978, Ichniowski, Freeman, and Lauer in their cross section analysis report relative to “no law,” the effect of “arbitration” raised compensation levels by 21% for those covered by a contract and 20% for those not covered by an agreement, and the “duty to bargain” raised compensation levels by 16% for those covered by a contract and 12% for others without a contract. [FN39] In their research, the differences between being covered by a contract or not were statistically insignificant, implying large spillover effects to all employees covered by the law. In their smaller longitudinal data set (163 departments) the results indicate that a switch from “no law,” to “arbitration” was associated with higher compensation levels of 16%, while they also found that a switch “duty to bargain” raised compensation levels by 13%; compared to future research these effect sizes are large, probably reflecting the social and labor turbulence during the period of their sample.

A forty-three-state analysis cross section study of the impact of dispute resolution mechanisms on the wages and hours of public school teachers found evidence that the right to strike increased teacher wages by 11.5%; arbitration availability was associated with a wage effect of 3.6%; and fact finding had no significant influence on earnings. A direct comparison of the right to strike and the right to arbitrate indicated that a legal right to strike affords teachers greater power to increase their earnings. [FN40]

Among those units with a legal duty to bargain between 1978 and 1980, Freeman and Valetta find a 2.3% wage effect from arbitration and a 1.4% effect from strikes in their cross section results, and no significant effect from arbitration and 3.2% wage effect from strikes in their longitudinal results (1972-1980). [FN41]

D. Studies on Binding Interest Arbitration and Pay
No state provides police or firefighters with the right to strike; however only two states, Virginia and North Carolina completely prohibit sworn public safety officers from collectively bargaining; four states allow local bargaining but the agreements are not legally enforceable, eleven states permit local bargaining for both police and firefighters with enforceable agreements, and four other states extend the right only to firefighters. [FN42] Thirty other states provide a duty to bargain for police and firefighters' employers and employee organizations. [FN43] The impasse procedures for police and firefighters bargaining most often end with either binding interest arbitration or fact finding (advisory arbitration with possible employer imposition of a settlement). While there is a strong bias against interest arbitration in the United States, largely influenced by the Hicksian neoclassical analysis of strikes that not only prefers that the parties resolve their own the disputes, a widely shared goal, but also models that assume they parties will make an efficient cost-benefit analysis to avoid negative-sum strikes and reach informed resolutions. [FN44] In a Hicksian world, strikes arise from imperfect or asymmetric information, but for the most part, this information problem can be resolved through negotiation, information requests, and mediation. [FN45] This analysis, however, has not been extended to the public sector, where only 20% of public employees have the right to strike, while one-third is covered by advisory arbitration. The right-to-strike has been vigorously debated in response to Wellington's and Winter's analysis of unbalanced power in the public sector. [FN46] Additionally, the public availability of information on the governmental employer's financial position should make imperfect or asymmetric information less of a problem in public sector bargaining.

No one concerned about public safety, however, has recommended a right to strike policy be applied to police or firefighters. In fact, it is broadly agreed that as a matter of policy it is more important to prevent strikes and job actions by public safety employees. As a result, binding interest arbitration is most commonly used as a procedure for final dispute resolution in police and firefighters negotiations. [FN47] Some states have extended interest arbitration to other employee groups, as well. Most research on interest arbitration, however, focuses on police and firefighters.

Compensation outcomes are often the most controversial issue in public employee interest arbitration. [FN48] Elected officials and union leaders are often quick to denounce decisions arising from interest arbitration as either too generous or too miserly, while the research findings are much more encouraging. An early longitudinal study of interest arbitration study found small positive wage effects in the range of one to 2% in maximum pay rates for urban police officers in the 1970s. [FN49] These findings are consistent with other results, for example, Ashenfelter and Hyslop who used two complementary data sources, a panel data set for the years 1961-1992 on state-level wages of police officers, and individual-level data on police officers from the 1970, 1980, and 1990 Decennial Censuses. [FN50] They excluded southern states from their comparisons, since southern states never introduced binding arbitration statutes. Approximately half of the states in their sample introduced binding arbitration and the remainder either required or permitted collective bargaining. Initial estimates indicated that arbitration coverage was associated with 8% higher wages, but probably not attributable to interest arbitration. The results of what they deemed to be the appropriate specifications showed no statistically significant effect of arbitration on the level of police wages. This study concluded there is no strong evidence that arbitration tends to raise wage levels. [FN51]

