CHAPTER 10

Wearing Two Hats: The Unionization of Public Sector Supervisors

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Introduction

Of the many differences between public and private sector collective bargaining, one of those potentially most important, but often ignored, is the unionization of supervisors and other managers. Private sector supervisors and managers lack representation rights.' In contrast, public sector supervisors and other lower- to middle-level managers have the right to engage in collective bargaining in more than a dozen states, including many of the most highly populated. In these states, supervisors have exercised those rights in large numbers.

Curiously, supervisory collective bargaining has not entered the discussion regarding the restructuring of work and labor relations in the public sector—even though work restructuring has raised issues about representation rights in the private sector.' The report of the U.S. Secretary of Labor's Task Force on Excellence in State and Local Government (U.S. DOL 1996), for example, seems to assume that supervisors sit on the managerial side of collective bargaining. Its discussion of experimentation with self-managed teams, flattened managerial hierarchies, and mid-level manager obstruction of cooperative programs does not explore the implications of managerial representation (p. 77 of the report, for example). Nor does it identify the potential advantages of having supervision collectively represented in cooperative efforts—even though nonrepresentation of supervisors' interests in cooperative efforts has been identified as a problem for such programs in the private sector (Voos, Eaton, and Belman 1993).

This chapter takes a new look at public sector supervisory unionization. We approach the question of supervisory unionism with the assumption that employees deserve collective bargaining rights unless there are strong public policy reasons to withdraw them. We recognize that there are major issues in the structuring of those rights (such as whether it is

best for units or unions to differ between supervisors and their subordinates). Thus, the empirical focus of this chapter is whether or not collective bargaining by supervisors creates serious problems for the functioning of the labor relations system or, more broadly and importantly, affects how well governmental units perform their missions. Unlike prior re search on the impact of supervisory unions, which predates the current discussion of work structuring in the public sector, we explore, albeit somewhat superficially, whether supervisors' organizing hurts or helps cooperative restructuring efforts. Our research involved interviews with public sector managers and union representatives in New Jersey, one of the states that has given both first-level supervisors and moderately high-level managers collective bargaining rights.

Review of Prior Research

Research on the question of public sector supervisory unionism has tended to focus on the interrelated constructs of loyalty, identity, and organizational commitment. This reflects both the legislative and judicial justifications for the exclusion of supervisors in the private sector. The logic of exclusion is rooted in the supposed need of the employer for the undivided loyalty of supervisors or other managerial employees. Union membership is assumed to take away, or at best divide, that loyalty.

Most prior studies have focused on supervisors in local government. Hayford (1975) surveyed local government employees in Iowa, breaking them into four groups: rank-and-file employees, nonbonafide supervisors, bonafide supervisors, and upper-level agency managers. Bonafide supervisors identified more closely with upper-level management on the definition of the supervisor's role. Interestingly, nonbonafide supervisors reported the least identification with management. Wheeler and Kochan (1977) looked at differences in fire department officers' identification with management, based on both union status and bargaining structure. Officers were surveyed on their agreement with their chief or rank and file on six issues. Overall, officers tended to agree with the rank and file on pay and benefits and manning issues but with their chief on enforcement of rules and discipline. Union representation or nonrepresentation and whether the officer involved was in the same unit as the rank and file were unimportant.

Murrman (1978) examined the relationship between unionization and supervisor identification with management within another uniformed service, police. While there was no relationship for sergeants, unionized lieutenants had lower identification with management.' A

more recent study (Piskulich 1995) examined supervisory unionism in a medium-size city in Michigan. In this city all but two city employees, the city manager and the assistant city manager, were in one of two unions (one for supervisors and one for "executives"). The study looked at both labor relations processes (management's preparation for collective bargaining and contract administration) and broader managerial issues, like the budgeting process and "day-to-day working relationships." Piskulich found that the unionized managers "consider themselves management" and have an instrumental rather than ideological attachment to union membership. Piskulich concluded, "No threats [to effective management] associated with contract administration, fragmentation, and loyalty were reported or noted" (p. 280). The lack of problems was, in part, explained by particular practices that helped managers handle their dual roles. First, separate bargaining units were viewed as "reinforc[ing] the divide with the rank and file." Second, the bargaining process and preparation for it were divided into money and operational issues so that managers could give input into the bargaining on operational issues (work rules) wearing their managerial hats. Third, "weekly meetings of the manager's cabinet help[ed] bind department heads to team and organization."

