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The 1986 Immigration Reform and Control Act: An Overview and Update

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On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986 (IRCA),[1] the most extensive revision of United States immigration law since 1952. The Immigration and Naturalization Service (INS) and the Department of Justice (DOJ) have since issued rules designed to implement and clarify the provisions of IRCA.[2] In general, the purpose of the new law is to control the continuing flow of illegal aliens into this country and to provide amnesty (and ultimately, citizenship) to certain illegal aliens who already live here.

Congress, through its passage of IRCA, chose the American workplace as the focal point for enforcement of its new policy on immigration by establishing civil and criminal penalties for employers who hire illegal aliens or otherwise fail to comply with the law's new requirements. Many employee groups fear that these same sanctions will result in discrimination by employers who, in reaction to IRCA, adopt general policies to fire and refuse to hire "foreign looking" or "foreign sounding" individuals rather than risk running foul of the law and suffering its potentially harsh penalties. In response to these employee concerns, Congress incorporated an anti-bias clause prohibiting discrimination against any individual on the basis of national origin or citizenship status.

IRCA has been characterized as a major employment law with significant economic and social implications affecting all employment practices of *all* employers. Nonetheless, many public employers, at first, dismissed the law as one of greater concern to their private-sector colleagues. Nothing could be further from the truth. Although it is true that certain private industries are prime targets for INS audits or DOJ investigations, it became apparent early on that public entities are by no means free from concern regarding IRCA when the first lawsuit filed under the new law was against a public school district.[3]

The purpose of this article will be to examine the employer's responsibilities under IRCA, to discuss discrimination and employee rights under the new law, and to comment on the impact of IRCA thus far. Also highlighted are some problem areas to steer clear of, and preliminary advice is offered on dealing with the law's requirements.

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IRCA — Employer Responsibilities

The major thrust of IRCA is to control the employment of certain aliens and to prevent the employment of unauthorized aliens. The law makes it illegal to hire unauthorized aliens or to continue to employ unauthorized aliens, with certain exceptions.[4] The statutory scheme is structured so as to accomplish these goals mainly by placing responsibility on employers to verify the identity and employment eligibility of any employees hired after November 6, 1986.

Identity and employment eligibility are verified by means of reviewing certain acceptable documents that the employee must provide and by recording the required information on a form provided by INS (the so-called "Form I-9"). The Form I-9 must be completed within three days of the hire. In cases

involving employment of less than three days, the form must be completed by the end of the first employment day.

The first section of the form is completed by the employee. It calls for some basic personal information, citizenship status, and an attestation by the employee as to the accuracy of the information. If the employee requires assistance to complete the form, the preparer or translator must also certify the form by signing it.

Section 2 of the form is to be completed by the employer after review of acceptable documents that verify the employee's identity and employment eligibility. The employer must check the appropriate box on the form that indicates the type of document(s) reviewed. For example, some documents satisfy both the identity and employment eligibility requirements, such as a U.S. passport, Certificate of U.S. Citizenship or Naturalization, or Resident Alien Card, to name a few. Other documents may only serve as evidence of identity, in which case the employee must provide further evidence of employment eligibility. Documents that typically serve only as proof of identity include a state driver's license, school I.D. card, voter's registration card, or other I.D. cards issued by federal, state, or local governments. Documents that are acceptable to establish only employment eligibility include a Social Security card, state certificate of birth, and certain documents issued by INS. Additional documents that may be acceptable are specified in the Form I-9 instructions. The Form I-9 and accompanying instructions also contain some special provisions in cases involving employment of minors. Finally, completion of the form requires an attestation by an authorized representative of the employer.

Form I-9s need not be completed for individuals hired before November 7, 1986; domestic employees working in a private home on a sporadic basis (although if they work on a regular basis, the form must be completed); individuals who provide services but are employed by another (such as subcontractors); independent contractors; and individuals who are self-employed. There are a number of other special provisions or exceptions too numerous to mention but with which employers should become familiar.

Other employer responsibilities under IRCA that relate to the Form I-9 concern retention, inspection, copying, and use of documents. Employers must retain the Form I-9 for three years after the date of hire or one year after termination, whichever is later. Also, in the case of existing employees, the employer carries the responsibility of reverifying any employment eligibility documents that contain an expiration date. Of course, if the employer discovers a change in information for a particular employee, the new information should be recorded on the existing form (such as name changes, new addresses or, more important, employment eligibility). In so doing, the employer should not erase or otherwise destroy the old information.

Form I-9s must be made available by the employer for inspection by properly identified officials of INS or the Department of Labor. All that is required is for the official to give the employer a three-day advance notice of intent to inspect. IRCA does not require a warrant or subpoena.

Although IRCA does not require the employer to retain copies of additional documentation, the employer may do so if it desires. If copies are kept, they must be maintained with the Form I-9 and will be subject to inspection. Generally it is advised for the employer to maintain copies in an effort to more easily demonstrate compliance with the law. If an employee is later discovered to be an illegal alien, but the employer had complied in good faith with the verification procedures, the employer will be afforded an affirmative defense from liability.[5] Of course, if the employer engages in the ill-advised practice of accepting blatantly altered or forged documents, retention of copies will expose such practices.

IRCA limits use of information contained on the Form I-9 and any additional documents maintained with the form to enforcement of the new law.[6] Consequently, some fears expressed by employers and employees regarding possible access to such information by the Internal Revenue Service appear to be unfounded.

IRCA contains special provisions related to rehires and employees hired before November 7, 1986 (the latter being the so-called "grandfathered employees"). In case of rehiring a former employee, the employer need not complete a new Form I-9 or provide additional verification if the rehire occurs within three years, unless the employer determines that the employee may no longer be authorized to work in the United States. As for employees hired before November 7, 1986, their grandfather status, which exempts them from the verification requirements of the law, will not be disturbed in cases of approved leave, promotion, demotion, lateral changes, lay-off, strike, reinstatement after wrongful discharge, or certain changes in the employer's corporate organization or reorganization. (Please note that grandfather status does not afford an illegal alien the right to work or reside in this country, but only serves to exempt the employer from liability under IRCA for employing that particular employee.)

As a final item related to the verification requirements of IRCA, there is a statutory prohibition against the use of indemnity bonds.[7] Congress foresaw the possibility that employers would move to insulate themselves from the economic penalties imposed by the new law by requiring employees to provide a financial guarantee against liability. Consequently, the law prohibits employers from requiring employees to pay or agree to pay any amount as bond or security. Any employer found to have done so is subject to a $1000 fine for each violation and an order to return to the employee any money so received.

Anti-Discrimination Measures

The one aspect of IRCA that has perhaps generated the most discussion and cause for concern among both employers and employees relates to the possibility of discrimination. A fear exists that, faced with the prospect of sanctions, employers will engage in employment discrimination against certain minorities. Most notably, Congress responded to the fears and concerns expressed by many Hispanic organizations. The response was in the

form of an express provision in the new law that prohibits discrimination, often referred to as the "Frank Anti-Discrimination provision," having been named after the sponsor, Representative Barney Frank (D-Mass).[8]

Under IRCA, any employer with four or more employees is prohibited from immigration-related employment discrimination against any individual on the basis of national origin or citizenship status. This protection is not available to illegal aliens unless they have made application for legalization (the so-called "intending citizen"). Although Title VII of the Civil Rights Act of 1964[9] already prohibits employment discrimination on the basis of national origin, IRCA surpasses the protection afforded by Title VII in at least two respects. First, the anti-bias provisions of IRCA apply to employers with as few as four employees, whereas Title VII requires the employer to have at least fifteen. Second, IRCA affords protection against discrimination on the basis of citizenship.[10] Title VII has not been historically interpreted to provide protection against discrimination purely on the basis of citizenship. Rather, Title VII claimants have generally been required by the courts to characterize their claims as constituting either race discrimination or national origin discrimination in order to make a case. Consequently, when a "citizenship only" rule is challenged under Title VII, it is usually done by alleging that such rules are only a pretext for unlawful discrimination.

