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# Public Employee Collective Bargaining In Louisiana

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## PUBLIC EMPLOYEE COLLECTIVE BARGAINING IN LOUISIANA

The National Labor Relations Act specifically exempts from the term "employer" "any State or political subdivision thereof."<sup>1</sup> Thus, the labor-management relations in state and municipal employment are subject to state and local jurisdiction. Traditionally, states have been reluctant to grant public employees the collective bargaining rights enjoyed by private employees under the National Labor Relations Act but the past decade has witnessed a striking growth in public sector collective bargaining.<sup>2</sup> While a majority of states have responded to employee demands by enacting legislation endorsing to some degree the right of collective bargaining, Louisiana has not enacted any general enabling legislation.<sup>3</sup> The purpose of this Comment is to examine the rights of public employees and employers in Louisiana to engage in collective bargaining in the absence of legislative authorization and to examine the collective bargaining agreements reached by these parties.

### *Employee Right to Organize and Collectively Bargain*

Recent decisions indicate that the right of public employees to form and join labor organizations for the purpose of collective bargaining is protected against government infringement under the first amendment guarantee of freedom of association.<sup>4</sup> In *Keyishian v.*

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1. 29 U.S.C. § 152(2) (1970).

2. As of November 1971, legislation in twenty-seven states *mandated* collective bargaining at the state or local level. For a complete compilation, see LABOR MANAGEMENT SERV. ADMIN., UNITED STATES DEPT. OF LABOR, SUMMARY OF STATE POLICY REGULATIONS FOR PUBLIC SECTOR LABOR RELATIONS: STATUTES, ATTORNEY GENERAL'S OPINIONS AND SELECTED COURT DECISIONS (1970). See also Executive Order 11491, 3 C.F.R. 451 (Supp. 1970), which expands the rights of federal employees to join unions and engage in collective bargaining.

3. An exception is La. R.S. 23:890 (Supp. 1964) granting full collective bargaining rights to municipal transit employees.

4. *Orr v. Thorpe*, 427 F.2d 1129 (5th Cir. 1970); *AFSCME v. Woodward*, 406 F.2d 137 (8th Cir. 1969); *McLaughlin v. Tilendis*, 398 F.2d 287 (7th Cir. 1968); *Teamsters Public Employees Union Local No. 594 v. City of West Point*, 338 F. Supp. 927 (D. Neb. 1972); *United Fed. of Postal Clerks v. Blount*, 325 F. Supp. 879 (D.C.D.), *aff'd*, 404 U.S. 802 (1971); *Melton v. City of Atlanta*, 324 F. Supp. 315 (N.D. Ga. 1971); *Local 858, American Fed. of Teachers v. School Dist. No. 1*, 314 F. Supp. 1069 (D. Colo. 1970); *Service Employees Int. Union, AFL-CIO v. County of Butler*, 306 F. Supp. 1080

*Board of Regents*,<sup>5</sup> the United States Supreme Court repudiated the premise that public employment may be conditioned on the surrender of constitutional rights which could not be abridged by direct governmental action. Subsequent to *Keyishian*, several courts granted injunctions and damages pursuant to the Civil Rights Act of 1871<sup>6</sup> to public employees discharged from employment on account of union membership on the theory that such discharge violated the employees' right of free association.<sup>7</sup> Statutes prohibiting public employees from joining labor unions<sup>8</sup> have also been invalidated based on a United States Supreme Court decision holding that freedom of belief, whether political, religious or *economic*, is an integral aspect of the "liberty" assured by the due process clause of the fourteenth amendment.<sup>9</sup>

Although criticized as weakening the protected right to organize,<sup>10</sup> it is nevertheless settled that public employees have no constitutional right to require their employers to bargain collectively.<sup>11</sup> The Seventh Circuit held that

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(W.D. Pa. 1969); *Beauboeuf v. Delgado College*, 303 F. Supp. 861 (E.D. La. 1969); *Atkins v. City of Charlotte*, 296 F. Supp. 1068 (W.D.N.C. 1969). For an analysis of the *McLaughlin*, *Woodward* and *Atkins* decisions see Eisener, *First Amendment Rights of Association for Public Employee Union Members*, 20 LAB. L.J. 438 (1969).

5. 385 U.S. 589 (1967).