Scott and Seers (1987) examined organizational commitment and agreement with management on specific bargaining issues among supervisors employed by the state of Alabama in two state residential facilities. Half of the sample in the study were union members. Union members were significantly more likely than nonmembers to differ with management on 11 of 13 bargaining issues. Bonafide and less than bonafide supervisors had similar views on bargaining issues, although supervisors with bonafide authority expressed significantly greater organizational commitment. Union membership had no impact. The authors concluded that "there is little basis for automatically denying bargaining rights to public sector supervisors." They also concluded "that the tendency in the public sector to bestow supervisory titles and status without comparable level of authority is...counterproductive" (p. 129).

In contrast to these studies of attitudes, Wheeler's studies of firefighters have attempted to focus on the "bottom line" by looking at the impact of union status and bargaining unit structure on individual and departmental performance. Wheeler and Kochan (1977) asked chiefs and officers whether unionization made the officers' jobs easier or harder. The majority of officers and chiefs reported that it made no difference on all or most job dimensions. The majority of chiefs also

reported, however, that unionization did make discipline and grievance handling more difficult. Moreover, unionization was possibly related to performance problems for line officers above the rank of captain, but the evidence on that was mixed.' Officer surveys demonstrated a strong desire for both union membership and single bargaining units for all.

Wheeler (1983) looked at the impact of officer unionization on fire department effectiveness. A 10-item index of fire department effectiveness was developed, including items that the author argued "reflect the public interest." These include work quality, efficiency, anticipating problems, and adaptability to change. Regression results indicated no significant relationship between union status and performance. However, there was a significant and negative bivariate correlation between effectiveness and bargaining units that included officers above the rank of captain together with the rank and file.

Overall, prior research has identified little negative impact from the unionization of supervisors. Problems seem more likely to arise with the highest-level supervisors, with issues most closely related to collective bargaining and discipline, and when supervisors, especially high-level supervisors, are in the same bargaining units as their subordinates. Piskulich's (1995) work indicates that even problems in labor relations processes are not inevitable and that management practices can ameliorate potential problems. At the same time, some of the research points to other sources of problems in public sector management, particularly the tendency to misidentify or mistitle jobs as supervisory when in fact they involve little to no real authority.

Law and Practice in New Jersey

The statute governing public sector labor relations in the state, the New Jersey Employer-Employee Relations Act (NJSA 34:13) was originally passed in 1968 and amended in 1974 (the law is also known as Chapter 303). Coverage was broad from the beginning and remains so. Employees are defined as any public employee "except elected officials, members of boards and commissions, managerial executives and confidential employees" (NJSA 34:13A-3(d)). The term managerial executive is defined in this way:

> "Managerial executives" of a public employer means persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent

> or other chief administrator, and the assistant superintendent of the district. (Chap. 123, Sect 2; NJSA 34:13A-3(e)

Public Employee Relations Commission (PERC) and New Jersey State Supreme Court decisions have further elucidated the meaning of this language.' Neither the court nor PERC has challenged the logic of the divided-loyalty exclusion; rather, they have contended that the public sector context alters the level of authority in which that division becomes a problem.

In addition to basic coverage, the law provides guidance regarding appropriate bargaining units. Supervisors, defined as those "having the power to hire, discharge, discipline, or to effectively recommend the same," were explicitly given the right to representation; however, their representation was limited by the requirement that it be by a different labor organization and that they be placed in separate units from their subordinates (NJSA 34:13; *Turnpike Authority v. AFSCME Council 73* 1997, p. 345). In an early decision *(Board of Education v. Wilton* 1971), the state Supreme Court found that different levels of supervisors must be placed into different bargaining units.

In practice this broad, inclusive statute has made for unionization and participation in negotiations for a wide range of public employees. Recent estimates for the public sector in New Jersey put the rate of coverage by a union or employee association at *64* percent for state workers and 71 percent for local public employees (AFL-CIO Public Employee Department 1997, using *1994–1996* CPS data). For some sectors or occupations (e.g., teachers and nonvolunteer fire departments), coverage approaches 100 percent.

In state government outside the prisons and state institutions, there are four major bargaining units, all represented by locals of the Communications Workers of America (CWA): Administrative and Clerical (approximately 8,500 persons), Professional (12,000), Primary Level Supervisor (12,000), and Higher Level Supervisor (2,400). The eight separate CWA locals to which these workers belong are organized, not by bargaining unit, but geographically or by department. In some state departments, like Community Affairs, Education, Environmental Protection, Labor, or Transportation, a single union represents the vast majority of workers in the agency, supervisory or not.' It is not clear that separate units, and separate contracts, matter much in practice—pattern bargaining is strong for all state workers and the four separate contracts contain only minute differences.