Aside from the fact that IRCA now provides employees with a new avenue by which to challenge employer decisions, there is also a greater opportunity for an employer to commit an act of discrimination either as a result of attempting to comply with the new requirements of the law or in connection with circumstances that the employer may not recognize as having any relationship to IRCA. The employer's dilemma in the latter instance could not be better illustrated than by the situation that occurred in the first reported case arising under IRCA. In *League of United Latin American Citizens (LULAC) v. Pasadena Independent School District*, 662 F. Supp. 443, 43 FEP Cases 945 (S.D. Tex. 1987), the U.S. District Court, Southern District of Texas, held that action taken by the school district in terminating undocumented aliens after discovering that they had previously given false Social Security numbers in connection with tax withholding forms, employment applications, and other matters constitutes an unfair immigration-related employment practice under IRCA. Although LULAC's request for a preliminary injunction alleged separate causes of action based on due process and equal protection, the court found a substantial likelihood of LULAC prevailing only with respect to its allegations based on the antidiscrimination clause of IRCA. In other words, but for the new provisions of IRCA, it appears the employer would have prevailed.

In March of 1987, Attorney General Edwin Meese announced rules designed to implement the antidiscrimination provisions of IRCA. One of the more controversial components of the rules concerned the express limitation of unfair immigration-related employment practices to instances where an employer "knowingly and intentionally" discriminated or engaged in a "pattern or practice of knowing and intentional discrimination."[11] Under such a rule, the anti-bias provisions of IRCA would not reach other forms of unintentional discrimination; namely, disparate impact. Therefore, statistics that show that an employer's conduct, although unintentional, results in discriminatory effect would not be sufficient to constitute an unfair practice under IRCA. This is to be distinguished from the broader standard of proof under Title VII, which recognizes claims based on disparate impact.

Almost immediately after DOJ issued its proposed rule limiting the coverage of the law to intentional discrimination, various groups commented in favor of a broader interpretation that would include disparate impact. These groups included civil rights advocates, labor organizations, and congressional Democrats, including Representative Frank and Representative Peter Rodino (D-N.J.), who co-sponsored the legislation. Generally, the proponents of a broader interpretation argued that to limit the law to intentional discrimination would represent a departure from the broader standard applicable to nearly all modern-day antidiscrimination legislation previously enacted by Congress.[12]

On the other hand, the U.S. Chamber of Commerce and other management representatives offered comments in support of the DOJ's position on the issue of intent.[13] Their comments pointed out that Title VII was enacted to cover broad areas of discrimination and, thus, a broader standard was applied. However, the antidiscrimination provision of IRCA was designed for the limited purpose of prohibiting employers from committing discrimination with the specific intent of avoiding the employer sanctions of IRCA. Consequently, an intent standard was more appropriate. Indeed, some management representatives would go further and limit complaints to discrimination directly relating to hiring and firing and not other employment matters such as wages, promotions, working conditions, and other terms and conditions of employment.

In October 1987, the DOJ published its final rules leaving intact the intent standard of proof.[14] However, in the DOJ's comments accompanying the final rules, it appears that the strict standard of intent that was thought to exist has been somewhat diluted. DOJ explained that the statistics often used in disparate impact cases may continue to have value as an aid to prove intent. Also, according to DOJ, employers will not be able to hide behind policies that appear neutral on their face if it is apparent that those policies create a situation intended to discriminate on the basis of national origin or citizenship status and it is shown that those policies, in fact, have that effect. In addition, DOJ added a new provision to the final rules that expressly prohibits retaliation against individuals who file claims of discrimination. It is likely that the precise scope of the standard for discrimination will not be known until further defined through judicial interpretation.

INS Audits

INS has about thirty-five regional offices with responsibilities for implementation of IRCA. In February 1988, INS began random audits of employers in

order to determine compliance. It has been projected that about 50 percent of all audits will be by random selection. The Department of Labor (DOL) has also been involved in inspecting employers for IRCA violations when making visits on other DOL matters. Although IRCA requires a three-day notice before an employer is required to submit to an INS inspection, the DOL has taken the position that the three-day notice only applies to INS agents. Therefore, DOL has indicated that it will conduct surprise visits on occasion and turn over any information it may obtain to INS. Whether such circumvention of the notice provision will be legally permitted is open to debate. However, a reading of certain INS material seems to indicate that, absent a three-day notice from DOL, an employer has a right to refuse to provide IRCA documents for inspection.[15] Of course, one can easily surmise that any employer so refusing is likely to be visited by INS soon thereafter and with proper notice.

The remaining 50 percent of audits will be aimed at particular employers suspected of violations, certain industries known to employ large number of aliens, and geographical regions that have substantial alien populations. With respect to targeting employers, the INS will make decisions based on a past history of employing aliens, prior warnings issued during the citation only period (employer fines are intended to begin in earnest June of 1988), interviews with arrested illegal aliens about their employment history, the nature of the employer's business, and geographical location. Eighty percent of all illegal aliens in the United States are believed to be concentrated in five states. These five states, and the estimated percent of illegal aliens contained in them, are California (50 percent), New York (11.5 percent), Texas (9 percent), Illinois (6.5 percent), and Florida (4 percent).

At the State Level and in Illinois

Activity at the state level has been focused primarily on the role of state employment security agencies and the gathering of data by states in response to a request by the General Accounting Office (GAO). GAO is responsible under IRCA for gathering and providing certain information as the new law is periodically reviewed.[16] The statute and the legislative history indicate a sensitivity on the part of Congress to a possible need for revision sometime in the future, or, perhaps, rescission if IRCA does not operate as intended.

Under IRCA, state employment security agencies will be looked to for assistance in providing employers with referrals to fill vacancies created by the removal of illegals from the job market. Consequently, state governmental agencies responsible for processing unemployment benefits will be expected to refer the unemployed to employers. Moreover, it is planned to better network various social agencies in order to create a system that will identify any illegal aliens receiving some form of public aid and terminate those benefits.[17]

As for data gathering, the five states identified earlier as having substantial alien populations were each asked by the General Accounting Office to collect and provide information regarding the extent of immigration-related employment discrimination from a local perspective. Illinois was among the first to begin gathering data because of a law enacted earlier authorizing the Illinois Department of Human Rights to collect such data.[18] Hearings have been conducted at several locations throughout the state to gather general testimony regarding incidents of employment discrimination. On the local level, the Chicago Commission on Human Relations submitted a similar report earlier that complained of cases of discrimination related to IRCA. At this juncture it is still too early to tell whether a substantial number of these complaints will result in judicial findings of discrimination. However, in a preliminary report issued approximately one year after President Reagan signed the measure, the GAO reported on finding few instances of discrimination as a by-product of IRCA. Many believe, however, that it is too early to draw any conclusions from GAO's first report.

Enforcement Procedures and Penalties

Although implementation of IRCA is already in full swing, use by INS of the procedures available for requiring involuntary compliance has, for the most part, not been necessary. America's employers and INS jointly deserve credit for the apparent success of voluntary compliance. However, in the event enforcement procedures are necessary, the process will be as follows.

Until approximately June 1988, in cases involving verification procedures and employment of illegal aliens, INS will continue in an effort to assist employers to comply. If a first violation occurs, a warning citation will be the likely result, assuming INS is not dealing with an employer whose violations are blatant and/or serious. Thereafter, civil penalties for unauthorized employees may be imposed, ranging from a $250 fine for each unauthorized employee for first violations, to $10,000 fines for each unauthorized employee in cases involving more than two prior violations. For failing to comply with the various record-keeping requirements of IRCA, fines may be levied ranging from $100 to $1000 for each employee depending on the presence or absence of mitigating circumstances. Also, a special $1000 fine and restitution may be imposed in illegal indemnity bond cases. Any employer to receive a civil penalty will first receive a notice of intent that allows the employer thirty days to request a hearing before an administrative law judge.[19]

IRCA also makes provision for criminal penalties up to a $3000 fine per employee and/or six months in jail for a pattern or practice of violations. Criminal penalties increase to $5000 and five years in jail in cases involving fraud or false statements.