6. 42 U.S.C. § 1983 (1964) provides that "[e]very person who, under color of any statute, ordinance, regulation of any State . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity or other proper proceeding for redress."

7. *Orr v. Thorpe*, 427 F.2d 1129 (5th Cir. 1970); *AFSCME, AFL-CIO v. Woodward*, 406 F.2d 137 (8th Cir. 1969); *McLaughlin v. Tilendis*, 398 F.2d 287 (7th Cir. 1968); *Local 858, American Fed. of Teachers v. School Dist. No. 1*, 314 F. Supp. 1069 (D. Colo. 1970). See also *Beauboeuf v. Delgado College*, 303 F. Supp. 861 (E.D. La. 1969), where a Louisiana federal district court, while finding no evidence of discrimination on account of union activities of a teacher, observed that if there had been a discharge because of union activities, the teacher would have been entitled to a preventative injunction under the rationale of *McLaughlin* and *Woodward*.

8. *Atkins v. City of Charlotte*, 296 F. Supp. 1068 (W.D.N.C. 1969). In accord is *Melton v. City of Atlanta*, 324 F. Supp. 315 (N.D. Ga. 1971), where the court concluded that a statute prohibiting firemen and police from joining labor unions, while tending toward the desired impartiality of these groups in times of strife, would not be so efficacious as to outweigh the impairment of first amendment rights.

9. *NAACP v. Alabama, ex rel. Patterson*, 357 U.S. 449 (1958).

10. See Note, 44 TUL. L. REV. 568 (1970).

11. *Atkins v. City of Charlotte*, 296 F. Supp. 1068 (W.D.N.C. 1969). See also *Melton v. City of Atlanta*, 324 F. Supp. 315 (N.D. Ga. 1971), where the court in upholding the constitutional right of police and firemen to join a labor organization, pointed out that plaintiffs did not contend that the city could be compelled to negotiate with the employee organization.

there is no constitutional duty to bargain collectively with an exclusive bargaining agent. Such duty, when imposed, is imposed by statute. The refusal of [the School Board] to bargain in good faith does not equal a constitutional violation of plaintiffs-appellees' positive rights of association, free speech, petition, equal protection, or due process. Nor does the fact that the agreement to collectively bargain may be enforceable against a state elevate a contractual right to a constitutional right.<sup>12</sup>

However, a recent federal court decision has held that public employees do have a right to present their demands to employers and consult with them under the first amendment right to petition government for a redress of grievances as such conduct involves no significant abridgment of government freedom of action.<sup>13</sup> Any further extension of collective bargaining rights, however, would require legislative authorization.<sup>14</sup>

*Authority of the State to Collectively Bargain in the Absence of Legislative Sanction*

Not only are public employers not constitutionally required to collectively bargain, but further, their ability to do so in the absence of legislative authorization is questionable.<sup>15</sup> A major objection to public employer collective bargaining is that it involves an improper delegation of discretion over terms and conditions of employment to employee representatives, resulting in a government by private agree-

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12. Indianapolis Educ. Ass'n v. Lewallen, 71 L.R.R.M. 2898 (S.D. Ind. 1969).

13. Newport News Fire Fighters Ass'n, Local 794 v. City of Newport News, 339 F. Supp. 13 (E.D. Va. 1972).

14. In certain circumstances, certain public employees may require collective bargaining in the absence of legislative sanction where "a public body might bargain so universally with unions representing other employees that the denial of the right of union representation . . . might be considered a denial of equal protection." *Beauboeuf v. Delgado College*, 303 F. Supp. 861, 866 (E.D. La. 1969). However, the court cautioned that executive officials may exercise some degree of latitude as to whether they should bargain with different classes of employees.

