

House Committee on Education and Labor Hearing

“Standing with Public Servants: Protecting the Right to Organize”

Full Testimony of Professor Joseph Slater

Madame Chair Wilson, Ranking Member Walberg and Members of the Committee, thank you for the opportunity to testify today. My name is Joseph Slater. I am the Eugene N. Balk Professor of Law and Values at the University of Toledo College of Law, and a Distinguished University Professor at the University of Toledo. I’m here to give some background and context about public-sector labor law in the U.S., and to explain why I am in favor of the Public Service Freedom to Negotiate Act and the Public Safety Employer-Employee Cooperation Act.

First, this is a very important area of law. Currently, public employees are nearly half of all unionized employees in the U.S.

Second, the U.S. is very different than other, comparable countries in that public-sector labor law here has developed differently than private-sector labor law. While most private-sector workers won the right to bargain collectively in 1935 with the National Labor Relations Act, public employees did not begin to win collective bargaining rights until the 1960s and later. Even today, eight U.S. states do not permit any public employees to bargain collectively, and about a dozen more only let one-to-four types of public employees bargain collective. In European and other comparable, industrialized nations, the rights of public and private sector workers are much more similar. But the U.S. has a patchwork of laws governing public-sector unions that vary tremendously state-to-state. I know of no other area of law which varies as much state to state as public-sector labor law does. This is not of private-sector labor law, which is governed by federal law.

Relatedly, the U.S. does not follow international law in this area. International law recognizes collective bargaining as a fundamental human right. Both Article 23 of the United Nations’ Universal Declaration of Human Rights and the 1998 International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work emphasize the significance of collective-bargaining rights for all employees, including government workers.¹ Both Human Rights Watch and Amnesty International have stated that U.S. law in this area in some states violate international human rights standards.² In 2007, the International Labor Organization called on North Carolina to repeal its statutory ban on all collective bargaining in the public sector in that state.³

1. *ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up*, INTERNATIONAL LABOR ORGANIZATION (1998), available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>; *Universal Declaration of Human Rights*, 217 A (III), U.N. GENERAL ASSEMBLY (Dec. 10, 1948), available at <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>.

2. Michelle Amber, *Collective Bargaining: Human Rights Groups Say State Measures on Workers’ Rights Violate International Law*, 49 GOV’T EMP. REL. REP. 438 (2011).

³ MARTIN MALIN, ANNE HODGES, JOSEPH SLATER, AND JEFFREY HIRSCH, PUBLIC SECTOR EMPLOYMENT (West, 3d ed. 2016)p. 418; see <http://southernworker.org/wp-content/uploads/downloads/2013/08/ILO-Decision-on-US-and-North-Carolina.pdf> containing the decision in Case No. 2460, Complaint against the Government of the United States by the United Electrical, Radio, and Machine Workers

Labor law is out of step with other forms of employment law in the U.S. Most of the major federal employment laws cover public employees as well as private employees. Of course the wages and working conditions of public employees affect commerce just as private employees do, which is why Congress had the power under the Commerce Clause to apply statutes like Title VII, the Fair Labor Standards, Act, the Americans with Disabilities Act, and other federal employment laws to state and local government employees. The idea that it is good policy to have public employees have the same types of protections as private employees has been well-established in the U.S. for over half a century.

Third, objections to public sector collective bargaining have been largely disproven by experience. One old objection was that public officials would, for political reasons, capitulate to union demands. But it is clear that public officials generally do *not* simply cave to union demands. That's because there are strong political pressures to the contrary. We know that the general public wants both high levels of public service *and* low costs for those services. We also know that at the voting booth, the general public vastly outnumbers public employees. Groups dedicated to reducing taxes and to limiting public-sector union rights are powerful. Meanwhile, public employees have legitimate interests *as employees* that deserve protection through collective bargaining just as in the private sector.

Further, public-sector collective bargaining rights generally don't have any significant, negative impacts on public budgets. Public employees are not overpaid, compared to comparable private sector workers. The vast majority of studies on the topic have concluded that public employees are, on the whole, paid less (including benefits) than comparable private sector workers. Public employees in lower-paid jobs are sometimes paid more than similar private-sector employees, but public employees in higher-paid jobs are paid less.