In cases of unlawful discrimination, an employer may be ordered to cease and desist, pay back pay, pay fines of $1000 to $2000 per person, maintain certain records regarding employment practices, and pay attorneys' fees.[20] Procedurally, charges are filed with the special counsel of the Department of Justice. An investigation will ensue, after which the special counsel may file a complaint with an administrative law judge. If a complaint is not filed within a specified time, the individual may file a complaint directly. The judge will conduct a hearing and issue a decision that is

appealable directly to the court of appeals.

Do's and Don'ts

For public-sector employers, the prohibition against employing illegal aliens and the verification procedures of IRCA are not likely, in and of themselves, to cause serious problems. However, the antidiscrimination provision poses a real threat, if for no other reason than already heightened familiarity of public-sector unions and their members with the maze of constitutional and civil rights protections available to attack employer actions. The addition of one more basis upon which to sue is not likely to make management's job any easier. That being the case, perhaps a few simple rules will help.

- Do get a free copy of the *Handbook for Employers*. This publication by the Department of Justice/INS contains detailed instructions on proper completion of the Form I-9, a review of IRCA, sample verification documents, and helpful questions and answers.

- Don't require all applicants to complete Form I-9s, but only employees. Not only does this avoid unnecessary paperwork, but it also minimizes exposure to discrimination lawsuits by steering clear of personal information that no longer has a place in the hiring process, such as national origin and age.

- Don't selectively complete the Form I-9. Be uniform for all employees irrespective of your hunches about whom you believe may or may not be an alien.

- Don't photocopy documents for some employees and not others. Again, be uniform.

- Don't accept blatantly false information or forged documents. If they don't fool you, they won't fool INS, in which case you may lose your defense of good faith compliance.

- Don't indicate a preference for particular types of documentation. Aside from the fact that doing so is considered inappropriate by INS, you are unnecessarily creating another area that, if not handled uniformly, will expose you to charges of discrimination.

- Do file employment eligibility documents so as to trigger any need for updating. This is especially true for "special rule" employees who, although illegal aliens, could be hired without documentation in the early stages of the law between November 7, 1986 and September 1, 1987 as long as they planned to apply for legalization.

- Do keep the Form I-9 and attached documentation filed separately from individual personnel files. This avoids any appearance that national origin, citizenship status, or other sensitive information likely to be contained on the documents played a part in subsequent actions related to employment.

- Don't discriminate against illegal aliens covered by the grandfather clause of IRCA. In other words, if you are thinking about exploiting aliens who are not eligible for amnesty but for whom you cannot be sanctioned (i.e., those hired before November 7, 1986), don't do it, or you may be rewarded with a civil rights lawsuit.

- Don't choose U.S. citizens over authorized aliens solely on that basis. Although IRCA permits you to do so if the employees are equally qualified, such close calls are liable to result in lawsuits claiming citizenship is being used as a cover up for discrimination on the basis of factors such as national origin, race, or sex. Instead, be sure your managers understand the importance of distinguishing between employees or applicants on objective, nondiscriminatory criteria.

- Do attempt to have those personnel responsible for IRCA compliance not also be responsible for major employment decisions. If this is not possible, then try to spread employment decisions so as to include at least one person without IRCA responsibilities. Also, always document nondiscriminatory reasons for all personnel action.

- Don't attempt to circumvent IRCA requirements by falsely labeling employees as "independent contractors." INS has enunciated a policy of looking closely at such relationships.

- Do look to state employment security agencies for assistance in filling vacancies created by loss of illegal alien employees. You will also have the added comfort of knowing that they have been previously verified for work authorization.

- Do provide assistance to all alien employees with respect to applications for legalization. This can best be accomplished by referring them to the nearest legalization office. This will show affirmative action on your part and may also avoid questions of alien status later, for your benefit as well as the alien.

Conclusion

The Immigration Reform and Control Act is a historic piece of legislation. It is this country's first real attempt at employer sanctions as a means of controlling illegal immigration. It is the first revision of the immigration laws in several decades. It is the first piece of legislation that contains an anti-bias provision designed as a precaution against anticipated discrimination rather than a belated reaction to past discrimination. It is filled with the promise of bringing millions of people out of secrecy and inviting them to be full and active participants in our democracy. And yet, it is received with some anxiety over what impact it will have on our economy, on the employment practices of our employers, and the welfare of certain minorities.

Notes

1. 8 U.S.C.A. Section 1324 a and b.
2. 52 F.R. No. 84 16216 (May 1, 1987) and 52 F.R. No. 193 37402 (October 6, 1987).

3. *League of United Latin American Citizens v. Pasadena Independent School District,* 662 F.Supp. 443 (S.D. Tex. 1987).
4. 8 U.S.C.A. Section 1324 a.
5. 8 U.S.C.A. Section 1324a (a) (3).
6. 8 U.S.C.A. Section 1324a (b) (5).
7. 8 U.S.C.A. Section 1324a (g).
8. 8 U.S.C.A. Section 1324 b.
9. 42 U.S.C.A. Section 2000e-2.
10. *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86 94 S. Ct. 334 (1973).
11. 52 F.R. No. 55 9274 (March 23, 1987).
12. 52 F.R. No. 193 37402 (October 6, 1987).
13. 52 F.R. No. 193 37402 (October 6, 1987).
14. 52 F.R. No. 193 37402 (October 6, 1987).
15. *Handbook for Employers*, U.S. Dept. of Justice, INS, page 9 (May, 1987).
16. 8 U.S.C.A. Section 1324a (d).
17. 8 U.S.C.A. Section 1324a (a) (5).
18. 68 Illinois Revised Statute, par. 8-113.
19. 8 U.S.C.A. Section 1324a (e) and (f).
20. 8 U.S.C.A. Section 1324b (b) through (j).

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Editor's note: The following article is excerpted from Chapter 2, "Unionism in the Public Sector," in *Public Sector Bargaining* 2nd edition, edited by Benjamin Aaron, Joyce Najita, and James L. Stern (Madison, WI: Industrial Relations Research Association, 1988), pp. 52-89.

Unionism in the Public Sector

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The dramatic increase in public-sector union membership associated with the spread of collective bargaining from the private to the public sector has been cited frequently as one of the most significant developments on the labor front in the past 25 years.[1] In this article, the characteristics of the major public-sector unions are examined.

At the outset it should be noted that with the exception of the federal sector, public-sector union decision making is decentralized. Bargaining leaders are usually representatives of municipal or state councils rather than national union representatives. This is contrary to the pattern found in the bargaining of major manufacturing units, for example, and gives rise to a situation in which the role of the national union president of the public-sector union is relatively less important than that of his private-sector counterpart. Analysis of unions that are active at the municipal and state levels is complicated, therefore, by this decentralized decision-making structure and the various patterns of public-sector unionism that have emerged in many cities and states.

Just the fact that labor relations legislation may be unique to one group of employees provides sufficient grounds for differences in the way the union conducts itself in a particular locality. Clearly, in jurisdictions where unions have not secured legal bargaining rights, their priorities will differ somewhat from union activities emphasized in localities where this goal has been achieved. And the union structure, even its finances, and the role of the union leader will be affected.

Another problem complicating the analysis of public-sector unions is the entrance into this field of what Jack Stieber identified as the "mixed unions"[2] — those primarily private-sector unions which are now organizing public-sector employees. Several of the latter unions, such as the Teamsters, the Laborers, and the Service Employees (SEIU), have become important public-sector unions in some localities but represent no public-sector employees in others. The reader is warned, therefore, that generalizations about public-sector unions are advanced with more than the usual reservations about exceptions to general practices.

The format adopted in this article is to examine unions by level of government and governmental structure and function. In the first of the subsequent sections, the postal unions are discussed. This is followed by examinations of the unions covered by the Civil Service Reform Act; then the unions active in the education field, including higher education; and finally the unions at the local and state levels. The term *union* is used throughout this chapter to mean employee organization and includes groups which are popularly identified as associations (California State Employees Association), professional societies (American Association of University Professors), and fraternal orders (Fraternal Order of Police). The concluding section of the chapter is addressed to membership trends of public-sector unions and speculation about their future.