A recent nation-wide study examined the effects of arbitration on police and firefighter wages using Census data from 1990 and 2000 and found wages of police and firefighters covered by arbitration statutes were not significantly different from wage levels, wage increases, and wage growth for police and firefighters in states in which collective bargaining does not include arbitration (but typically includes mediation and fact-finding). [FN52] However, the cross sectional analysis indicate wages were 20 to 26% higher for police officers covered by a duty to bargain law than police officers not covered by an enabling collective bargaining law, but these high earnings may not be attributable to collective bargaining. Median wages were approximately 28% higher in 1960 in states that subsequently enacted the duty to bargain compared to states that continued to have no collective bargaining statutes for police officers. In other words, high wage states enacted interest arbitration laws for police, and these states remain high wage states. This study concludes
that arbitration is an effective tool for avoiding strikes, and it may be more cost effective a dispute resolution procedure than mediation and fact finding while offering a higher degree of finality.

*262 III. The Data

This study utilizes census data collected from 1960 to 2010 to enable a longitudinal analysis of the effect of public sector labor law changes on the earnings of five employee groups across fifty states over fifty years. The micro-data sample is constructed of five Decennial U.S. Census cross section surveys for 1960, 1970, 1980, 1990, and 2000 and U.S. Census, American Community Survey for 2010. [FN53] The individual weighted sample is restricted to full-time employees who worked a full-year in the year prior to the sample for a state or local government entity. The 1960 Census does not identify whether an employee works for federal, state, or local government, therefore the 1960 data utilizes only observations from the three identifiable occupations.

The main source of information on the public employee labor laws is The NBER Public Sector Collective Bargaining Law Data Set developed by Freeman and Valletta. [FN54] This data set contains information on state-level public sector collective bargaining laws from 1955-1984 for five state and local government employee groups in the fifty states. The five employee groups are state government employees, local police officers, local firefighters, local public school teachers, and other local government employees. Kim Rueben extended the variables concerned with collective bargaining rights and union security laws, through 1996, and I further extended the data for 2000 and 2010.

As the data means in Table 1 indicate there was a rapid growth in public sector collective bargaining from 1960 through the 1980s from 1% of public employees covered by the right to collective bargaining in 1960 to more than one-third in 1970 to more than one-half in 1980 and leveling off to two thirds in 1990. At the same time, other states enacted laws to prohibit public employee collective bargaining for some or all employee groups. In 1960, one in ten public employees was covered by legislation that prohibited collective bargaining, and in 2010 one in five public employees was denied collective bargaining rights. Most public employees (89%) are covered by a public employee labor law, those who are not most often can be covered by a municipal or county law, if one is enacted, for example, in Memphis and Birmingham that can enable collective bargaining. A small number of states employing 6.5% of public employees have opted for meet and confer laws for some government employers and *263 employees that require the parties to meet and confer over terms and conditions of employment and some permit collective bargaining if both parties are willing to reach an enforceable binding agreement.

There is considerable occupational variation in state public labor laws and occupational or group unionization. For example, professional firefighters have noncontroversially not only gained the greatest access to collective bargaining rights that has permitted a high membership rate of 77%. [FN55] Firefighters are prohibited from bargaining in only two states, while only four states allow bargaining as a local option but do not allow agreements to be legally enforceable. Another fourteen states permit firefighter collective bargaining as a local option with enforceable agreements, and the thirty other states provide a duty to bargain, potentially enabling firefighter collective bargaining in forty-four states. In midst of the recent public employee labor law controversies firefighter collective bargaining has remained stable, although concession bargaining has been widespread. In contrast, teacher collective bargaining laws since 2010 have been a target of substantial reform or elimination in states such as Idaho, Tennessee, Wisconsin, Michigan, Illinois, and Ohio. In 2010, thirty-five states had laws that required teacher collective bargaining, while five states prohibited teacher collective bargaining, the other states provided various local options, permitting a teacher union membership rate of 70%. [FN56] Dissatisfaction over educational outcomes and achievement, coupled with new opportunities to launch potentially profitable education businesses, a financial and economic crisis, and public disdain of perceived superior conditions of
employment for teachers has led some politicians to embark on recent initiatives to restructure the legal employment frameworks for teachers. Nonetheless, this type of political ebb and flow provides some of the variation across occupations, states, and time that this research utilizes to investigate the impact of public sector labor law frameworks.