15. See, e.g., *International Longshoreman's Ass'n v. Water Works Bd.*, 276 Ala. 642, 163 So. 2d 619 (1964); *Wichita Public School Employees Union v. Smith*, 194 Kan. 2, 397 P.2d 357 (1964); *Local 507, IBEW v. City of Hastings*, 179 Neb. 455, 138 N.W.2d 822 (1965); *Delaware River & Bay Auth. v. International Org.*, 45 N.J. 138, 211 A.2d 789 (1965); *Turnpike Auth. v. Local 1511, AFSCME*, 83 N.J. Super. 389, 200 A.2d 134 (1964). But see *Chicago Division of Illinois Educ. Ass'n v. Board of Educ.*, 76 Ill. App. 2d 456, 222 N.E.2d 243 (Ill. Ct. App. 1966); *IBEW v. Town of Farmington*, 75 N.M. 393, 405 P.2d 233 (1965). An excellent discussion of the general area is contained in *Dole, State and Local Public Employee Collective Bargaining in the Absence of Explicit Legislative Authorization*, 54 IOWA L. REV. 539 (1969).

ment.<sup>16</sup> Several courts, however, have concluded that no such illegal delegation of sovereign authority results since the public employer retains the discretion to refuse to assent to the proposed terms and conditions.<sup>17</sup> Another argument advanced against collective bargaining is based on a strict construction of local government powers. Reasoning that local government entities are limited to those powers expressly granted, several courts have refused to imply a power to collectively bargain from expressly granted powers to contract and to fix wages, hours and conditions of employment.<sup>18</sup> A contrary view was expressed in one case where the court observed that authorization to do business necessarily implies the power to make employment contracts. The court reasoned that "[t]o say that the [school] district is powerless to enter into one agreement covering the terms of employment of many of its employees but has the power to enter into approximately 750 separate negotiations would be incongruity beyond reason."<sup>19</sup>

A third objection is that a civil service system preempts the authority of the public employer to collectively bargain.<sup>20</sup> However, some decisions have voiced the conclusion that there is no preemption but only a reduction of the subjects of bargaining to those within the discretion of administrative officials since the statutory rights

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16. *Fellows v. La Tronica*, 151 Colo. 300, 377 P.2d 547 (1962); *Miami Water Works Local No. 654 v. Miami*, 157 Fla. 445, 26 So. 2d 194 (1946); *Wichita Public School Employees Union v. Smith*, 194 Kan. 2, 397 P.2d 357 (1964); *Mugford v. Mayor & City Council of Baltimore*, 185 Md. 266, 44 A.2d 745 (1945); *Springfield v. Clouse*, 356 Mo. 1239, 206 S.W.2d 539 (1947).

17. *IBEW Local 266 v. Salt River Project Agric. Improv. & Power Dist.*, 78 Ariz. 30, 275 P.2d 393 (1954); *Norwalk Teacher's Ass'n v. Board of Educ.*, 138 Conn. 269, 83 A.2d 482 (1951). The argument of sovereignty has been characterized as the "management prerogative" issue which proved to be so divisive in early private sector bargaining. Chamberlain, *Public v. Private Sector Bargaining*, COLLECTIVE BARGAINING IN GOVERNMENT 11 (1972). The author rejects the sovereignty argument because it is the policy making rather than the administrative function that involves sovereignty.

18. *Miami Water Works Local No. 654 v. Miami*, 157 Fla. 445, 26 So. 2d 194 (1946); *Wichita Public School Employees Union v. Smith*, 194 Kan. 2, 397 P.2d 357 (1964); *Delaware River & Bay Auth. v. International Org.*, 45 N.J. 138, 211 A.2d 789 (1965).

19. *IBEW Local 266 v. Salt River Project Agric. Improve. & Power Dist.*, 78 Ariz. 30, 38-39, 275 P.2d 393, 399 (1954); *accord*, *Norwalk Teacher's Ass'n v. Board of Educ.*, 138 Conn. 269, 83 A.2d 482 (1951); *Christie v. Port of Olympia*, 27 Wash. 2d 534, 179 P.2d 294 (1947).

20. *Nutter v. Santa Monica*, 74 Cal. App. 2d 292, 168 P.2d 741 (1946); *Board of Educ. v. Sand*, 227 Minn. 202, 34 N.W.2d 689 (1948); *Springfield v. Clouse*, 356 Mo. 1239, 206 S.W.2d 539 (1947).

created by civil service cannot be varied by agreement.<sup>21</sup> Several earlier decisions denied the power of government to collectively bargain with its employees on the basis of public policy.<sup>22</sup> However, a recent decision noted that attitudes concerning public employees have changed radically and adopted the view that the right of employees to participate in the establishment of working conditions is not contrary to public policy.<sup>23</sup>