In state institutions and in the turnpike authority, different unions represent different levels of state workers. In the state institutions for the developmentally disabled and psychiatric patients, for instance, CWA-represented supervisors (primary and higher-level) oversee CWA members in professional, administrative, and clerical titles. But they also supervise American Federation of State, County, and Municipal Employees (AFSCME) members who constitute the large direct-care workforce.'

State government managers who are legally excluded from collective bargaining are not, in fact, unorganized. Prior to layoffs early in 2002, there were about 3,000 managers in state government who were not eligible for union representation, out of a total workforce of about 65,000 persons. About 800 of these 3,000 managers belonged to the Public Sector Managers Association (PSMA). This association was formed in 1991 when managerial pay compression began to surface as a major issue. Compression resulted from a decision in the mid-1980s to detach managerial pay changes from their traditional patterning after the negotiated union pay increases. Although PSMA has no bargaining rights, it does have dues checkoff and it represents managers' interests in the political process and before administrative decision-making bodies.

Practice is also diverse in local government. It appears to be more unusual there for supervisors and the workers they supervise to be in the same union; where they are in the same international, they are typically in separate locals.' Volunteer fire companies are common in the state, but in larger municipalities with public firefighters, there are typically separate units and locals for the rank and file and different levels of officers. In public schools, teachers are typically represented by the New Jersey Education Association, but school principals are in a different union, as are higher-level educators.

In this broad coverage of public sector supervisors above the first level, New Jersey resembles 10 other states.' Fifteen other states and the District of Columbia provide rights for first-level supervisors only or provide coverage for particular types of supervisors (e.g., police and fire alone).]' Coverage has major consequences for the extent of organization in a state. States with broad coverage feature high union density in both state (60 percent) and local (65 percent) government (see Table 1). This likely translates into union power and a strong union culture in the public sector. Our study explores more-specific impacts within New Jersey state government.

TABLE 1
Public Sector Union Density

Coverage	in Category Employees	Unionized Employees	Unionized
Representation rights for supervisors above first level	11	65	60
Mixed practices or rights for first-level supervisors only	16	50	37
Representation rights for some public sector workers, but not supervisors	8	47	32

Source: Union density estimates are from CPS 1994–96 data; they are contained in AFL-CIO, Public Employee Department (1997); for information on state laws, see Bureau of National Affairs, *Labor Relations Reporter: State Labor Laws,* various issues. Given well-known problems with the CPS union-membership question, these estimates are biased toward zero.

Research Methods

To explore the impact of supervisory unionism, we conducted interviews regarding what problems had been observed with the operation of this system, either on the managerial or union side. Those interviewed worked in two contexts in state government, the first being a Trenton-based department with a regulatory mission employing many professionals, technical experts, and clericals. The second context covered state institutions for the developmentally disabled, mental patients, and troubled juveniles. The first situation involved a local that represented all employees; the second involved two different unions, one representing supervisory and the other nonsupervisory employees.

The positions of the interview subjects are listed in the appendix. They include union representatives from the major unions representing state employees, outside of education and uniformed services: CWA and AFSCME. Some of the union representatives also had experience in, or responsibility for, local government. For the employer, we interviewed labor relations and human resource managers as well as several nonrepresented line managers, ranging from low-level section chiefs to high-level

assistant commissioners (some of whom were civil service workers and some essentially political appointees). Our questions focused on identifying actual or potential conflicts of interests or other problems that arise with the unionization of supervisors. We probed the managers about each of several specific types of conflicts. Because of the paucity of formal labor-management cooperation in the state in both the public and private sector (for the private sector, see Keefe, Eaton, and Begin 1989; Eaton and Keefe 1996), we were restricted for the most part to asking interview subjects about informal and occasional union-management cooperation efforts rather than large formal programs or full-scale restructuring initiatives. Managers had a great deal to say about such efforts but could only speculate about the possible functioning of greater cooperation initiatives in the context of organized supervisors.

Findings

Issues for Management

"Managerial" Decisions: Expenditures, Policy, and Mission. We asked public sector managers about possible conflicts of interest around both mundane "managerial" decisions like purchasing and core decisions about policy and mission." In general, questions about union influence on these matters tended to be greeted with incomprehension or humor for two reasons. One is because the authority of managers (represented or not) in state government is quite seriously circumscribed, and the other is because most public sector workers who are represented by unions are not particularly motivated by pro-union ideology on a day-to-day basis. [12]

Likewise, in the implementation of policy—such as the application of a particular piece of regulation—respondents were all sure that favoritism was a nonexistent issue. Instead, according to one manager, lower-level managers are sometimes pressured in the application of regulations by legislators. In such a case, union representation actually helps buffer these managers from pressure and protects them from political considerations in their decision making.