Table 1 shows the estimated public-sector membership of major unions representing public employees. As can be seen by inspection of the table notes, some of these estimates are informed guesses. For the sake of consistency, the basic data are the 1983 figures assembled by Troy and Sheflin from the Labor Management Reporting and Disclosure Act financial reports.[3] In subsequent sections of this article dealing with specific unions, more up-to-date figures compiled by Gifford[4] and Freeman[5] are used.

Table 1

Public-Sector Union Membership, 1983

Teachers[a]	
Education Association; National (Ind.)	1,444,000
Teachers; American Federation of (AFL-CIO)	457,000
University Professors; American Association of (Ind.)	58,000
State and Local Government	
State, County & Municipal Employees; American Federation of (AFL-CIO)	955,000
Service Employees' International Union (AFL-CIO) (1985)	560,000 [b]
Governmental Employees; Assembly of (Ind.)	340,000
Fire Fighters; International Association of (AFL-CIO)	157,000
Police; Fraternal Order of (Ind.)	150,000
Teamsters, Chauffeurs, Warehousemen & Helpers of America; International Brotherhood of (Ind.) (1985)	150,000 [b]
Laborers' International Union of North America (AFL-CIO) (1985)	85,000 [b]
Communications Workers of America (AFL-CIO) (1987)	85,000 [c]
Nurses' Association; American (Ind.) (1987)	25,000 [d]
Automobile, Aerospace & Agricultural Implement Workers of America; International Union, United (AFL-CIO) (1987)	25,000 [c]

Source: Leo Troy and Neil Sheflin, U.S. Union Sourcebook: Membership, Finances, Structure, Directory, 1st ed. (West Orange, N.J.: Industrial Relations Data and Information Services, 1985), 6-1-6-39, unless otherwise noted.

[a]Includes support personnel in schools and faculty and support personnel in higher education.

[b]From Richard B. Freeman, *Unionism Comes to the Public Sector*, 24 J. Econ. Lit. 41, 46 (March 1986); based on discussions with union officials.

[c]Based on discussions with union officials.

[d]Calculated from data in U.S. Bureau of the Census, 1980 Census of Population: Vol. 1, Characteristics of the Population; Ch. D, Detailed Population Characteristics; Part 1, United States Summary, PC80-1-D1-A (Washington: U.S. Government Printing Office, 1984); U.S. Bureau of the Census, 1982 Census of Governments: Vol. 3, Government Employment; No. 3, Labor-Management Relations in State and Local Government, GC82(3)-3 (Washington: U.S. Government Printing Office, 1985); and discussions with ANA officials. A small but indeterminate number of ANA members are represented by other organizations for collective bargaining purposes.

Unions in Education

The dramatic shift in image from the milquetoast-like teacher to the militant unionist which has accompanied the adoption of collective bargaining procedures by teachers at all levels of instruction is one of the well-publicized developments in public-sector labor relations. The three major unions in the field and their estimated membership in 1985 are as follows: National Education Association (NEA), independent, membership about 1.7 million; American Federation of Teachers (AFT), AFL-CIO, membership about 610,000; and American Association of University Professors (AAUP), independent, membership about 55,000 active nonstudent members.[6]

In contrast to union experience in the federal sector, union and association membership in the education field exceeds the extent of collective-bargaining coverage. Some AAUP members belong to chapters that do not engage in collective bargaining. Many NEA members are in locals in southern states where there is no bargaining. And, because of the rivalry between the NEA and AFT, some teachers may be paying a service fee to one organization while maintaining membership in the other.

In education, as in other parts of local and state government, the national union usually is not involved in the collective bargaining process. The key decision-makers are either local union officers or officials of district councils, UniServ districts (discussed later in this article), or state councils. For this reason, national office-holders and national policy are less important in these organizations than in industrial unions in the private sector.

The National Education Association (NEA), Independent

The predecessor organization to the present-day National Education Association was founded in Philadelphia in 1875 by educational administrators and college professors. For most of its long existence, it has functioned as a professional organization promoting the cause of public education and the improvement of teaching. In the 25 years since 1962 when the NEA was defeated by the American Federation of Teachers (AFT) in the battle to represent New York City school teachers, the organization has undergone a sharp metamorphosis. Today in many sections of the country it

is indistinguishable from the AFT insofar as its bargaining stance is concerned. In several respects, however, it still differs from the AFT.

First, as a matter of ideology the NEA has maintained that affiliation with the AFL-CIO is not desirable. Second, in states where bargaining is not well rooted, school administrators have been influential in the affairs of the organization. Third, in part because of membership losses to the AFT in major cities in the Northeastern, Middle Atlantic, and North Central states, more conservative positions on policies have been adopted than otherwise would be the case.

The difference between the AFT and NEA in the late 1970s was illustrated by the eagerness with which the AFT sought bargaining rights for educational-support personnel and the reluctance of the NEA to do so. At the 1977 convention the NEA assembly defeated the recommendation to give support personnel full membership rights,[7] although it reversed its position two years later and agreed to full membership for support personnel by 1982.[8] Also, in the late 1970s, the delegation from Texas was the largest state group at the conventions and in 1977 helped to defeat a constitutional amendment which would have disqualified supervisors and administrators from active membership.[9]

In the decade preceding 1987, there was a gradual increase in the role played by the three national officers — the president, vice president, and secretary-treasurer. The constitutional ban on reelection was amended to permit two two-year terms starting in 1974, and in 1977 the national officers were reelected for the first time.[10] After defeating subsequent attempts to further amend the constitution by permitting a third two-year term, the delegates agreed to this change in 1986. Mary Hatwood Futrell, a popular black female leader who had been a classroom teacher in Alexandria, Virginia, served as the secretary-treasurer for two two-year terms starting in 1980 and then as president for two more two-year terms. In 1987, she became the first person elected to a third term as president.[11]

The increased length of service of the top officers and the resignation in 1983 of the veteran executive director, Terry Herndon, suggest that the officers will play a relatively more active role compared to their predecessors. Herndon was succeeded by his assistant, Don Cameron, who, as executive director, is responsible for the day-to-day operations of the 550-person staff and $83 million budget.[12] Approximately 38 percent of the budget is spent on services for local affiliates, primarily the UniServ program described below.

In 1976, the NEA endorsed a candidate for the presidency of the United States for the first time. It supported Jimmy Carter in both 1976 and 1980 and Walter Mondale in 1984. The 1980 convention was considered the most politically oriented of its many conventions.[13] However, the Reagan victory and subsequent endorsement of tuition tax credits by his administration put the NEA on the defensive. The organization concentrated its political efforts on its successful attempt to defeat the tuition tax credit plan and its less successful attempts to gain greater federal support for education.[14]

In the area of bargaining legislation, the NEA supported the idea of federal legislation that would "guarantee meaningful collective bargaining rights to the employees of public schools, colleges, and universities." The NEA-backed statute would "allow for the continued operation of state statutes that meet federally established minimum standards."[15]

Another development of the last decade worthy of note is the attempt by the NEA, along with the AAUP and AFT, to organize institutions of higher education, a development that is discussed subsequently in the section of this article about the AAUP.[16]

Key officials of the NEA are appointed rather than elected directly by the rank and file or convention delegates. At the national level, the key position is that of executive director. It is filled by someone hired by the nine-person executive committee that consists of the three full-time national officers and six board members at large — all of whom are elected at the representative assembly and who serve also on the board of directors, a group of about 125 people elected by the state affiliates.

Similarly, at the state level, state executive directors are appointed by state officers and boards of directors, who, in turn, have been elected by delegates to state conventions. National staff members and state staff members in states without bargaining laws are concerned with the usual broad range of activities, other than bargaining, carried on by most unions — political and legislative activity, organizing, legal actions, education, research, affirmative action, and special-projects and crisis-related functions. In states where bargaining has statutory protection and is widespread, the state office may help local unions and UniServ districts, particularly in strike situations.

The UniServ district is a structural unit of the organization created to administer bargaining activities. Typically, there is a local union for each school district and each local union has a contract which it has negotiated with the school board. But most districts, except the largest ones with a thousand or more teachers, cannot pay the salaries of full-time negotiators — nor is there a need for a full-time staff representative for each small unit. By persuading independent local unions in the same general geographic area to combine forces in maintaining a UniServ office and staff, the NEA has created the mechanism for providing staff help in contract negotiation and administration.