Thus, the power of state and local governments to collectively bargain in the absence of legislative authorization is, at best, a questionable one. Moreover, even those decisions which have sanctioned such voluntary bargaining have emphasized the necessity of legislation to settle such matters as representation status, subjects of bargaining, unit determination and other procedural and substantive matters in the bargaining process.<sup>24</sup>

### *Collective Bargaining in Louisiana*

#### *The Statutory and Judicial Framework*

With one narrow exception, no Louisiana statute confers collective bargaining rights on state and local employees.<sup>25</sup> Moreover, the state labor code<sup>26</sup> asserts the public policy of the state to be that "[n]egotiation of terms and conditions of labor should result from voluntary agreement between employer and employee."<sup>27</sup> While the term "employee" is not defined to exclude those employed by a governmental authority, it is doubtful that the legislature intended to

21. *Civil Service Forum v. N.Y. Transit Auth.*, 3 Misc. 2d 346, 151 N.Y.S.2d 402 (Sup. Ct. 1956). While civil service evolved in the late 19th century to ensure that government employment would be based solely on merit, the role of civil service has expanded with the passage of time to include supervision of a number of tasks not related to merit hiring such as training, salary administration, attendance control, morals, safety and grievances. See Stanley, *What Are Unions Doing to Merit Systems*, 31 PUB. PER. REV. 108 (1970); Comment, 38 U. OF CHI. L. REV. 826 (1970) for an analysis of the civil service-collective bargaining conflict.

22. *International Union of Operating Eng. v. Water Works Bd.*, 276 Ala. 642, 163 So. 2d 619 (1964); *International Longshoreman's Ass'n v. Georgia Ports Auth.*, 217 Ga. 712, 124 S.E.2d 733 (1962).

23. *Louisville Fire Fighters v. Burke*, 75 L.R.R.M. 2001 (1970). See also *Chicago Div. of Illinois Educ. Ass'n v. Board of Educ.*, 76 Ill. App. 2d 456, 222 N.E.2d 243 (Ill. Ct. App. 1966); *Christie v. Port of Olympia*, 27 Wash. 2d 534, 179 P.2d 294 (1947).

24. See, e.g., *Minneapolis Fed. of Teachers Local 59 v. Obermeyer*, 275 Minn. 347, 147 N.W.2d 358 (1969).

25. Employees of municipally owned or operated public transportation facilities are granted the right of collective bargaining. LA. R.S. 23:890 (Supp. 1964).

26. LA. R.S. 23:821-90 (1950).

27. LA. R.S. 23:822 (1950).

confer on public employees the broad organizational and bargaining rights described in the statute, since it presumes a corporate employer.<sup>28</sup> Furthermore, a California court has held an identical provision of the California labor code<sup>29</sup> to be inapplicable to the state and its political subdivisions, interpreting the objective of the legislation to be the improvement of the status of labor in private industry.<sup>30</sup>

The jurisprudence indicates that no right to collectively bargain in the absence of legislative authorization exists. For example, in *Beauboeuf v. Delgado College*,<sup>31</sup> a federal district court concluded that "Louisiana law as interpreted by its Attorney General, neither *commands* municipal corporations to, nor *prohibits* them from, bargaining collectively with unions representing groups of municipal employees."<sup>32</sup> (Emphasis added.) A state district court reached the same conclusion with respect to the state's authority to collectively bargain.<sup>33</sup> Thus, while state and local employees in Louisiana cannot require their employers to collectively bargain, governmental entities are not prohibited from collectively bargaining by law. Further, while the exclusive jurisdiction of the civil service over terms and conditions of employment has been held not to preempt the authority of a state agency to negotiate a collective bargaining agreement with an employee representative, contract provisions are necessarily subordinate to the controlling civil service authority.<sup>34</sup> Thus negotiable items are limited to those areas within the discretion of administrators.

Despite the absence of legislative authorization and the existence of a comprehensive civil service system, several state institutions have entered into collective bargaining agreements with employee unions.<sup>35</sup> Their stated purpose is to enable employees to bargain

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28. *Id.* The statute states that the underlying reason for the stated policy is the disadvantage imposed on the unorganized worker who, in dealing with corporate employers, is unable to obtain acceptable terms of employment.

29. CALIF. LABOR CODE § 923 (Deering 1964).

30. *Nutter v. Santa Monica*, 74 Cal. App. 2d 292, 168 P.2d 741 (Cal. Ct. App. 1946). The court observed that the reasoning of the legislature in enacting the statute is that oppression occurs in the field of private industry due to the incentive for personal gain whereas this incentive is not found in public employment.