*264 Table 1. Census and NBER Matched Data Means by Decade [FN57]

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</tbody>
</table>
Asian 0.8% 1.0% 1.6% 2.2% 2.5% 3.4%
Hispanic 2.3% 2.6% 4.4% 5.9% 7.6% 9.1%
Disabled 2.9% 3.9% 3.4%
State Government EE 31.2% 32.8% 34.0% 33.5% 30.6%
Teacher 10.6% 20.7% 19.6% 20.1% 19.7% 24.5%
Police Officer 3.2% 5.0% 5.2% 5.5% 6.5% 5.5%
Firefighter 1.8% 2.4% 2.2% 2.1% 2.1% 1.9%
Other Local Government Employee 40.7% 40.3% 38.3% 38.2% 37.5%
State Private Sector Unionization 29.7% 27.7% 23.1% 16.3% 13.5% 11.8%
Observations 72,278 128,967 422,135 484,578 582,663 144,125

Over time, dispute resolution procedures have undergone a somewhat surprising evolution given the widely shared concerns about the right to strike in the public sector. When Wellington and Winter, were drafting their analysis in 1970, the right-to-strike in the public sector was negligible, *265* covering one-tenth of 1% of public employees. By 1980, the right-to-strike had extended to cover 9% of public employees and by 1990, 21% of public employees were in jobs covered by the right-to-strike. The growth of the right-to-strike suggests that it may not have had the catastrophic effects predicted by Wellington and Winter (1971), or it was extended, as they suggested, to nonessential services where the public could accept disruption, or possibly both are true, that nonpublic safety strikes are neither catastrophic nor shift power excessively to public employees. In contrast to the right-to-strike, interest arbitration, which has been shown to be a cost effective and widely accepted alternative to the right to strike, has grown slowly and not broadly, covering only 7.7% of public employees in 1980 and never covering more than 9.7% of public employees.

Fact finding, the practice of advisory arbitration, remains the most widely enacted final dispute resolution procedure with one-third of public employees covered by laws that provide fact finding. With fact finding the public employer retains the right to implement its final offer, even if after that offer is revised or rejected by the fact finder. Somewhat surprisingly, mediation, which is widely available to facilitate settlements (49.6%) in most formal dispute resolution pro-
cesses, is the final dispute resolution process that covers 7.9% of public employees. Mediation services are increasingly rare in meet and confer processes, as the public employer retains the strong unfettered right to implement changes after meeting and conferring with the employees' representative. One could reasonably expect that dispute resolution based on meet and confer laws, mediation as the final step in dispute resolution, or fact finding serve to weaken union collective bargaining power, whether unions can offset their collective bargaining power deficit through their legally institutionalized political collective action is an empirical question.

Money is the lifeblood of most social institutions in U.S. society, labor organizations as well. Unions need a steady flow of revenue to support staff and to provide representation services. Given the highly enmeshed legal environment of public employee labor organizations, they tend to be highly dependent on expert legal services. Dues check off has enabled most unions to devote their resources away from basic revenue collection and, instead, rely on the employer's payroll services to deduct and transfer funds, of course, with each individual member's consent. Even in states such as North Carolina and Virginia, which prohibit collective bargaining, they have permitted dues check off (although in 2012 North Carolina repealed the check off rights for public employees). More than four out of five public employees (83.4%) work for a government employer that allows dues check off.