Work Stoppages. The clearest set of problems for management occurred around work stoppages and the provision of minimally necessary public services. Strikes are essentially illegal in the New Jersey public sector," but they nonetheless occur occasionally. When supervisors are represented, there are fewer nonunion personnel to deliver services during a work stoppage. Yet only a minority of the nonrepresented managers viewed a potential walkout that included supervisors as problematic. The

biggest concerns arose in the state institutions where operations are "24-7" and patient care cannot be discontinued. Trenton-based department managers were, in general, less concerned, although one manager who worked in state government during the last actual work stoppage (in 1979) viewed the resulting situation as an important downside to supervisory representation.

A majority of state managers said that occasional union job actions were not a big problem because they are rare, known about in advance, and typically very short. Furthermore, they said that nonsupervisory personnel (e.g., computer professionals) were often just as necessary for emergency operation as supervisors. Moreover, systems of accommodation under which unionized supervisors sometimes cross other employees' picket lines seem to have emerged in local government to minimize the problems of providing essential services during work stoppages."

Work stoppages are so rare that they should not be viewed as a reason to ban representation for supervisors. One possible way of further minimizing potential problems would be to extend interest arbitration to public sector employees who are deemed "essential." The state of Minnesota has done precisely that: only some supervisors are counted in the ranks of essential employees there. An alternative would be to extend binding interest arbitration to all public sector employees in New Jersey from its current limited use in the area of public safety.[15]

Discipline. It has been claimed that unionized supervisors are less likely to discipline subordinates, especially when those subordinates are in the same labor organization, and that this creates problems for management.

Virtually everyone we spoke to recognized that this was a potential issue, but opinion was split as to whether or not it was truly a problem. Most of the line managers we interviewed claimed to have seen no evidence that unionization of supervisors in fact made supervisors more reluctant to issue discipline. They pointed to the fact that discipline does take place. As one manager put it, "People can wear two hats": supervisors can simultaneously be conscientious managers (disciplining employees when necessary) and loyal union members.

A minority (3 managers out of 12) reported that there was too little discipline in state agencies and that supervisors were very reluctant to discipline employees. One believed this was primarily a civil service problem, rather than a union problem, and advocated the elimination of civil service protections for state employees so that discipline and discharge

could occur more easily. One thought that the state unions did encourage "systems of accommodation," under which routine poor performance and small problems were not dealt with until they became big problems. He believed that intervention often came too late, when the situation was quite serious. But even he acknowledged that this situation was probably as much a result of the culture of the agency as of unionization: supervisors and higher-level managers in this department came up through the ranks and remained close to their co-workers, socializing regularly and sometimes participating in the same community and interest organizations. In addition, many of these supervisors were technical experts and not professionally trained managers. Finally, under the civil service system, considerable work was required by a manager for success in the discipline process, and this made all managers, union or not, reluctant to initiate discipline. All this suggested to us that insofar as there are problems with discipline in state government, they probably are not due to supervisory unionization—only one supervisor even thought that unionization contributed to a lack of appropriate discipline.

All those we interviewed agreed that supervisors in the institutions who were represented by CWA were avid in their discipline of subordinate employees who were AFSCME members. But it was not evident that the institutions, with their much higher rates of discipline and grievances, had the "correct use" of discipline. Several interviewees regarded the institutions as having a highly hierarchical culture ("a plantation mentality") in which discipline and grievances were high because of the intense nature of the work and the close supervision that took place.

At this point we cannot say what amount of formal disciplinary activity is too low, too high, or just right for state employees. We found little evidence that represented supervisors systematically fail to initiate discipline when it is appropriate. However, if management believes that supervisors are unduly reluctant to discipline employees, it needs to take primary responsibility for developing procedures for supporting supervisors who undertake this burdensome task, whether or not the supervisor is union-represented, is part of the civil service, or is neither. Unions that represent supervisors might constructively be involved in such a management-led initiative.

Benefits from Managerial Representation. Some managers claimed that benefits to the employer from managerial representation included less turnover and better morale stemming from more-regularized and less-disruptive establishment of pay increases and greater perceived

equity and predictability in treatment of the workforce. This perspective was predicated on perceived problems with the nonunion alternative: salary compression has historically been a problem for state managers in New Jersey and unionization has helped remedy that. Furthermore, some claimed that being in the union made them better supervisors, with greater knowledge of the contract and the appropriate procedures for discipline. Related to this generally positive view of supervisory unionism, most, but not all, of the managers we talked to thought the line between represented supervisors and nonrepresented managers should be drawn higher, reducing the problems of pay compression that have arisen in the state for managers who are not now represented.'