For example, one study concluded:

Wages and salaries of state and local employees are lower than those for private sector workers with comparable earnings determinants (e.g., education). State employees typically earn 11 percent less; local workers earn 12 percent less. ... Over the last 20 years, the earnings for state and local employees have generally declined relative to comparable private sector employees. ... [Including benefits] . . . total compensation is 6.8 percent lower for state employees and 7.4 percent lower for local workers, compared with comparable private sector employees.⁴

Another found that, after controlling for education, experience, hours of work, and other relevant factors, “[F]ull-time state and local employees are, on average, undercompensated by 5.6%.”⁵

⁴ Keith Bender & John Heywood, *Out of Balance? Comparing Public and Private Compensation over 20 Years* (National Institute on Retirement Security 2010), *available at* http://www.nirsonline.org/storage/nirs/documents/final_out_of_balance_report_april_2010.pdf.*

⁵ Jeffrey Keefe, *State and Local Public Employees: Are They Overcompensated?* 27 A.B.A.J. LAB.

To the extent problems exist in public employee compensation, they mostly relate to formulas for pension benefits; and, crucially, under existing laws, public employees in the vast majority of jurisdictions are not permitted to negotiate about pension benefits.⁶ Pension benefits can be dealt with separately. Between 2010 and 2012, 41 states enacted significant changes to at least one of their statewide retirement plans, mostly cutting benefits, increasing employee contributions, or both. This was all entirely independent of collective bargaining rights.

For these reasons, not surprisingly, there is no significant correlation between state budget deficits and collective bargaining rights for public employees. Researchers from U-C Berkeley found “no statistically significant correlation between union density, union strength, and the size of state budgets.”⁷ As Congressman Mike Quigley (D-Ill.) has observed, states allowing public-sector collective bargaining, on average, have a 14% budget deficit, while states that bar collective bargaining have, on average, a 16.5% deficit.⁸ Many states with high budget deficits bar public-sector collective bargaining, many states that permit public sector bargaining have low state deficits, including my state of Ohio.

Fourth, public-sector collective bargaining laws do a lot of good. They promote labor peace, reducing the number of illegal public-sector strikes. When the Ohio public-sector law was passed, the number of public-sector strikes decreased dramatically, even though the law actually allowed for some public employees to strike in some circumstances, and the previous law made all strikes illegal. The same thing happened in Illinois when it passed its law granting collective bargaining rights to public employees. Giving realistic bargaining rights to workers and effective alternatives to strikes means workers don’t have illegal strikes as their only option. One study found that public-sector strikes were most likely to occur in states without collective bargaining rights.⁹

It is worth noting here that teachers’ strikes in 2018 took place in states that did not permit collective bargaining by teachers: West Virginia, Oklahoma, North Carolina, Tennessee, Colorado, and Kentucky.

Further, collective bargaining rights help with retention and recruitment of employees. It is good public policy to encourage talented and skilled people to go into teaching, policing, firefighting, and other public jobs. It is good policy to try to retain such employees. Opponents of union rights frequently argue that executives, managers, and other higher-level employees in

& EMP. L. 239 (2012).

⁶ See Joseph Slater & Elijah Welenc, *Are Public-Sector Employees “Overpaid” Relative to Private-Sector Employees? An Overview of the Studies*, 52 WASHBURN L.J. 533 (2013).

⁷ Sylvia Allegretto et al., *The Wrong Target: Public Sector Unions and State Budget Deficits*, INST. FOR RES. ON LAB. & EMP (Univ. of Cal., Berkeley), Oct. 2011, at 9, http://www.irl.berkeley.edu/research/state_budget_deficits_oct2011.pdf.

⁸ *State Employees: House Panel Debates State Budget Problems, Whether Bargaining Rights Need to Be Cut*, 25 BUREAU OF NAT’L AFFAIRS LAB. REL. WK. 700 (2011).

⁹ David Lewin et al., *Getting It Right: Empirical Evidence and Policy Implications from Research on Public-Sector Unionism and Collective Bargaining* 13-14 (Emp’t Pol’y Research Network & Labor & Emp’t Relations Ass’n, 2011), available at <http://ssrn.com/abstract=1792942>.

deserve high pay because of recruitment and retention concerns. This is also true if policymakers want good teachers, firefighters, police officers and an efficient public service.