The NEA is attempting to provide one UniServ staff representative for each 1,200 teachers. The staff-representative subsidy provided by the national and state organizations is sufficient to induce most small locals to join their UniServ district. Although the negotiators and state directors are appointed by elected officials of the organization, the usual path to these key offices is through the elected hierarchy.

The American Federation of Teachers (AFT), AFL-CIO

The American Federation of Teachers was formed in 1916 by about two dozen teachers' groups across the country with a total membership of approximately 3,000 members. The Chicago Federation of Teachers, which had existed since the turn of the century and which had joined

the AFL in 1913, was the key group in early AFT activities. Its long-time leader, Carl Megel, was president of the AFT from 1952 to 1964. In the 1960s when the New York City local of the AFT, the United Federation of Teachers (UFT), gained bargaining rights for New York City teachers after defeating the NEA affiliate in an election, the balance of power shifted from Chicago to New York, and Charles Cogen, past president of the New York group, was elected AFT president. In 1974, Albert Shanker, who was then the president of the UFT and an AFL-CIO vice president, became president of the AFT. His decision to retain the presidency of the New York City local until 1987 while serving as the national president reflects the fact that the important bargaining decisions vitally affecting the life of the union are made at the local level.

The 610,000-member AFT is primarily the union of teachers in major cities and holds bargaining rights in New York, Chicago, Philadelphia, Detroit, Boston, Pittsburgh, Cleveland, Minneapolis, Denver, and Baltimore. Leaders of these locals serve as unpaid national officers and guide AFT activities between conventions. The only full-time national officer paid by national funds is the secretary-treasurer who directs the daily activities of the AFT. The president, Albert Shanker, and the 34 vice presidents who comprise the AFT executive board receive expenses but no salaries from the national organization. As local officials, however, these national AFT officers receive salaries from their locals and devote most of their time to local union activities. The AFT structure, like the NEA structure, reflects the importance of bargaining decisions made at the local level.

The AFT has approximately 2,200 local unions. The national office supplies the same wide range of nonbargaining services to its units as does the NEA. The national office also supplies the organizers and conducts the campaigns to persuade teachers to join the AFT rather than the NEA. In states where there are local unions, the AFT maintains a state organization that handles legislative matters, participates in organizational drives, and helps the locals handle bargaining problems. In some areas, locals have banded together to form area councils. Since AFT strength is in its big-city locals, however, the elected officials and staff of these locals provide the essential services to most AFT members.

At its 1977 convention, the AFT, like the NEA, faced the question of organizing groups other than teachers. But unlike the NEA, which declined to give paraprofessionals full rights at that time, the AFT passed a constitutional amendment permitting it to organize workers outside of schools and educational institutions. In the 10-year period since that decision was made, the AFT has organized a substantial number of employees in the health-care field and in state civil-service positions as well as paraprofessionals and school-related personnel (referred to as PSRP units) and faculty and PSRPs at community colleges and other institutions.[17]

At its 1986 convention, the AFT reported that it had increased its membership by nearly 154,000, to 624,000, in the past 10 years.[18] This increase of approximately 33 percent during a period when most unions were shrinking is quite unusual. Some of these new members were formerly members of independent groups, such as state civil-service associations, but many are new members in units that have gained bargaining rights during this period. Although there are periodic discussions of the desirability of an NEA/AFT merger,[19] the rivalry between the two organizations continues unabated. The AFT reported that between November 1984 and June 1986, the AFT was successful in fending off raids on units in Detroit, Baltimore, Washington, D.C., St. Louis, and Broward County, Florida, involving a total of almost 58,000 school employees.[20] The NEA and AFT also continue their competition to gain representation rights of higher education units throughout the country.

Although some of the dramatic percentage gains in membership reported by the AFT are in southern states where there are no laws mandating bargaining, a large number of new members are in states where bargaining is well established. One factor that may contribute to the expansion of membership is the passage of legislation in Illinois and Ohio. In particular, the existence of mechanisms for resolving contract disputes by third party determination of issues on which the parties are unable to reach agreement may encourage teachers in rural areas and small districts where they have not been strong enough to organize and bargain. Binding arbitration has had a similar effect among rural teachers in Wisconsin.

In 1982, the AFT went from annual to biennial conventions, effective in 1984.[21] Given the lack of rivalry for the presidency of the AFT and the fact that bargaining decisions are made locally, there was no strong opposition to this money-saving modification. It is possible that AFT leadership at the local level may change considerably in response to changes in the ethnic, racial, and sexual demographics of teachers in major cities. An indication of a possible trend is the 1984 election of Jacqueline Vaughn, a black woman and a long-time active union leader, as president of the Chicago Teachers Union, which is the largest AFL-CIO local union of the Chicago Federation of Labor.

In 1986, in keeping with the AFL-CIO drive to promote membership, the AFT launched its associate member program. This program is designed to attract retired teachers, teachers who have left the profession who may possibly return, and active teachers in areas where there is no AFT local. Dues are relatively low for associate members, and in return they receive the union publications and have access to the various group-insurance plans and discount programs.[22]

The American Association of University Professors (AAUP), Independent

From the 1960s to the present (1987), the AAUP has struggled with the question of identifying its role in higher education when collective bargaining comes to the campus. Essentially, it has been forced by the organizing efforts of the NEA and AFT to establish arrangements under which it could become the bargaining agent, singly or jointly with the NEA or AFT, while at the same time attempting to continue its traditional role in the areas of academic freedom,

protection of individual rights, and promotion of higher education. The effort to reconcile its function "as a broad based professional association concerned with protecting academic freedom and tenure" with its role as the "collective bargaining agent for university faculty" seems to be a perennial question engendering debate at almost every annual conference.[23]

In 1966 the AAUP adopted a policy stating that it "should oppose the extension of the principle of exclusive representation to faculty members in institutions of higher education . . . ."[24] It reaffirmed its support of faculty governance in 1969, but "recognize(d) the significant role which collective bargaining may play in bringing agreement between faculty and administration on economic and academic issues.[25] In 1972 the AAUP abandoned its opposition to exclusive representation and stated: "The AAUP will pursue collective bargaining, as a major additional way of realizing the Association's goals in higher education, and will allocate such resources and staff as are necessary for a vigorous selective development of this activity beyond present levels."[26] It is clear that the AAUP changed its policy because of the pressure from local chapters on campuses where NEA or AFT affiliates were likely to become sole representatives of the faculty if the AAUP did not attempt to become the bargaining agent.

At its annual meeting in 1984, the AAUP approved without debate a revision of its collective-bargaining policy that expresses a more positive endorsement of collective bargaining than did the 1972 statement.[27] The stronger endorsement of bargaining did not mean, however, that the conflict between the AAUP role as a professional association and as a bargaining agent had been resolved. What it did mean was that the two groups — the "traditionalists" and the leaders of the Collective Bargaining Congress of the AAUP — believed that neither group was strong enough to flourish separately and, therefore, that it was necessary to continue the search for the best structural arrangements for continuing both the traditional and the bargaining activities of the AAUP.[28]

This conflict within the AAUP was reflected in the changes in both the number and types of members. At the beginning of the 1970s, the AAUP had approximately 90,000 members, most of whom were individual members not covered by bargaining. By 1984, the membership had dropped to 52,000 active members, two-thirds of whom were in chapters engaged in collective bargaining.[29] The rise of collective bargaining also created financial problems for the organization by increasing the need of local chapters for funds to carry on bargaining and diminishing their willingness to contribute full dues to the national AAUP office to finance traditional activities.