*266 Always controversial, the nature of public employee union security provisions was settled by the Supreme Court in Abood v. Detroit Board of Education, which provided that the agency-shop clause is valid, provided that the agency service charges were used to finance expenditures by the union for collective-bargaining, contract-administration, and grievance-adjustment purposes, and not for political or ideological purposes. [FN58] Approximately, 46% of public employees were covered by agency fee provisions in 2010, down from 55% in 1980; whereas 41% of public employees were covered by an open shop legal requirement in 2010, which was up from 24% in 1980. This shift toward open shop frameworks would suggest a diminishment of union collective bargaining power in public employment and possibly the result of the weakening union interest group political power, as well as population and employment growth in the South, Southwest, and Mountain states. [FN59]

From the mid-1950s to the 1960s, public sector pay rose relative to private sector pay, while beginning in the mid-1970s relative public sector pay fell. [FN60] The relatively high paid public sector workers of the early 1970s within the span of a decade lost their real compensation advantage over otherwise comparable private sector workers. The Census data confirm Freeman's analysis. At the same time, public employees educational levels steadily increased by an average of two years from a 12.2 years in 1960 to 14.3 years in 2010. More importantly, the relative number of college graduates increased from 22% in 1960 to 54% in 2010, making public employment one of the most highly educated sectors of the economy.

The public sector employee was on average five years older in 2010 compared to 1960 (40.6 to 45.9 years) and less likely to live in a city (58% to 41%). The average employee worked on average about one hour more per week in 2010 (42.6 hours) compared to 1970 (41.8 hours). Average weeks worked per year remained essentially unchanged over the five decades. The public sector employee was more likely to be female in 2010 (57%); however, an employee was much more likely to be male in 1960 (74%). The public employee workforce has become increasingly racially and ethnically diverse between 1960 to 2010, for blacks the growth was modest from 9% to 12%, for Asians from less than 1% to 3.4%, and for Hispanics 2% to 9% of the workforce.

The five employee groups in this analysis are state government employees, local police officers, local firefighters, local public school teachers, and other local government employees. Teachers are the single largest occupational group, accounting for one in four state and local public employees in 2010. Police and firefighters account for a stable portion of public employment at 5.5% for police and 1.9% for firefighters in 2010. State government employment also has re-
mained stable with 30.6% of public employment in 2010. Other local government employment has declined as a percentage of employment from 1970 to 2010 falling from 40.7% to 37.5%. The 1960 Census did not identify state and local government employment, which prevents the reporting of that data for that year.

In summary, this data permit an analysis of the impact of the rapid growth of laws that enable public sector collective bargaining that covered 1% of the workforce in 1960 growing to 63% in 2010 on employee earnings. During this same period this research can assess the growth of laws and coverage prohibiting collective bargaining from 10% in 1960 to 20% of the public workforce in 2010. Given the concerns of Wellington and Winter about strikes in the public sector this data enable an evaluation the growth of the right to strike from negligible in 1970 to more prevalent in 2010, covering 20% of the public employee workforce. In comparison with the right to strike, other dispute resolution procedures including interest arbitration and fact finding, will be evaluated to determine their relative impact on public employee earnings. The analysis will also assess the effects of laws permitting dues check off and the legislation enabling or prohibiting agency shop provisions on public employee earnings.

IV. The Analysis and Results

The models presented in this analysis examine the effect of various aspects of the public labor law on public employee labor law. The sample is restricted to full time state and local public employees (who work more than 34 hours per usual work week), who worked at least 39 weeks in the prior work year, and who had annual earnings above $10,000 in 2010 constant dollars.

The CPI was used to deflate annual earnings. The coefficients reported in Table 2 provide the results from various specifications of a standard wage equation, with the natural log of annual earnings as the dependent variable. The basic model used in each specification includes variables for each of the 1,631,366 public employees in the sample, for each person’s education level, age, weekly hours of work, annual weeks of work, whether the individual is female (male omitted), whether the person is black, Asian, or Hispanic (white non-Hispanic omitted), whether the respondent lives in a central city or in a city but not the central city (omitted noncity residents), whether the employee is disabled (nondisabled omitted), and whether the individual works as a state employee, teacher, police officer, or firefighter (local government employee omitted). Columns 1 to 4 report the results of pooled cross sections with various controls for state and time trend. Columns 5 and 6 report state fixed effect models with a time trend (6) and without (5).