31. 303 F.Supp. 861 (E.D. La. 1969).

32. *Id.* at 864.

33. *Zbozen v. Department of Highways*, Civil No. I-163480 (19th D. La., July 6, 1973).

34. *Id.*

35. The contracts hereinafter relied upon include those contracted by American Federation of State County and Municipal Employees with Southeastern Louisiana College (Local 489) [hereinafter cited as Southeastern], Charity Hospital of Louisiana

through the union with regard to wages, hours and conditions of employment within the provisions of the civil service system and to promote the general efficiency of agency operations.<sup>36</sup>

### *Representational Status of the Union*

In the contract, the employee representative is recognized as the exclusive bargaining agent<sup>37</sup> of all "employees" who are generally defined to include all agency employees except the director and professional staff<sup>38</sup> of the agency. Privileges accompanying exclusive recognition include union access to bulletin boards and to the employer premises during working hours provided that there is no interference with the employees' duties.<sup>39</sup> Furthermore, the agency agrees to deal with all accredited representatives of the recognized union, granting time off with pay during working hours to union stewards to settle grievances in the area of their jurisdiction upon the approval of their supervisor.<sup>40</sup> There currently is no practice of ascertaining the strength of employee support for the exclusive representative as a prerequisite to the conferral of recognition.

The granting of exclusive recognition to a majority representative of employees tends to effectuate the contract purpose of promoting harmonious and efficient operations as it is generally recognized that exclusive recognition eliminates disruptive competition among

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at New Orleans (Local 1991) [hereinafter cited as Charity of New Orleans], Southwest Charity Hospital (Local 715) [hereinafter cited as Southwest], Southern University of Baton Rouge (Local 927) [hereinafter cited as Southern], and Louisiana Highway Department proposed contract (Local 17) [hereinafter cited as Highway Dept.]. These are on file at the Louisiana State Department of Civil Service in Baton Rouge, Louisiana.

36. Southeastern p. 1, Southern p. 1, Highway Dept. p. 1, Southwest p. 1. The preamble of the Charity of New Orleans agreement describes the purpose as the promotion of harmonious relations between employer and union, the establishment of equitable and peaceful procedures to resolve differences, and the establishment of rates of pay, hours of work and other conditions of employment.

37. Southeastern art. I, p. 1; Highway Dept. art. I, p. 1; Charity of New Orleans art. II, p. 1; Southwest art. I, p. 1.

38. For example, Southeastern art. I excludes as employees faculty members, departmental heads, appointees and elected officials; Charity of New Orleans art. I, p. 1 excludes the director, physicians, nurses, technicians, private personnel guards and department heads; Highway Dept. art. I, p. 1 excludes the director, all positions above section head, engineers and surveyors, attorneys with the stipulation that any employee may become a union member and be represented on an individual basis.

39. Southeastern art. XVII, p. 9; Highway Dept. art. XV, p. 16; Southwest art. XIII, p. 13. In some instances, approval of the agency director is required.

40. Southeastern art. III, p. 2; Highway Dept. art. IV, p. 3; Charity of New Orleans art. V, p. 4; Southwest art. IV, p. 3.



rival unions.<sup>41</sup> The right to confer exclusive recognition and its attendant privileges on a union selected by a *majority* of employees has been approved in several decisions.<sup>42</sup> Nevertheless, to the extent exclusive recognition is adopted in public employment there is a commensurate diminution in the freedom of individual employees and of nonrecognized organizations.<sup>43</sup> In two recent decisions involving school employees, such interference with first amendment rights was regarded as insignificant in light of the compelling state interest in maintaining the orderly functioning of the schools and in the effective representation by the majority union which might otherwise be disrupted by inter-union competition.<sup>44</sup>

Several decisions have approved union shop agreements and concerted activities to achieve them in the private sector even in the absence of majority support.<sup>45</sup> In these cases, however, the constitutional issue was not reached since state action was not involved. Instead, the court's sanction of a nonmajority union shop was based