AAUP leaders have been hard pressed to work out satisfactory financial and voting arrangements. In 1986, individual annual dues were $72. Special arrangements were devised for members in large bargaining chapters such as the California Faculty Association (CFA) and the University of Hawaii Professional Assembly (UHPA). CFA members paid full dues, but two-thirds of the money was rebated to the CFA for its activities.[30] UHPA became an affiliated organization paying a fixed sum per member ($10.50 annually in 1986) and received full membership benefits but did not have voting rights except for the UHPA board members for whom full dues were paid.[31]

The competition for bargaining rights for faculty among the NEA, AFT, and AAUP led to the formation of coalitions, thus creating further complications. In 1984, according to Joseph Garbarino, there were 547 institutions bargaining with faculty units composed of a total of 168,000 persons. The AFT claimed a membership of 75,000 persons in higher education, some not in bargaining units, while the NEA claimed that 62,000 of its members were in colleges or universities and the AAUP claimed about 52,000 members.[32] Although the AAUP seems to have fewer members than the other two organizations, it is more prestigious in the eyes of faculty and therefore has been sought as a coalition partner by both of the other organizations. And, because of financial considerations and the greater political strength that was thought to accompany coalitions, the AAUP has been willing to form coalitions with the AFT and NEA.

An analysis of the bargaining units in higher education shows that in 1984, 28 percent of the 170,320 individuals in bargaining units were in coalitions, 13 percent were represented by the AAUP, 30 percent by the AFT, 28 percent by the NEA, and 2 percent by independent organizations.[33] The major coalitions in 1984 were on the campuses of City University of New York (AFT/AAUP), California State University Colleges (NEA/AAUP and California State Employees Association), the Pennsylvania State College System (AFT/AAUP), and the University of Hawaii (NEA/AAUP). In 1986, however, the CUNY unit disaffiliated, thereby reducing AAUP membership by 9,500.[34] In August 1986, the Penn State unit also voted to disaffiliate, leaving the AAUP as a partner in only two coalitions.[35]

Current trends suggest that AAUP will have less of a role in collective bargaining in higher education than NEA or AFT. Although the AAUP prestige is still valued at major institutions where bargaining has not yet penetrated, it does not seem to be of primary importance on most of those campuses that have opted for bargaining. One mechanism suggested by the former general secretary of the AAUP in order to preserve its traditional functions outside of bargaining was the creation of an AAUP Foundation insulated from the organization's collective bargaining activities.[36] As of 1987, however, this approach had not been adopted and the AAUP continues to struggle financially to maintain both its traditional role and its collective-bargaining role.

Unionism in Municipal and State Governments

Although the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, is the dominant union of local and state government employees outside of education, many other organizations represent sizable numbers of public employees. In many states there are heated organizational battles among various AFL-CIO unions, as well as between AFSCME and independent unions such as the Teamsters and the National Education Association. In Illinois and Ohio the passage of

bargaining legislation effective in 1984 was followed by contested elections for representation rights.

In the Cook County, Illinois, election in 1984, for example, AFSCME won bargaining rights in five units, the International Brotherhood of Electrical Workers won rights in two, a coalition of Service Employees International Union and the Teamsters won rights in one, and the Combined Counties Police Association won in one.[37] In Ohio, the state's 51,494-member workforce was divided into 14 bargaining units and elections were held in 13 of these units in 1985. AFSCME faced competition from the Communications Workers of America (CWA), the United Food and Commercial Workers Union (UFCW), District Council 1199 (the National Union of Hospital and Health Care Employees), and a coalition of building trades unions, all of which are AFL-CIO unions, as well as from the following independent unions: Ohio Education Association, Fraternal Order of Police, Ohio Nurses Association, and the Teamsters.[38] AFSCME won representation rights in the seven larger units, 1199 and the Fraternal Order of Police won rights in two units, and the UFCW and Ohio Education Association each won rights in one unit. The CWA and the Teamsters which initially had callenged AFSCME in the larger units were not successful in gaining rights in any unit.

The organizing competition among AFL-CIO unions has supposedly been brought under control, according to the president of AFSCME who told a meeting of the National Public Employer Labor Relations Association in March 1986 that, before an organizing campaign even begins, an AFL-CIO arbitrator will weigh competing unions' claims and will determine which union should be given the right to be on the ballot.[39] Although this will not eliminate the competition with the NEA, Teamsters, and other organizations not affiliated with the AFL-CIO, it should reduce interunion rivalry, if it is widely observed by the various organizations.

The organizing conflict has been extensive within two groups: the state civil-service employees who have been represented by independent organizations and the clerical and other nonteacher units in school systems. AFSCME's victories in Ohio are in part attributable to the fact that the formerly independent Ohio State Classified Employees Association had affiliated with AFSCME prior to the representation elections. In the 1981-1983 period, 943,000 state employees were in bargaining units. AFSCME represented 44 percent of these employees and independent associations represented 8 percent of them. Also, state employees in various parts of the country are represented by the CWA, Teamsters, UFCW, and other unions.[40]

Most of the contests for nonteacher units in school systems have been between AFSCME and the local NEA affiliate that represents the teachers. In some instances, however, it is reported that the Service Employees International Union (SEIU), Teamsters, Laborers' International Union of North America (LIUNA), and United Automobile Workers Union (UAW) have sought to represent these employees.

In the health-care field, the American Nurses Association (ANA), similar to professional associations in education, has been drawn into the collective-bargaining arena in order to maintain its representation function. The ANA bargains for private-sector nurses covered by the National Labor Relations Act as well as for nurses employed by city, county, and state governments. In recent years, some groups of salaried doctors in both the private and public sectors have sought to bargain with their employers. Competition to represent the nonprofessional employees of hospitals and nursing homes in both the private and public sectors reflects the continuing fight of 1199, AFSCME, SEIU, and LIUNA for bargaining rights.

In the protective-services field, the International Association of Fire Fighters (IAFF), AFL-CIO, has little competition for the right to represent firefighters, in contrast to the situation among police where several organizations are active. It is estimated that slightly over half of the 600,000 full-time police officers are members of unions,[41] and about half are members of the Fraternal Order of Police.[42] For the most part, police officers are organized into independent organizations at the local level which combine loosely at the state level. The SEIU has organized some police on the West Coast and also, by virtue of its absorption of the National Association of Government Employees (NAGE), acquired the New England-based police groups that had belonged to NAGE. National membership figures can be misleading in specific situations because some unions tend to be strong in one region and weak in others. For example, SEIU has considerable strength in the California public sector and almost none in Wisconsin. The UAW is a factor in public-sector unionization in Michigan and the Teamsters have organized public employees in various locations. Another factor making it more difficult to analyze public-sector unions is the degree to which bargaining is local in character. Local unions and district councils are relatively autonomous groups where bargaining strategy is concerned. One unit may be militant, favoring the strike, while another may prefer arbitration.

The role of the Assembly of Governmental Employees (AGE) is an interesting one. It has been the umbrella organization for the independent state civil-service employee associations (CSEAs) that traditionally lobbied on behalf of state employees prior to the advent of collective bargaining. As bargaining has spread, however, more and more of the state affiliates have left AGE and affiliated with other unions. The New York State organization, which formerly was the largest CSEA in AGE, affiliated with AFSCME in 1978 and the second largest, the California CSEA, affiliated with the SEIU in 1983. Despite these and other losses of state affiliates, AGE continues to function as a central clearinghouse for independent associations with a substantial number of members. In 1984, it reported that it had 22 affiliates representing almost a half-million members, many of whom presumably are not covered by bargaining.[43] Further erosion of AGE membership will probably occur if bargaining laws are passed in states that currently have none and if public-sector collective bargaining continues to spread.

This review of public-sector unions is made more complicated by the shift of

the local transit industry in the past 35 years from the private sector to the public sector. Practically all major city transit systems have gone public during this period and, strictly speaking, the unions in this industry which traditionally have not been thought of as public-sector unions should be included in that category.

The three major unions representing bus drivers and other local transit employees are the Amalgamated Transit Union (ATU) and the Transport Workers Union (TWU), each with approximately 140,000 members, and the local transit division of the United Transportation Union (UTU), which represents a smaller number of local transit workers than the other two unions. Although the ATU is the dominant union in the field nationally, the TWU represents bus drivers in New York City, Philadelphia, San Francisco, and Miami, and the UTU represents drivers in several other cities including Los Angeles and surrounding communities.[44] Bargaining procedures and union policies in the local transit industry frequently were quite different from those covering other public employees of the same city or county; however, as public-transit labor relations is integrated into the public-sector labor relations policies of the employer, bargaining policies and procedures in transit unions are becoming more like those of other public-sector unions.