In Table 2 Panel A the results are reported in relation to states that did not enact a collective bargaining law for one of the five groups over the fifty year period. Legal enactment was associated with higher earnings regardless of what the law required whether it provided for the duty to bargain, prohibited collective bargaining or enabled the parties to meet and confer. The duty to bargain is associated with the highest earnings, but as controls are added the effect size is reduced and becomes negligible in the state fixed effects model with a time trend. Columns 1 and 2 report the results of cross sections most often found in the research literature, which tend to confound the effects of the labor law with pre-existing higher than average wages, since high wage states were the most likely to enact public sector labor laws enabling collective bargaining. Columns 4 and 5 probably provide the best estimates of the effects of the duty to bargain with wages 5% to 7% higher for workers covered by this legal framework. The effect sizes the prohibition of collective are somewhat surprising. They are sizeable and significant in the range of 4% to 6% higher, when compared to workers covered by no state law and may reflect growing employment in those states. Meet and confer laws are positive and significant in the range of 2% higher wages for employees covered by this process. When the duty-to-bargain is examined in relation to all other laws (Table 2 Panel B) the effect size increases slightly from 6% to 8% higher wages; however, when the fixed effect time trend is added to the model the effect size, again, is barely above zero.
Table 2: The Effect of Different Labor Legal Frameworks on Public Employee Earnings (Dependent Variable the log of annual earnings) [FN61]

<table>
<thead>
<tr>
<th>Panel A</th>
<th>Pooled Cross Sections 1960-2010</th>
<th>Fixed Effects</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td>Collective Bargaining Prohibited</td>
<td>4.00%</td>
<td>1.56%</td>
</tr>
<tr>
<td>Meet and Confer</td>
<td>5.13%</td>
<td>3.65%</td>
</tr>
<tr>
<td>Duty to Bargain</td>
<td>18.22%</td>
<td>16.70%</td>
</tr>
<tr>
<td>Omitted - No Policy</td>
<td>-</td>
<td>-</td>
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<tr>
<td>State</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Time</td>
<td>0</td>
<td>X</td>
</tr>
<tr>
<td>Census Obs</td>
<td>1,631,366</td>
<td>2,633,501</td>
</tr>
</tbody>
</table>

Statistically insignificant at .05

<table>
<thead>
<tr>
<th>Panel B</th>
<th>Pooled Cross Sections 1960-2010</th>
<th>Fixed Effects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty to Bargain</td>
<td>15.80%</td>
<td>14.84%</td>
</tr>
<tr>
<td>State</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Time</td>
<td>0</td>
<td>X</td>
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</table>
The results reported in Table 3 examine the impact of alternative dispute resolution procedures on employee earnings. Panel A provides estimates for the entire sample of public employees. In comparison to mediation as the final process, the effect sizes are modest. Focusing on columns 4 and 5, which provide results that control for state and time trend and for state fixed effects, fact finding’s impact on wages ranges from 1% to -3%, interest arbitration ranges from 3% to 4% and the right-to-strike is associated with 5% higher earnings. Panel B reports estimates for the alternative dispute resolution procedures, among the employees who are covered by duty-to-bargain legislation. For those employees, fact-finding is associated with a -2% to -5% employee wage penalty, arbitration has no wage effect, and the right-to-strike is associated with higher earnings in the range of 2% to 5%.

*270 Table 3: The Effects of Final Dispute Resolution on Public Employee Earnings [FN62]

Panel A: All Public Employees

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<th>(4)</th>
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<tr>
<td>Pooled Cross Sections 1960-2010</td>
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<tr>
<td>Fact finding</td>
<td>5.24%</td>
<td>5.27%</td>
<td>-1.77%</td>
<td>-1.43%</td>
<td>-2.66%</td>
<td>-2.28%</td>
</tr>
<tr>
<td>Arbitration</td>
<td>-0.45%</td>
<td>-0.52%</td>
<td>3.38%</td>
<td>2.54%</td>
<td>4.00%</td>
<td>3.04%</td>
</tr>
<tr>
<td>Right to Strike</td>
<td>9.20%</td>
<td>7.89%</td>
<td>8.57%</td>
<td>5.38%</td>
<td>5.16%</td>
<td>0.94%</td>
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</tbody>
</table>