More recently, with the downturn in New Jersey state revenues, there have been layoffs focused on nonrepresented managers, some of whom were political appointees and some of whom were professionals caught in a system in which they lacked union protection. Had these persons been union-represented and had they had sufficient seniority, they would have had "bumping rights" into lower-level jobs in the bargaining unit for positions for which they were qualified. Given this context, the advantages of union representation for supervisors in a system in which other employees are represented become obvious to all managers. From a societal perspective, such representation (and rights in times of layoffs) is attractive insofar as it helps retain highly skilled and highly capable employees in state government who have been promoted to supervisory ranks.

Issues for Labor Organizations

Supervisors and nonsupervisors are formally in different bargaining units in the state of New Jersey, but they often find themselves in the same local union, particularly in state government. What are the resulting issues for labor organizations, and what actions have they taken to minimize possible problems? The primary issues arise with regard to grievances when one union member disciplines another. Other issues around contract negotiations and work stoppages seem to be less problematic. Nonetheless, we found that New Jersey unions had figured out ways to handle the issues that arose to the satisfaction of a majority of their members.

Discipline and Grievances against Discipline. Most grievances involve a single member and, thus, only one union representative. Some cases, however, can entangle members at different levels in the organization. A

grievance against a supervisor–member, for instance, could result in discipline for the supervisor by higher-level management, if management believes that the grievance developed because of poor practices on the part of the supervisor.' In that situation, the union might be called on to represent the supervisor–member in its own disciplinary procedure. All the unions we talked to resolved this difficulty by assigning different staff people to represent the different members, just as they had different shop stewards in different units (so that supervisors could go to other supervisors with their concerns and nonsupervisors could go to nonsupervisors).

Yet there were still differences in the practices unions used to deal with this situation, differences that appear related to different philosophies of representation. These philosophies seem sometimes to have been developed by individuals rather than organizations. When we met with the full staff in one local, it appeared that they had not previously discussed the different approaches they were using. Unions should consider developing an organizational approach to these issues rather than leaving it up to individual staff members.

Some union staff indicated that, because any advice given might be used to discipline another union member, they told supervisors in these situations to talk to management. They felt it was not the union's job to assist in making them better supervisors. Other union staff indicated that their response would depend on the situation. If there was a good steward to support it, they would push the supervisor to engage in problem solving; if not, they would push the supervisor to "do discipline right." Despite these differences, however, employer representatives from the agency represented by this union local reported that there was a great deal of informal problem solving around disciplinary issues.

In a second CWA local in state government, a "wall" has been erected between the two union staff people involved and information is not supposed to be shared. This second local emphasizes that a grievance is against a contract violation, not against an individual manager who may or may not be a member. Nonetheless, some supervisor–members in this local still call the union for help in handling problems with subordinates.

We also found a wide variety of philosophies around these issues in other local unions, ranging from those who insist that supervisors issuing discipline do so as managers and hence should not be assisted by the union, to those who try to minimize formal discipline through member-to-member techniques designed to resolve workplace problems. [19] While

the unionization of supervisors raises issues for local unions, these problems may be dealt with in a variety of fashions, the preferred "solution" reflecting the labor relations and management philosophy of the persons involved. (We regard the problem-solving approach as particularly helpful and consonant with labor-management cooperation intended to improve public service, but we respect the fact that formal discipline systems are needed to deal with some employee problems.) Whatever one's philosophy of discipline, however, it became apparent from talking to the union staff that New Jersey state supervisor–members need better training in the solution of workplace problems, personnel issues, and the discipline of subordinates.

Contract Negotiations. In New Jersey state government, there is very open and public conflict in most bargaining rounds between CWA and AFSCME, in part reflecting the different distribution of members in the two organizations (there are more supervisors in CWA). While there is some informal communication between the two unions, they sit at different tables. Different economic packages suit the memberships of the two unions better, and each attempts to reach agreement with the state first so that its settlement is imposed on the other union (under the pattern bargaining practice of the state). It is not clear whether labor organizations that represent both supervisors and nonsupervisors tend to negotiate contracts favorable to the nonsupervisory group (who are a majority of members) or to supervisors, or professionals, or both (who are often union activists)." The tensions within unions around economic issues at times of contract renewal are not really different for supervisors and nonsupervisors than for skilled workers and laborers, or other groups of employees with divergent economic interests. Unions can and do make compromises that resolve these tensions.