Space limitations and the impossibility of analyzing in any depth the many unions active in the public sector have made it necessary to limit the following portion of the article to a relatively brief summary of AFSCME and to omit discussions of other unions.

The American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO

The American Federation of State, County and Municipal Employees was founded in the early 1930s by scattered groups of public employees who had affiliated individually with the AFL. The pioneering organization to affiliate in 1932 was the Wisconsin State Employees Association under the leadership of Arnold Zander, who subsequently became the first president of AFSCME. Originally, the individual units of local-government employees were included within AFGE (American Federation of Government Employees), but in 1936 AFSCME was chartered separately by the AFL.[45] At the time it had about 10,000 members, and by 1950 its membership had increased to over 80,000. When the AFL and CIO merged in 1955, the 30,000-member, public-employee CIO affiliate, the Government and Civil Employees Organizing Committee, merged with AFSCME. By 1960, the union had about 180,000 members and was entering a period of internal strife.

Jerry Wurf, the executive director of the large New York City AFSCME District 37, defeated Arnold Zander for the AFSCME presidency in 1964. In his campaign, he argued that the union must devote more of its efforts to collective bargaining. Over the following 17 years, the union, under Wurf's leadership, increased its membership from a little more than 200,000 members to almost one million members, and became the third largest AFL-CIO union.[46] After Wurf died of a heart attack late in 1981, Gerald W. McEntee, a long-time AFSCME vice president and executive director of the large Pennsylvania AFSCME council, was elected by AFSCME's executive board to fill out the presidential term expiring in 1984. Although McEntee was opposed by William Lucy, the black secretary-treasurer in 1981, and won only narrowly, he was not opposed when he ran for a full four-year term in 1984. Lucy was reelected secretary-treasurer.[47]

In the 1984-1986 period, AFSCME became the largest union in the AFL-CIO, reporting more than one million members in a 1984 tally of its membership. It had 400,000 members in the health-care field, 190,000 clericals, 110,000 technicals and professionals, and 100,000 in law enforcement. It had members in 47 states under almost 3,500 contracts. More than 400,000 of its members are women and about 30 percent of its membership is black or Hispanic.[48]

In the mid-seventies, Wurf stopped payment of AFSCME dues to the AFL-CIO Public Employee Department (PED). Along with the NEA, NTEU (National Treasury Employees Union), and IAFF, AFSCME participated in the Coalition of American Public Emplyees (CAPE). This organization was designed to give public-employee unions an independent voice, in competition with PED. Nearly a decade had passed before AFSCME rejoined a restructured PED in which separate divisions had been created for state and local government employees and for federal and postal employees.[49] McEntee apparently established good personal relationships with the presidents of the AFT (Shanker) and SEIU (Sweeney) despite their jurisdictional conflicts,[50] and was elected by acclamation to a two-year term as the president of the PED in September 1985. Under the PED's new structure, the president will be a state/local government representative and the secretary-treasurer, a federal/postal representative, with the representatives alternating these positions for ensuing terms.[51] In 1986, it was too soon to determine whether the PED, as the united voice of public-sector unions, will be more effective than it had been previously.

Despite the spotlight on the national leaders, it should be kept in mind that bargaining is essentially decentralized and that the most important bargaining decisions are being made at the municipal- and state-government bargaining-unit levels. The key decision maker in AFSCME bargaining in the smaller municipalities is the full-time district-council representative helping the local negotiate the contract. In the larger cities, key decisions are usually made by the full-time executive director of the AFSCME district council in the area, with the approval of the bargaining team. Victor Gotbaum, executive director of the New York City AFSCME council, and his counterparts throughout the nation have considerable power and autonomy. However, in contrast to major steel and auto bargaining, national AFSCME leadership usually does not participate in these contract negotiations.

Analyses of the councils, however, reveal varying patterns of operation. In some councils, staff members are elected (Philadelphia, for example). In others, staff members are appointed by the executive director. Some directors favor

the appointment of college-trained or private-sector, union-trained full-time staff, while others pick local activists who have demonstrated ability. The traditions of the district council and the composition of the membership provide partial explanations for these differences. The less-educated, less-skilled female and minority-group members may not aggressively seek union leadership roles and may prefer to rely upon staff professionals chosen from outside their ranks.

The most important factor explaining the various postures of the councils is the absence or presence of bargaining legislation and the degree to which legislation, where it exists, facilitates employee organization. In most instances, it is only after success on the legislative front that the union can turn its attention to serious bargaining.

Conclusions and Speculation About the Future

As predicted, public-sector unions have grown at a lower rate in the past decade than they did in the previous decade. However, predictions reflecting an overall average are much like estimates of comfort with one foot in boiling water and the other in the freezer — on the average it's comfortable! In the federal sector, unions have not grown, as was predicted, but have shrunk. AFSCME and the AFT, on the other hand, have made substantial progress in expanding their membership in the local- and state-government sector.

Unionism in the field of education probably will continue to grow at a slow rate unless Congress enacts a national local-government bargaining bill. The constitutional barrier posed by the *National League of Cities*[52] decision no longer exists and the possibility of legislation will depend upon the political climate in 1988 and subsequently. If minimum bargaining standards are provided by federal legislation, it is likely that there will be a substantial increase in teachers' unions in those states in which there currently is no state law. Competition between the NEA and AFT will continue, but it is doubtful that rivalry will dampen organizing efforts and may very well have a stimulating effect.

Union membership in higher education is likely to grow at a slow rate in the next decade under the prevailing legal climate. If a national bargaining law is passed, it seems probable that the growth will be faster. Also, if the antipathy toward unionism changes on the "flagship" campuses in states where there is bargaining legislation, growth will increase substantially. Currently, however, neither of these changes seems likely in the near future.

The growth of union membership at the state and local level has been slow and is not likely to change. Much of AFSCME's recent growth is attributable to the passage of legislation in California, Illinois, and Ohio and the decisions of formerly independent state civil-service associations to affiliate with AFSCME. Further increases from those sources will be small and, as in education, substantial increases will depend upon passage of national legislation.

Although the political clout of public-sector unions does not seem great at the moment (1986), the revised PED and the more politically active NEA provide the unions with a stronger base for future efforts. Mergers of independent groups such as the NEA and NTEU with AFL-CIO unions are possible, but what seems more probable is that there will be an increase only in the number of joint efforts, such as the NEA- and AFT-mounted drive to defeat tuition tax credits.

Two final questions come to mind: will differences between public- and private-sector unionism be seen as more or less important than they have in the past and will unions based on occupation prevail over general unions? As public-sector unionism matures and as public-sector management and the public become more accustomed to it and the occasional conflicts that arise, it is likely that the perceived differences between public- and private-sector unionism will diminish. Given the traditions and heritage of this country, however, it is unlikely that these differences will decrease to the level that exists in other western industrialized nations.

Occupationally-based unions are dominant in education and the public-safety sectors of society and are likely to maintain that dominance. General unions, however, are dominant among unskilled and semiskilled blue- and white-collar workers. The borderline area where the pattern is not clear is among professionals, technical workers, and skilled workers. In some states these workers have preferred the narrow craft union or professional association over the general union, while in other situations the opposite has been true. It seems likely that this mixed pattern will prevail and that in the future public-sector unions will continue to exhibit a great variety of structural patterns.