Omitted Mediation Final Process

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<tbody>
<tr>
<td>State</td>
<td>0</td>
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<tr>
<td>Time</td>
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<tr>
<td>Obs</td>
<td>1,633,501</td>
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</tbody>
</table>

Panel B: Public Employees Covered by a Law with a Duty to Bargain

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<table>
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<tr>
<td>Pooled Cross Sections 1960-2010</td>
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<tr>
<td>Obs</td>
<td>1,633,501</td>
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<tr>
<td>Procedure</td>
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</tr>
<tr>
<td>Fact finding</td>
<td>-5.11%</td>
</tr>
<tr>
<td>Arbitration</td>
<td>-6.56%</td>
</tr>
<tr>
<td>Right to Strike</td>
<td>0.78%</td>
</tr>
</tbody>
</table>

**Omitted Mediation Final Process**

Statistically insignificant at .05

State | 0 | 0 | X | X | X | X
Time | 0 | X | 0 | X | 0 | X

Observations: 1,016,555

Table 4: Alternative Mediation Dispute Resolution Procedures [FN63]
Table 4 reports estimates on the effects of the most widely used formal dispute resolution procedure, mediation, in three settings, as the initial formal step in dispute resolution, as an aid in the meet and confer process, and as the final step in dispute resolution. In the meet and confer process the estimates are small and inconsistent ranging -4% to 2% depending on specification. As a step in the dispute resolution process, where it is most commonly utilized, mediation is associated with wages that are 1% to 2% higher than settings that provide no dispute resolution. As a final step in resolving disputes mediation the estimates range from -1% to 2% depending on the specification. Regardless, of the legal setting mediation appears to have a small effect on wage outcomes. In the only estimates where the effect size is large, the initial formal step of the process, it is probably picking up the effect of the duty-to-bargain states higher wages before and after the enactment of collective bargaining legislation.

Table 5: The Effect of Check off, Open Shop, and Agency Shop Law on Employee Earnings [FN64]

Panel A. All Public Employees

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<tr>
<th></th>
<th>Column (1)</th>
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<th>Column (3)</th>
<th>Column (4)</th>
<th>Column (5)</th>
<th>Column (6)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Pooled Cross Sections 1960-2012</td>
<td>Fixed Effects</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Open Shop</td>
<td>-9.27%</td>
<td>-9.91%</td>
<td>-7.14%</td>
<td>-11.20%</td>
<td>4.43%</td>
<td>-4.86%</td>
</tr>
<tr>
<td>Check off</td>
<td>7.77%</td>
<td>6.04%</td>
<td>2.90%</td>
<td>-0.40%</td>
<td>3.19%</td>
<td>-0.05%</td>
</tr>
<tr>
<td>Agency</td>
<td>5.75%</td>
<td>6.17%</td>
<td>5.28%</td>
<td>6.57%</td>
<td>2.03%</td>
<td>4.95%</td>
</tr>
<tr>
<td>Omitted No Policy</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>0</td>
<td>0</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Time Trend</td>
<td>0</td>
<td>X</td>
<td>0</td>
<td>X</td>
<td>0</td>
<td>X</td>
</tr>
<tr>
<td>Obs</td>
<td>1,631,366</td>
<td></td>
<td></td>
<td></td>
<td>1,633,501</td>
<td></td>
</tr>
</tbody>
</table>

Panel B. Public Employees with State Dues Check off Policy
Table 5 Panel A reports estimates of alternative dues collection laws on for all public employee wages. Dues check off is widespread and has a small positive effect on wages ranging 0% to 3%. Open shop laws are associated with significantly lower public employee wages with estimates ranging from -5% to -11% with one exception the state fixed effect estimate of 4%. Agency shop provisions are associated with significant higher wages ranging from 2% to 7% for public employees. Table 5 Panel B examines the effect of agency shop laws on public employee earnings among those employees covered by dues check off legislation. Compared to the open shop laws, agency provisions are associated with higher earnings ranging from 5% to 12%; however, with one exception the state fixed effect indicates a small negative effect. In summary, dues check off appears to have a small effect on earnings, open shop laws have a significant negative impact on public employee wages, and agency shop provisions are associated with a significantly higher wages for public employees.