Impact on Cooperation and Restructuring Efforts

What, if any, is the role of unionization of supervisors in labor-management cooperation? Although in general there has been little in the way of formal cooperation or partnership in the public sector in New Jersey, there are some exceptions. In the judicial system, labor-management committees at both a state and work-site level were created when the state began its takeover of the county courts (U.S. DOL 1996:148). These committees helped standardize what had been widely variant human resource practices, including such basics as pay and job descriptions. Although the effort waned with a change in top management

(chief justice of the New Jersey Supreme Court), many of the committees have continued to meet.

These committees often include representatives from supervisory and nonsupervisory units. Unionized supervisors are reported to speak freely and to assert their interests, leading to a more realistic and honest discussion of particular issues where their needs or views differ from those of nonsupervisory workforce, such as on performance appraisals, for example. One union representative explicitly contrasted the contributions to these efforts of supervisor–members to the inhibited voice of nonrepresented managers serving on a joint health and safety committee in another state agency. That representative argued that cooperative discourse is improved when all voices are heard and that it is important for managers and supervisors to feel free to make comments without inhibition. These observations provide mild support for the notion that the representation of supervisors can improve the functioning of cooperative efforts. It is also valuable for even higher-level nonrepresented supervisors to be involved in cooperative efforts, of course.

At the same time, it does seem likely that the unionization of supervisors could make work restructuring and the flattening of managerial hierarchies familiar in the private sector somewhat difficult. For instance, not long ago, the state department of personnel was considering a major effort to reduce and restructure job titles. The department tabled this in 2001 after the passage of a bill requiring union negotiations over the creation of new titles. Such negotiations would be extremely complicated and difficult. The fact that supervisors are represented most likely increases the complexity but it does not create it. As with any issue, bargaining involving multiple interests is difficult but should produce improved outcomes with wide legitimacy. In January 2002, a new governor, elected with strong labor support, took office in the midst of a large budget shortfall. It is certainly arguable that his ability to cope with the state's budget problems is severely constrained by the potential political consequences of laying off unionized state workers. As mentioned earlier, layoffs thus far have taken place only among the already-thin ranks of nonrepresented managers.

Concluding Observations

In the course of this research, we interviewed many individuals knowledgeable about the actual consequences of the unionization of supervisors in New Jersey state government. Despite continuous probing, our interviews found few problems that arose in the day-to-day performance of

managers. Rather, our interviews showed that if problems arose, they did so in the highly unusual context of a work stoppage or around the nonroutine issue of discipline. With discipline, the problems encountered did not seem to be major and did not seem to be due primarily to the unionization of supervisors. Although more concerns were raised about the representation of supervisors and subordinates by the same local union than about representation per se, we cannot conclude that this has created major problems. There was broad acceptance of the idea that with appropriate accommodations by management and the union organizations involved, supervisors could both receive representation in their role as employees and continue to act on the job in a managerial capacity. People can wear two hats. People can be loyal to the mission of the agency (and act as supervisors to further that mission), while they are also union members.

At the same time, we found the matter of supervisory representation rights to be a lens that revealed a number of bigger issues for management in the public sector. It is likely these arise not only for the state of New Jersey, but also for other public employers. Pay compression was a big problem in the system we studied—a problem that had led to demand for representation by higher and higher levels of public sector managers. A related issue involved the limited ability of high-performing employees to garner continued gains in compensation over a lifetime career in state service. The primary way to create promotion opportunities for employees who have "topped out" in a given pay grade is to create jobs with a supervisory element. As a result, and consistent with other research, it seems likely that many more employees are classified as supervisory on paper than actually have much authority (see note 17 for an example). Given this reality, it is not surprising that no one we talked to wished to eliminate representation rights for supervisors: even the most anti-union thought only that such rights should not be extended further "up the ladder" or insisted that a separate union local should in fact be required as a representative for supervisors. Any move to reclassify nonbonafide supervisors would need to grapple simultaneously with the compensation issues. Such reclassification was paired with attention to the compensation issues, for example, when the state assumed responsibility for its county court systems (an effort in which labor-management committees played an important role).

Another issue that emerged in the course of interviews included problems stemming from the absence of finality in a negotiations system that is lacking either binding interest arbitration or the right to strike, and the resulting need to deal with occasional, albeit infrequent, work

stoppages. It would be better to fix the underlying problem with this system for all state employees than to use the very infrequent work stoppages that result from the existing system as an excuse for denying representation rights to supervisors.