Also, unions can often improve efficiency. For example, evidence shows that unionization of teachers correlates positively with higher student scores on standardized tests and higher graduation rates.¹⁰ More generally, the literature on unions and efficiency indicates that unions can often have a positive effect. One survey explained that there “is scant evidence that unions act to reduce productivity ... while there is substantial evidence that unions act to improve productivity in many industries.”¹¹ Another survey noted that “[a]nalyzes of the union effect on firms and the economy have generally found unions to be a positive force, improving the performance of firms and contributing to economic growth.”¹²

Public-sector unions and employers have often worked together to improve efficiency, because workers understand the nature of their jobs.¹³ In my state of Ohio, teachers’ unions have negotiated to shrink or maintain class sizes—without unions, school districts sometimes try to save money by increasing class sizes. The Cleveland Teachers’ Union negotiated an “In-School Suspension” program that keeps students off the streets and helps give appropriate treatment to troubled students. Unions also help improve the curriculum by negotiating for additional class offerings, including foreign languages in high schools and music, art, and physical education classes in elementary schools. The Toledo Federation of Teachers created the Peer Assistance and Review (PAR) program that allows the union and management to decide when teachers are struggling, and pair them with veteran teacher mentors to provide guidance and evaluation. More than 70 school districts around the country have adopted the PAR program, and it is widely known as one of the best systems for improving new teacher quality.¹⁴

Other unions also bargain for measures that benefit the public. Firefighter and police unions have bargained to maintain safe staffing levels with sufficient personnel for effective response times.¹⁵ Transit workers in Portland, Oregon joined with an organization of passengers, Bus Riders Unite, to advocate for better safety measures that would benefit both riders and drivers.¹⁶ Unions in the federal sector and elsewhere have engaged in labor-management cooperation groups that have had many positive effects. For example, a partnership between the Defense Distribution Depot and AFGE Local 1546 saved \$950,000 per year by reducing

10. See generally Robert M. Carini et al., *Do Teacher Unions Hinder Educational Performance? Lessons Learned from State SAT and ACT Scores*, 70 HARV. EDUC. REV. 437 (2000).

11. Dale Belman & Richard Block, *The Impact of Collective Bargaining on Competitiveness and Employment: A Review of the Literature*, in BARGAINING FOR COMPETITIVENESS: LAW, RESEARCH, AND CASE STUDIES 45, 51 (2003).

12. LAWRENCE MISHEL & MATTHEW WALTERS, ECON. POL’Y INST., HOW UNIONS HELP ALL WORKERS 15 (Briefing Paper No. 143, Aug. 26, 2003), available at http://www.epinet.org/content.cfm/briefingpapers_bp143.

13. See generally, e.g., PUBLIC SECTOR EMPLOYMENT IN A TIME OF TRANSITION (Dale Belman et al. eds., 1997) (collecting “best practices” in public-sector labor relations).

14. Philip Stevens, *Benefits of Bargaining: How Public Sector Negotiations Improve Ohio Communities*, POLICY MATTERS OHIO 8 (Oct. 2011), available at http://www.policymattersohio.org/wp-content/uploads/2011/10/benefitsofbargaining_2011_1010.pdf.

15. *Id.* at 15.

16. Alexandra Bradbury, *Making Buses Safer*, LABOR NOTES, Aug. 1, 2017, <http://labornotes.org/blogs/2017/08/making-buses-safer>.

workplace accidents by 20%, ergonomic injuries by 40%, reducing overtime and reducing production costs.¹⁷

Finally, unions can help the economy as a whole, in part because they help bolster the middle class. A study by labor relations experts explained, “Collective bargaining has historically served to increase consumer purchasing power, assure voice in the workplace, and provide checks and balances in society.”¹⁸ Another study explicitly linked increased wage inequality with the decline of unions.¹⁹

In sum, the Public Service Freedom to Negotiate Act and the Public Safety Employer-Employee Cooperation Act will set reasonable, minimal standards for public workers that will give all public employee similar bargaining rights as private sector workers and public sector workers in most states already enjoy. The FLRA will be authorized to determine whether states already meet those minimum standards, and if the state does – which most states will – the law will make no change. In the minority of states that do not meet this standards, this law will bring the U.S. into conformity with the rest of the U.S. and with comparable countries by providing the right to bargain collectively, with realistic means to resolve bargaining impasses. This will contribute to labor peace, provide stability in employment, and will provide voice and opportunities to the millions of people who help governments across the country provide services to the American people.

¹⁷ U.S. OFFICE OF PERSONNEL MGMT., LABOR-MANAGEMENT PARTNERSHIP: A REPORT TO THE PRESIDENT (2000).

¹⁸ Lewin et al., 3.

¹⁹ Bruce Western & Jake Rosenfeld, *Unions, Norms, and the Rise in American Wage Inequality*, 76 AM. SOC. REV. 513, 514, 528 (2011).