Notes

1. A review of the Proceedings of the Industrial Relations Research Association shows that many sessions have been devoted to various aspects of public-sector bargaining.
2. Jack Stieber, Public Employee Unionism (Washington: The Brookings Institution, 1973), 19-20.
3. Leo Troy and Neil Sheflin, U.S. Union Sourcebook: Membership, Finances, Structure, Directory, 1st ed. (West Orange, N.J.: Industrial Relations Data and Information Services, 1985).
4. Courtney D. Gifford, Directory of U.S. Labor Organizations, 1986-87 Ed. (Washington: BNA Books, 1986).
5. Richard B. Freeman, *Unionism Comes to the Public Sector*, 24 J. Econ. Lit. 41, 46 (March 1986).
6. Gifford, *supra* note 5, at 43, 56, 58.
7. 716 GERR 15 (July 11, 1977).
8. 819 GERR 15 (July 16, 1979).
9. 716 GERR 17 (July 11, 1977).
10. *Id.* at 15.
11. 25 GERR 961 (July 13, 1987).
12. 21 GERR 1444 (July 11, 1983).
13. 870 GERR 13 (July 14, 1980).
14. 971 GERR 14 (July 19, 1982).
15. Today's Education, A Special Issue, 5 NEA Today 68 (1986).
16. 971 GERR 15 (July 19, 1982).
17. 24 GERR 960 (July 14, 1986).
18. 71 Am. Teacher 6, 17 (September 1986).
19. At its 1983 convention, for example, the AFT passed a resolution calling for merger talks and teacher unity

because of the threat of tuition tax credits. 21 GERR 1466 (July 18, 1983).
20. 71 Am. Teacher 16 (September 1986).
21. 970 GERR 17 (July 12, 1982).
22. 71 Am. Teacher 4 (November 1986).
23. 22 GERR 1318 (July 2, 1984).
24. 52 AAUP Bull. 229 (Summer 1966).
25. 55 AAUP Bull. 490 (Winter 1969).
26. 58 AAUP Bull. 46-61 (Spring 1972) contains a summary of the development of the positions on bargaining taken by the AAUP leadership and the reasons for and against the change.
27. 22 GERR 1318 (July 2, 1984).
28. 22 GERR 2307-2308 (December 17, 1984).
29. Joseph W. Garbarino, *Faculty Collective Bargaining*, in Unions in Transition, ed. Seymour Martin Lipset (San Francisco: ICS Press, 1986), 278. This estimate may overstate the decline. The Chronicle of Higher Education states that AAUP peak membership was only 78,000 (32 Chron. Higher Educ. 19 [July 16, 1986]).
30. 71 Academe 6a (November-December 1985).
31. *Id.*
32. Garbarino, *supra* note 87 at 272-273.
33. *Id.* at 274
34. 72 Academe 12a (November-December 1986).
35. *Id.*
36. 70 Academe 19a (September-October 1984).
37. 22 GERR 1437 (July 23, 1984).
38. 23 GERR 567-569 (April 15, 1985); 23 GERR 1396-1398 (September 30, 1985); 23 GERR 1617-1618 (November 11, 1985); 24 GERR 11-12 (January 6, 1986).
39. 24 GERR 455 (March 31, 1986).
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44. James L. Stern et al., Labor Relations in Urban Mass Transit (Madison: Industrial Relations Research Institute, University of Wisconsin, 1977).
45. Information about the early history of AFSCME and its development may be found in Leo Kramer, Labor's Paradox (New York: John Wiley & Sons, 1962); Richard Billings and John Greenya, Power to the Public Worker (Washington: E.B. Luce, 1974); Stieber, *supra* note 2; and an article about AFSCME by Jerry Wurf and Mary Hennessy in Collective Bargaining in Government, eds. J. Joseph Loewenberg and Michael H. Moskow (Englewood Cliffs, N.J.: Prentice-Hall, 1972).
46. 942 GERR 33 (December 14, 1981) and 943 GERR 14-15 (December 28, 1981).
47. 22 GERR 1253 (June 25, 1984).
48. *Id.* at 1254.
49. 23 GERR 246 (February 25, 1985).
50. 21 GERR 2095 (October 24, 1983).
51. 23 GERR 1409 (September 30, 1985).
52. *National League of Cities v. Usery*, 426 U.S. 833 (1976).

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Aaron, Benjamin, Joyce M. Najita, and James L. Stern, eds. *Public-Sector Bargaining* (2d ed.). Washington: BNA Books, 1988. 334 pp. (Industrial Relations Research Association Series)

This volume updates the 1979 edition and contains chapters written by many of the same authors as that edition. Their approach is to identify basic trends, organize, and interpret, rather than undertake new research. Each chapter is written by a different author, and the topics covered are the extent of collective bargaining in the public sector, union structure, management organization for collective bargaining, compensation, dispute resolution, legislation, arbitration, public employee bargaining in Canada, and future prospects.

Freeman, Richard B. "Contraction and Expansion: The Divergence of Private Sector and Public Sector Unionism in the United States." *Journal of Economic Perspectives*, vol. 2, no. 2, Spring 1988, pp. 63-68.

Why has private-sector union membership declined while public-sector membership has grown? Freeman describes the numerical dimensions of the changes and then uses comparisons with other countries, especially Canada, to test possible explanations for the divergence. The evidence appears to indicate that the private-sector decline is due to increased management opposition and the public-sector growth is due to decreased management opposition as reflected in the spread of bargaining laws and in vote-seeking behavior. This has two implications for the economy as a whole: first, smaller union effects are associated with the public sector, and second, national economic problems will not in the future be attributable to unions.

Ichniowski, Casey. "Police Recognition Strikes: Illegal and Ill-Fated." *Journal of Labor Research*, vol. 9, no. 2, Spring 1988, pp. 183-97.

This article analyzes the strike activity and unionization rates of six hundred nonunion police departments from 1972-78. The results indicate that recognition strikes, which most frequently occur in the absence of a state bargaining law, do not help in gaining recognition; in fact, they may reduce the likelihood of a union's being recognized. The author assesses what this reveals about the power that public employees wield when they engage in strikes.

Kurth, Michael M. "Teachers' Unions and Excellence in Education: An Analysis of the Decline in SAT Scores." *Journal of Labor Research*, vol. 8, no. 4, Fall 1987, pp. 351-67.

SAT scores of college applicants have consistently declined over the last twenty years, and theories advanced to explain the decline have occasioned widespread debate. This article tests explanations for the decline using cross-sectional regression analysis of SAT scores from 1972-83. Among the possible causes not tested are the design of the test itself and the innate ability of the students taking it. Those causes tested are home and social environment variables, including working women, divorce rate, newspaper circulation, and urbanization; school funding variables, including local funding, school consolidation, spending per pupil, and private schools; teacher unionism variables, including salaries, collective bargaining, meetings, and conferences; and the proportion of high school students taking the test. Of the variables tested, those related to unionism were the most significant.

Reder, Melvin W. "The Rise and Fall of Unions: The Public Sector and the Private." *Journal of Economic Perspectives*, vol. 2, no. 2, Spring 1988, pp. 89-110.

Reder attempts to explain the decline in private-sector union membership and the growth in public-sector union membership historically in terms of the costs and benefits of membership to the individual. He distinguishes five epochs in private-sector growth and two in public-sector growth. Membership cycles are generally related to the condition of the economy in the private sector and to the role of laws and government regulation in the public sector.

Vanderporten, Bruce, and W. Clayton Hall. "Teacher Strikes in Strike Prone States." *Journal of Collective Negotiations in the Public Sector*, vol. 17, no. 1, 1988, pp. 75-87.

From 1972-81, two-thirds of all teacher strikes occurred in Illinois, Michigan, Ohio, Pennsylvania, and New Jersey. This article develops an empirical model to determine the causes of these strikes. Results suggest that strikes are caused primarily by factors directly related to teachers' salaries and a decline in their real wages. A favorable political climate may have some influence, but concern over working conditions, such as student-teacher ratios, seems not to be important.

Wesman, Elizabeth C. "Unions and Comparable Worth: Progress in the Public Sector." *Journal of Collective Negotiations in the Public Sector*, vol. 17, no. 1, 1988, pp. 13-26.

This article begins by tracing the role of unions in the administrative and legislative history of comparable worth and analyzing landmark federal court decisions. The second part describes the status of union efforts in various states to secure the adoption of comparable worth programs. The article ends with an assessment of how support for comparable worth may contribute to union growth in the public sector by attracting women and low-paid service workers to the labor movement.

(Books and articles annotated in *Further References* can be obtained on interlibrary loan through ILLINET by contacting your local public library or system headquarters.)

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