Arguably, the lack of formal union-management cooperation initiatives in this governmental system is another problem. There was no evidence that supervisory unionism was the cause of this situation. If anything, the unionization of supervisors appears to facilitate informal cooperation and problem solving in the workplace. The unions we studied assist frontline workers and their supervisors in problem solving around day-to-day issues and foster a sense of common mission. In this they resemble many "self-managed" unionized private sector workplaces. Furthermore, these public sector unions face many of the same questions about their role in managing, particularly in discipline, that private sector unions involved in managerial decision making face (Kaminski 1999; Rubinstein 2001). What is less clear is in whose interest this collaboration takes place. Formal partnering requires private sector unions involved in management to consider the interests of the business while representing the needs of members. The extent to which the collaboration made possible by broad unionization of public sector workers in New Jersey balances the public interest or is tilted toward employee interests remains an open and important question. In any case, New Jersey would appear ripe for more formal labor-management cooperation initiatives.

Workplace problems and discipline raised issues beyond the role of the unions. There were a variety of differing opinions about the appropriate use of the formal disciplinary system in resolving occasional problems with subordinate employees. Clearly, research on performance management in the public sector is highly desirable. Moreover, whatever training systems now exist for public sector supervisors in the optimal performance of their managerial roles, it seemed clear to us that state managers want additional help with these issues from their employer and from their labor organizations. Unions that represent supervisors need to think more systematically about what role they should play in assisting their members in this regard.

We find that supervisors, like the growing number of union leaders and members participating in managing their enterprises in the private sector, can wear two hats. This suggests that the fundamental theoretical approach to representation that emphasizes loyalty is conceptually inadequate. A better approach to determining who should have bargaining rights would be premised on the ability of individuals and institutions to

manage multiple social roles and balance multiple conflicting interests. We hope that this study and other empirical studies of how systems in which supervisors are represented actually work can provide a fresh perspective on these issues.

Appendix:
Titles of Interview Subjects2'

Assistant commissioners, state agency (2)
Assistant division director, state agency
Bureau chiefs, state agency (2)
CEO, state developmental center
Director, human resources, state agency
Director, labor relations, state agency
Division directors, state agency (3)
Former chair of Public Employee Relations Committee
Former director, AFSCME Council
Local union presidents (CWA) (2)
President (and Bureau Chief), Public Sector Managers Association
Professional staff member, Office of Employee Relations, governor's office, state of New Jersey
Retired faculty, Industrial Relations and Human Resources Department, Rutgers University (2)
Union staff representative (AFSCME)
Union staff representatives (CWA) (7)

Notes

' The 1947 Taft-Hartley amendments to the National Labor Relations Act (NLRA) excluded supervisory employees from the protections of the Act. In 1974, the Supreme Court extended this exclusion to all managerial employees in the Bell Aerospace case (*NLRB v. Bell Aerospace).* Later Supreme Court decisions further enlarged the excluded groups by defining private sector professors making curriculum and other policy decisions as managers (*NLRB v. Yeshiva University* 1980) and nurses "directing less skilled employees" as supervisors (*NLRB v. Health Care and Retirement Corp.* 1994; *NLRB v. Kentucky River Community Care* 2001).

[2] For instance, under the logic of the *Yeshiva* case, workers could lose representation rights as restructuring and self-management accords them more decision-making authority (Germana 1991:421-22).

[3] The research design left open the question of causation: it is likely that lieutenants who were more alienated from management sought union representation in the first place.

[4] There were also few reported problems with union representation for lieutenants. There were, however, negative correlations between the assessments of performance by chiefs and union status for line officers above the rank of captain. The largest negative correlations came in the categories of labor relations performance, rather than more general managerial performance. The same questions in the officer

data, which the authors argued for various methodological reasons were likely to he more reliable, produced few significant correlations.

For a thorough discussion of many of the issues, see the New Jersey Supreme Court case *Turnpike Authority v. AFSCME Council 73* 1997.

This situation, which appears to contradict the legal requirement of separate organizations or units for supervisors, apparently falls within the loophole provided in the statute that allows supervisors and nonsupervisors in the same organization if "established practice, prior agreement, or special circumstances, dictate" (Section *7).*

[7] In the prisons, guards are represented by the Patrolmen's Benevolent Association (PBA), with different supervisory levels in different units, whereas CWA represents clericals, professionals, and two levels of supervisors, again in different units. In the Turnpike Authority, the higher-level supervisory unit is now represented by AFSCME, and the International Federation of Professional and Technical Engineers (IFPTE) represents others.