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41. Oberer, *The Future of Collective Bargaining in Public Employment*, 20 LAB. L.J. 771 (1969); Smith, *State and Local Advisory Reports on Public Employment Labor Legislation*, 67 MICH. L. REV. 891, 901-02 (1969); Comment, 55 CORNELL L. REV. 1004 (1970). These articles emphasize exclusive recognition as a prerequisite of a viable bargaining process especially in public employment where problems would be acute due to the necessity of agreement prior to budget deadlines. Recognition of a union as the exclusive representative of all employees in a governmental unit is prohibited by only two states and is provided for by a majority of state statutes authorizing collective bargaining in public employment as well as by Executive Order 1149, 3 C.F.R. 451 (Supp. 1970), 5 U.S.C. § 7301 (1970). However, the salutary effect of exclusive recognition in the absence of majority support of the exclusive bargaining agent is questionable.

42. *Federation of Del. Teachers v. De La Warr Bd. of Educ.*, 335 F. Supp. 385 (D. Del. 1971); *Local 858, American Fed. of Teachers v. School Dist. No. 1*, 314 F. Supp. 1069 (D. Colo. 1970); *Minn. Fed. of Teachers Local 59 v. Obermeyer*, 275 Minn. 347, 147 N.W.2d 358 (1969); *Chicago Div. Ill. Educ. Ass'n v. Board of Educ.*, 76 Ill. App. 2d 456, 222 N.E.2d 243 (Ill. Ct. App. 1966); *State Bd. of Regents v. United Packing House Food and Allied Workers, Local 1258*, 175 N.W.2d 110 (Iowa 1970).

43. *Steele & Louisville v. NRA*, 323 U.S. 192 (1944). A grant of exclusive recognition precludes a non-recognized union from negotiating a labor agreement in behalf of employees and generally involves a conferral of exclusive privileges such as access to bulletin boards or employer facilities on the recognized union.

44. *Federation of Del. Teachers v. De La Warr Bd. of Educ.*, 335 F. Supp. 385 (D. Del. 1971); *Local 858 American Fed. of Teachers v. School Dist. No. 1*, 314 F. Supp. 1069 (D. Colo. 1970).

45. *Englund v. Chavez*, 105 Cal. Rptr. 521, 504 P.2d 457 (1972); *Petri Cleaners Inc. v. Auto. Employees*, 53 Cal. 2d 455, 349 P.2d 76 (1960). See also *Messner v. Journeymen Barbers Int. Union*, 53 Cal. 2d 873, 351 P.2d 347 (1960); *Shafer v. Reg. Pharm. Union*, 16 Cal. 2d 379, 106 P.2d 273 (1940).

on the laissez-faire labor policy of the state.<sup>46</sup> While exclusive recognition does not inhibit public employees per se in the exercise of their first amendment right to form, join and assist labor organizations, the absence of majority support might unduly discourage the rights of association of non-union employees and thus may be attacked as an overly broad means of achieving the objective of labor peace.<sup>47</sup> Furthermore, the grant of exclusive recognition to a nonmajority union should be measured against the equal protection requirement that the privilege be reasonably related to attainment of a permissible objective.<sup>48</sup> The equal protection requirement would not be satisfied because absence of majority support for an exclusive representative of employees would result in labor strife rather than the desired goal of labor peace.<sup>49</sup> A recent Louisiana district court decision invalidated the conferral of exclusive recognition by the State Department of Highways on a nonmajority employee representative. The court did not consider the first amendment and equal protection arguments but held the state's action to be arbitrary and capricious in light of its finding that only one-third of the agency employees supported the union.<sup>50</sup>

Another problem involving the representational status of a public union in Louisiana is the determination of an appropriate unit for purposes of collective bargaining.<sup>51</sup> No legislative guidelines exist for

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46. *Englund v. Chavez*, 105 Cal. Rptr. 521, 504 P.2d 457 (1972).

47. Support for this proposition is derived from the continually expanding application of the constitutional precept that a state may not utilize broadly drafted legislation in a field of activity which touches constitutionally protected rights. Increasing substance to freedom of association is given through the overbreadth doctrine. *United States v. Robel*, 389 U.S. 258 (1967); *Aptheker v. Secretary of State*, 378 U.S. 500 (1964); *Elfbrandt v. Russell*, 384 U.S. 11 (1964); *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288 (1964); *Shelton v. Tucker*, 364 U.S. 479 (1960); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). Moreover, while the denial of rights of communication to a non-majority exclusive bargaining agent serves a compelling state interest of promoting labor peace which justifies interference with first amendment rights, *Local 858, American Fed. of Teachers v. School Dist. No. 1*, 314 F. Supp. 1069 (D. Colo. 1970), there may be no compelling interest to justify such interference in the absence of majority support.