V. Discussion: The Analysis and a Reconsideration of The Unions and the Cities

No state government chose to transplant the private sector model of collective bargaining either before or after the publication of The Unions and the Cities. Possibly by using this hyperbolic concern, Wellington and Winter sharpened the debate about potential conflict between democratic processes and public employee collective bargaining. [FN65] While many policymakers probably heeded Wellington and Winter’s advice, many states did extend the right-to-strike to more than 20% of public employees, all of these employees are in nonpublic safety positions. The right-to-strike has not had catastrophic results. Employees covered by the right-to-strike earn about 2% to 5% more than those without it. Public safety employees are effectively covered by interest arbitration that has prevented strikes and has resulted in cost effective and widely accepted settlements by the participants. As with other studies of interest arbitration, this research finds no wage effect attributable to interest arbitration when compared to other dispute resolution procedures and only a small effect in the range of 3% to 4% higher when compared with all public employees. The results reported in this analysis indicate that fact finding, the most widely employed final dispute resolution procedure, tends to favor the public employer, resulting in significantly lower wages for public employees in the range of 2% to 5% less than other dispute resolution procedures.

In summary, it is difficult to conclude that the relatively small wage effect sizes have led to serious distortions in the democratic process. Collective bargaining has resulted in higher public employee wages in the range of 5% to 8%. There is some indication that collective bargaining has offset employer monopsony power in the public sector, thus not produ-
cing excessive or distorted public employee compensation. [FN66]

The research on public expenditures further confirms that there are few if any public shifts in expenditures attributable to collective bargaining. Using longitudinal models on data from 700 cities between 1977 and 1980, Valleta estimates provide little support for the claim that union bargaining and political activities resulted in a demand shift. [FN67] Zax on the other hand using data from 13,749 departments of city and county governments with unchanged union status between 1977 and 1982, reported municipal unions in units with a duty to bargain were associated with a 3.1% higher departmental employment and monthly payroll per employee that were 8.5% greater than nonunion workers. [FN68] However, Trejo found evidence that there was simultaneity bias that contaminated previous estimates of positive employment effects by municipal labor unions. [FN69] Using data on teachers' union certifications from Iowa, Indiana, and Minnesota, Lovenheim's research examined the effect of teachers' unions on school district resources finds no net impact on per student district expenditures. [FN70] Lindy uses the 1999 sunset and 2003 reauthorization of New Mexico's public employee collective bargaining to examine the impact of mandatory collective bargaining laws on public schools, estimates a fixed effect model and also finds mandatory bargaining has no significant impact on per-pupil expenditures. [FN71] Fransden reports that cross section results show that states with collective bargaining laws have much higher per-pupil salary and educational expenditure than those states without it (10% greater salary per pupil and 12.3% greater educational expenditure per pupil); however, the fixed effect models show results that are very close to zero for all specifications of log per-pupil salary and for log per-pupil expenditure and statistically insignificant for the most reliable estimates. [FN72] This finding follows the state pattern on wages, where in this case states with higher expenditures on education were also the states that adopted collective bargaining for public employees. Collective bargaining did not cause higher education expenditures, but it is associated with greater expenditures.

The research to date, however, has not examined the impact of the scope of bargaining on either employee earnings or union bargaining agenda impact on public issues normally reserved for democratic decision making. This is important area for future research investigation. The scope of bargaining varies greatly by state even where there is a duty to bargain. [FN73]

VI. Conclusion

Wellington's and Winter's greatest concern was that public sector collective bargaining based on the private sector model may result in distortions of democracy that would shift governmental resources disproportionately toward public employee compensation and result in the over employment of economically and politically advantaged and powerful groups of public employees. [FN74] This pessimistic concern was never realized. The full private sector model was never transplanted. The various state public labor laws that were enacted, resulted in relatively small pay increases for public employees where collective bargaining was permitted. In many circumstances, even where there is a duty to bargain, the public employer retained considerable power by adopting laws that provide for mediation and fact finding as the final step in dispute resolution. In addition, the public employer has also preserved the right to privatize public services and has demonstrated a willingness to privatize services often earning elected officials political support from the private interests that benefit directly from the privatization.