[8] There are *567* municipalities and 21 counties in the state of New Jersey. Virtually all possible legal arrangements (and perhaps some that aren't) are present in these jurisdictions. For instance, in the capital city of Trenton, AFSCME represents both blue-collar workers and their supervisors, although in different locals. In Middlesex County, AFSCME represents blue-collar workers and their "working foremen" in the same local. Independent unions often represent supervisors in local government, including law enforcement. The Middlesex County Board of Social Services, for- instance, has two bargaining units, an agencywide unit represented by CWA and a supervisory unit represented by an independent (Middlesex County Welfare Administrators Organization).

[9] Alaska, Connecticut, Florida, Hawaii, Maine, Massachusetts, Michigan, Minnesota, New York, and Washington.

[10] Rhode Island, Wisconsin, Nevada, California, Maryland, Pennsylvania, New Hampshire, Vermont, Delaware, Nebraska, Oklahoma, North Dakota, South Dakota, Missouri, Tennessee, and the District of Columbia. While we made every attempt to be inclusive, additional states may provide rights for specific groups of supervisors.

[11] These issues also arise out of the private sector record (U.S. Senate 1947:4; U.S. House 1947). In *NLRB v. Bell Aerospace* (1974:270), for instance, the employer expressed concerns over the conflicts of interest that would arise if buyers were unionized. The allegation was that a unionized purchasing agent might favor a union supplier over a nonunion supplier. Spinning out this logic, one could argue that a public agency's regulatory decisions could be influenced positively or negatively by pro-union bias of unionized supervisors, if, for instance, the company to be regulated was itself unionized.

[12] The state's system for making "large" capital expenditures (e.g., computers) is so full of checks and balances that managers have little real control over the source of purchase. Smaller purchases of supplies, like paper, are made centrally. It would he quite difficult to direct such state business improperly. Hiring of professional services is somewhat more complicated, but even here, where the possibilities are greater, the managers we interviewed cited no examples of improper, "union-biased" choices.

13 The existence of a right to strike is contested by unionists in the state. The prohibition of strikes is not statutory but arises from the state constitution. Therefore, a public employer must go to court to get an injunction against a strike, which it can always get. Before this action is taken, however, the strike is technically not illegal, and, in fact, employers do not always seek such injunctions.

[14] One union staff person claimed that when nonsupervisory employees strike, his local determines whether or not supervisor—members need to cross picket lines to provide an emergency level of municipal services. If so, they simultaneously explain the situation to the union and employees on strike and arrange for some symbolic act of solidarity (such as picketing by a few supervisors while off-duty). If supervisors are not needed, the local encourages members to exercise their individual right of conscience to honor a picket line. This union representative claimed that this system of accommodation was widespread in local government and worked well.

[15] At the time of this writing, a bill extending interest arbitration broadly to the public sector in New Jersey has been introduced in the legislature.

[16] It should be noted that supervisors in state government, primary and higher level, are merely recommending discipline to higher-level labor relations specialists. The supervisors do build the discipline case, however, and their recommendations are often accepted.

[17] In recent years, the line between represented and nonrepresented managers has been contested repeatedly by CWA. For instance, CWA recently petitioned for and won representation rights for the lowest level of nonrepresented managers, known as section chiefs, in the Departments of Environmental Protection and Transportation. This case demonstrates an important dynamic in public sector pay systems. The section chief title was created historically in order to give higher-level more pay in a compensation system in which the pay for a position strongly reflects managerial responsibility. In fact, though, the section chiefs have very little managerial authority. In the long run, this compensation strategy has backfired because since the mid-1980s managerial pay increases have systematically been lower than bargaining-unit pay increases.

[18] This situation is not all that different from other types of grievances in the private or public sector that pit one member against another, such as access to overtime or promotions. These occurrences may be uncomfortable for the union, but they are not typically debilitating.

[19] For instance, in a second CWA local, there was no wall erected when cases involved multiple members at different levels; staff members were reported to communicate, but typically in a competitive way: "They both wanted to win!" A third local union, in this case functioning in local government, handled things differently. Here there was a heavy emphasis on solving problems between or among members before they got to actual discipline. If this was not possible, and formal discipline resulted, the staff members representing the two union members would discuss the case. This local union had an emphasis on "problem solving" and contended that formal disciplinary systems were often less successful in working out problems, and improving employee performance, than its own member-to-member techniques.

[20] One person pointed out to us that this is why it is a good thing for supervisors and nonsupervisors to have the legal right to separate bargaining units—if either group became convinced its interests were not being served by the current representative, it could decertify and then gain independent representation.

[21] Most interview subjects were promised confidentiality. Thus, we have chosen to report titles with no identifying information.

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