48. *Kotch v. Board of River Port Pilot Comm'rs*, 330 U.S. 552 (1946).

49. In *Local 858, American Fed. of Teachers v. School Dist. No. 1*, 314 F. Supp. 1069 (D. Colo. 1970), the court suggested that the strict test of equal protection must be met where the use of school facilities was denied to a minority union, but held that a compelling state interest in labor peace justified the classification which admittedly circumscribed the exercise of a constitutional right.

50. *Zbozen v. Department of Highways*, Civil No. I-163480 (19th D. La., July 6, 1973).

51. See note 35 *supra*.

the formation of a unit of public employees. In practice, state employees are organized on an agency or institution-wide basis. Employees represented by the union include all those employed by the agency with the exception of those holding professional and managerial positions.<sup>52</sup> Two criteria generally relied on in assessing the appropriateness of governmental units are the existence of an identifiable community of interest among the employees, and the power of the employer to conclude an agreement covering terms and conditions of employment.<sup>53</sup> The department-wide unit of Louisiana employees does not meet these criteria. While state agency employees admittedly share a degree of interest by virtue of their common employment, the diversity of occupational groups included within a departmental unit and the failure to exclude those employees who occupy supervisory, confidential or personnel positions reduces the cohesiveness among unit employees.<sup>54</sup> Furthermore, the choice of a department unit is questionable because agency directors lack authority to conclusively determine wages, hours and working conditions of those employees subject to the civil service system. In view of the lack of cohesiveness and the overall inability of the agency director to determine working conditions, the stated purpose of the agreements, *i. e.*, to afford the employees the right to collectively bargain, is not being fully implemented through departmental collective bargaining.

#### *Subjects of Collective Bargaining*

Within the framework of the civil service system, subjects of collective bargaining are restricted to those within the administrative discretion of agency directors.<sup>55</sup> Employee representatives have, how-

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52. See note 38 *supra*.

53. See, *e.g.*, MICH. COMP. LAWS PUB. A. 379, § 13 (1965); N.Y. CIV. SERV. LAW § 207 (McKinney Supp. 1968). In its 1968 *Report and Recommendations* the Governor's Commission to Revise the Public Employee Law of Pennsylvania urged that the appropriateness of the bargaining unit be determined pursuant to statutory guidelines such as a community of interest among unit members, protection against the fragmentation of bargaining units and the recognition that units should be structured to correspond to the governmental agencies with whom they will deal.

54. State public employer-employee relations statutes in other jurisdictions generally exclude supervisory and confidential employees from units of employees. See, *e.g.*, CONN. GEN. STAT. REV. § 7-471 (Supp. 1970); PA. STAT. tit. 43, §§ 1101.101-1101.2301 (1935); WIS. STAT. ANN. § 111.81 (Supp. 1970-71).

55. Collective bargaining between public employers and representatives of non-classified state and local employees, such as teachers, is not subject to the constitutional and legislative provisions of the Civil Service System nor to Civil Service Regulations. LA. CONST. art. XIV, § 15.

ever, exercised a measure of influence in this area. With respect to wage determination, while the parties merely follow the constitutional requirement in considering comparable pay in private industry,<sup>56</sup> the employer does agree to consult with the union on revision and proposal of pay plans to be jointly submitted to the Department of Civil Service.<sup>57</sup> Regular working hours in collective bargaining agreements are those prescribed by Civil Service Regulations and overtime is also defined in accordance with Civil Service Regulations.<sup>58</sup> However, employees working overtime are granted the right to choose between compensatory leave and overtime pay, a choice otherwise left to employer discretion under Civil Service Regulations in the absence of a collective bargaining agreement.<sup>59</sup> Furthermore, the employing authority is required to check off union dues of employees signing payroll deduction cards<sup>60</sup> as he is authorized, but not required, to do under Louisiana law.<sup>61</sup> Pay increases are merit step increases prescribed by Civil Service Regulations.<sup>62</sup> However, if a step increase is not timely granted, the employer must notify, in writing, employees eligible for such increases of the reason that it was not effected.<sup>63</sup> Prior to a general layoff<sup>64</sup> or a dismissal of a particular employee,<sup>65</sup> the employer agrees to consult with the union; both dismissal and denial of a meritorious step increase are reviewable under the contract grievance procedure<sup>66</sup> whereby the employee may be

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56. LA. CONST. art. XIV, § 15(7).