Wellington's and Winter's main apprehension rested on an incorrect economic analysis of the demand for public sector workers. They believed that demand was inelastic because public employers provided essential services that were vulnerable to strikes and other types of job actions. The introduction of interest arbitration, however, with strong strike prohibitions and penalties has been widely accepted by public safety employees, where demand for labor may be inelastic. Elsewhere, there are alternatives to the public provision of services and the public has tolerated inconveniences resulting
from labor disputes rather than support tax increases. The alternatives to strikes—arbitration, fact finding, mediation, or bargaining without some final resolution mechanism—have become increasingly legitimate and accepted as fair, consequently strikes have steadily lost public support. This evolution is consistent with Wellington's and Winter's more optimistic conjecture that the appropriate dispute resolution procedures, for example, binding or advisory arbitration, that offer public employees a fair alternative to the strike, might change their attitudes and the community’s sense of the propriety of strikes. [FN75] In addition by the *275 1980's several states accepted their advice that some circumstances strikes can be permitted for nonessential services depending on local conditions, where a strike ban may not work. [FN76]

While criticism of public sector labor law continues, nevertheless, in recent political disputes about public sector labor law, the public has consistently expressed support for the right of public employees to engage in collective bargaining. [FN77] Whether the public employer has a duty to bargain remains the threshold issue in public employee labor relations; a clear majority did (63%) possess that right in 2010; however, this number represents substantially less than a consensus on the value of public employer-employee collective bargaining.


[FN3]. Id.


[FN5]. See Wellington & Winter, supra note 2.

[FN6]. Id. at 179.

[FN7]. Id. at 8-9.

[FN8]. Id. at 25.

[FN9]. Id. at 13-14.

[FN10]. Id. at 18-19.

[FN11]. See id. at 63.


[FN16]. Wellington & Winter, supra note 2, at 25.

[FN17]. Id. at 31.


[FN19]. Wellington & Winter, supra note 2, at 49.

[FN20]. Id. at 75.

[FN21]. Id. at 113.

[FN22]. Id. at 96.

[FN23]. Id. at 119.

[FN24]. Id. at 149.

[FN25]. Id. at 171.

[FN26]. Id. at 179.

[FN27]. Id. at 201.


[FN33]. See Farber, supra note 31.


[FN37]. Craig Olson, Strikes, Strike Penalties, and Arbitration in Six States, 39 Indus. & Lab. Rel. Rev. 539 (1986); see Ichniowski, supra note 35.

[FN38]. Olson, supra note 37.


[FN42]. Wyoming, Idaho, Utah, and Missouri.


[FN44]. Sir John Richard Hicks, The Theory of Wages (1932).


[FN47]. See Farber, supra note 31.


[FN51]. Id.

[FN52]. See Benson et al., supra note 48.


[FN55]. Farber, supra note 31.

[FN56]. Id.

[FN57]. Public Use Microdata Sample of the U.S. Census for 1960, 1970, 1980, 1990, and 2000 and American Community Survey for 2010. The 1% individual weighted sample is restricted to full-time employees who worked a full-year in the year prior to the sample for a state or local government entity. Ruggles et al., supra note 53.


[FN59]. In contrast to the rising open shop employment, as recently as 2009 public labor laws were tilting toward unions. Between 2000 and 2009 a total of eight states enacted card-check legislation for public sector employees. Timothy Chandler & Rafael Gely, Before Wisconsin and Ohio: The Quiet Success of Credit-Check Organizing in the Public Sector (Working Paper no. 2011), while only Indiana retreated from collective bargaining. In 2005 in his first day in office, Indiana Governor Mitch Daniels signed an executive order ending collective bargaining with state public employee unions.


[FN62]. Id.

[FN63]. Id.

[FN64]. Id.

[FN65]. See Wellington & Winter, supra note 2.


[FN74]. See Wellington & Winter, supra note 2.

[FN75]. Id. at 179.

[FN76]. Id. at 201.


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