57. Southeastern art. IX, p. 6; Charity of New Orleans art. XI, p. 9.

58. Southeastern art. X, p. 7; Charity of New Orleans art. XII, p. 9; Southwest art. VIII, p. 11; Southern art. IV, p. 3; Highway Dept. art. IX, p. 12. 20 LA. ST. PER. MAN. 6.24, 6.25.

59. 20 LA. ST. PER. MAN. 11.29.

60. Southeastern art. II, p. 1; Southern art. I, p. 1; Highway Dept. art. IV, p. 3; Southwest art. IV, p. 3.

61. LA. R.S. 42:457 (Supp. 1966).

62. See 20 LA. ST. PER. MAN. 6.15.

63. Charity of New Orleans art. X, p. 9; Southeastern art. VIII, p. 6; Southwest art. IX, p. 11; Highway Dept. art. XI, p. 14.

64. Southwest art. X, p. 12; Highway Dept. art. XII, p. 15.

65. Southeastern art. VI, p. 6; Charity of New Orleans art. VIII, p. 7.

66. Southeastern art. IV, p. 2; Southern art. III, p. 2; Highway Dept. art. VI, p. 5; Charity of New Orleans art. VI, p. 5; Southwest art. V, p. 4. The State Civil Service Department prescribes a grievance procedure for state agencies to process those grievances arising in a day-to-day relationship between the employer and employee rather than those grievances appealable to the Civil Service Commission under rule 13.10. (20 LA. ST. PER. MAN. 13.10). The latter include removal of a permanent employee for cause, demotion of a permanent employee, political, religious, or racial discrimination, suspension without pay as a disciplinary action or assignment of unsatisfactory pay increases. The contract grievance procedure is not limited to a particular type of

represented by a union representative through several levels of appeal with final discretion resting with the agency director. Agency promotional policies which require the employer to fill vacancies from the next lower level of classification in the unit on the basis of seniority are jointly determined by the employer and the union.<sup>67</sup> Finally, the union is forbidden to sanction or cause strikes among the employees.<sup>68</sup> Thus, it is clear the limitations imposed on the parties by Civil Service Regulations preclude employees from realizing the purpose of collective bargaining agreements, *i.e.*, the right to bargain through the union.

### *Conclusion*

The past decade has witnessed a striking growth in public employee organization and collective bargaining at the state, local and federal levels of government employment. Public employees in Louisiana have not participated fully in the determination of working conditions due to two major shortcomings of the collective bargaining process. These are the organization of employees into inappropriate bargaining units and the inability of employers to conclusively determine working conditions of civil service employees. Both problems arise because the bargaining unit is not structured to correspond to the government agency with which it deals. A possible solution would involve collective bargaining between the civil service director and employees organized into occupational units. Nonetheless, a viable collective bargaining process is unattainable in the absence of legislative authorization due to the questionable authority of public employers to engage in collective bargaining and the necessity of legislative guidelines to establish procedural and substantive issues involved in the collective bargaining process. Thus if Louisiana state and local employees are to effectively participate in the formation of terms and conditions of employment, legislation authorizing public employee collective bargaining and establishing guidelines to achieve a viable bargaining process is in order. Such legislation is desirable not only because it would enable employees to participate effectively

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grievance, but if appeals are not brought to the Civil Service Commission within 30 days from their occurrence the right to appeal to the Commission is forfeited. 20 LA. ST. PER. MAN. 13.12.

67. Southeastern art. V, p. 5; Southern art. II, p. 1; Highway Dept. art. VIII, p. 9; Charity of New Orleans art. VII, p. 7; Southwest art. VII, p. 7.

68. Southeastern art. XVI, p. 8; Highway Dept. art. XIII, p. 15; Charity of New Orleans art. III, p. 2; Southwest art. XI, p. 12.

in collective bargaining but also because of its deterrent effect on labor strife caused by employee demands for recognition and collective bargaining.

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