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# Collective Bargaining as a Negotiation Tool for Police and Fire Personnel

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# ABSTRACT

Labor relations is one of the most relevant issues to contemporary law enforcement today. The Texas Fireman's and Policeman's Civil Service Act was enacted in 1947 to address a variety of issues relating to hiring practices, promotions, and disciplinary procedures. The act has seen many court challenges and changes but has failed to keep pace with the demands of an ever-changing workplace environment.

The position of the researcher is that cities covered under the Fireman's and Policeman's Civil Service Act should adopt collective bargaining as a negotiations tool for its police officers and fire fighters. These cities have an opportunity to respond to changing attitudes in the workforce and public expectations for quality and effective emergency services. With 41% of all local police departments across the nation operating under a collective bargaining agreement, Texas civil service cities can no longer afford to operate under an obsolete system of labor relations.

The types of information used to support the researcher's position were a review of articles, internet sites, books, published papers, and state and federal laws. The recommendation drawn from this position paper is that collective bargaining can lead to a better performing workplace where employers and employees jointly engage in problem solving on an equal standing; it can protect the rights of labor and management equally; and it can provide management with predictability on salary and other budgetary issues.

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# INTRODUCTION

Throughout the history of American labor, there has been a variety of methods employed to protect the rights, benefits, and wages of employees. Unionization was one such method that flourished in the 1930s and 1940s for the private sector under the umbrella of the National Labor Relations Act. Unfortunately, public sector employees had very little protection. In 1883, Congress passed the Pendleton Act, which created a Civil Service Commission tasked to protect federal employees from the practices of the spoils system in addition to regulating their wages and working conditions. Congress, however, did not extend the act to state and local employees. Therefore, many states enacted a civil service system of their own. Texas did so in 1947 with the enactment of the Fireman's and Policeman's Civil Service Act (Edge, 2001).

With unionization gaining ground in the private sector, employees found themselves wielding a powerful negotiations tool, collective bargaining. Collective bargaining empowered the employee and gave them a voice when it came time to negotiate such things like wage and benefit increases. The Texas Civil Service Act has often been labeled a kind of collective bargaining law. Ironically, most cities covered under the act have no collective bargaining or meet and confer on agreements in place. This paper will attempt to argue that many facets of the Civil Service Act have become obsolete, and cities covered under the act should embrace collective bargaining as a negotiation tool to the mutual benefit to those cities and their employees.

# POSITION

By examining the history of state civil service and collective bargaining, one can find a variety of research. The concepts of civil service and collective bargaining

originated in Europe. Both concepts have American roots as well, so that is what the focus of this paper will be. In the 1930s and 1940s, unionization flourished for the private sector after the passage of the National Labor Relations Act. The purpose of the act was to protect the rights, benefits, and wages of employees. Until the passage of the Pendleton Act in 1883, public sector employees had very little protection. The Pendleton Act created a Civil Service Commission tasked to protect federal employees from the practices of the spoils system in addition to regulating their wages and working conditions. However, Congress did not extend the benefits and protections of the act to state and local employees. This forced many states to enact civil service systems of their own for the protection of their public sector employees. Texas was one such state that found it necessary to do so in 1947 with the enactment of the Fireman's and Policeman's Civil Service Act (Edge, 2001).

The Civil Service Act provided Texas police officers and firefighters with protection in the areas of hiring, promotions, discipline, and, on a limited basis, pay issues. Since its passage, the Civil Service Act has seen numerous amendments and court challenges. There are, however, ten core provisions that remain relatively intact today. These include a mandate that a Civil Service Commission be established to supervise the provisions of the statute; the requirement that police officers and firefighters be classified; and the requirement that cities must pay police officers and firefighters "step-up" pay for working temporarily in a higher classification at the higher rate of pay (Texas Fireman's and Policeman's Civil Service Act, 1947).

To address hiring, promotion, and administrative issues, the act required the establishment of testing criteria and hiring procedures for recruit police officers and

firefighters; the establishment of a six-month probationary period for newly hired police officers and firefighters; and the requirement of a competitive promotional process. It also established the prohibition of police officers and firefighters from engaging in political activities while in uniform or on duty and establish disciplinary procedures and rights to them (Texas Fireman's and Policeman's Civil Service Act, 1947). To address benefit issues, the act provided for the allowance police officers and firefighters to accumulate 15 sick days a year to be accrued on an unlimited basis but only be paid for up to 90 days when the employee's employment is terminated. It also provides the entitlement to police officers and firefighters of 15 days of paid vacation per year, which cannot be carried over unless approved by the municipality's governing body (Fireman's and Policeman's Civil Service Act, 1947).

While the Civil Service Act provides benefits and rights to its covered employees and municipalities mutually, it does not specifically address many other labor issues and circumstances. These include but are not limited to salary rates, working conditions, and training standards. Civil service cities and their employees have addressed the issues in a variety of ways, but some have found collective bargaining a useful tool in dealing with them.

In 1973, the Texas Legislature passed the Fire and Police Employee Relations Act, which permitted municipalities to adopt collective bargaining as a negotiating tool provided its citizens voted it in. The Employee Relations Act set out specific provisions and policies that the cities and employees would have to follow upon its adoption. These include the requirement of a city to provide its police officers and firefighters with salary and benefits that are similar to the prevailing comparable private sector

employment and the right to organize into unions or associations for the purpose collective bargaining as a method for determining compensation and other employment conditions. It specifically prohibits strikes, lockouts, work stoppages, or slowdowns and makes it the duty of the state to find an alternative solution to strikes by police officers and fire fighters, which is usually judicial enforcement of the provisions of the act (Fire and Police Employee Relations Act, 1973).

Although adoption of the Employee Relations Act is available to all political subdivisions of the state that employ full-time police officers and/or firefighters, it requires an adoption vote by the citizens of the municipality that desires collective bargaining as a means of negotiating with its employees. Successful adoption usually results in a collective bargaining agreement or contract and currently is predominately in place at larger cities.

There is, however, pending federal legislation that could require all states and their political subdivisions that employ public safety personnel to adopt collective bargaining as a negotiating tool. The Public Safety Employer – Employee Cooperation Act of 2007 (H.R. 980), if passed by both houses, would require that the Federal Labor Relations Authority determine if a state's labor laws allows its public safety officers the right to organize into a labor union, and it would require the employers to recognize such labor union. It would also establish collective bargaining as a means of negotiating over working hours, salaries, and the terms and conditions of employment. The House of Representatives' draft of the bill would exclude pension negotiation while the Senate's draft would exclude pensions and health insurance. It would also establish a

process to resolve impasses and would require state courts to enforce it. States will be required to conform to H.R. 980 within two years of its passage (H.R. 980, 2007).

The obvious benefits H.R. 980, if passed, would be a national standard for police officers and firefighters to negotiate with their employers by and federal oversight to ensure those standards are abided by. It is the view of this paper that whether H.R. 980 is passed or a municipality (or more specifically, a civil service city) adopts the Texas Fire and Police Employee Act, collective bargaining can lead to a better performing workplace where employers and employees jointly engage in problem solving on an equal standing. According to a research study conducted by the Public Administration Service (PAS), Burpo (1979) concluded during his examination of the Corpus Christi Police Department that collective bargaining over civil service issues can lead to an efficient police operation. He also argued that civil service is an obsolete personnel system under current labor conditions and that collective bargaining is an alternative that can improve the quality of personnel practices in a police department. This can be exemplified by the fact that several civil service cities such as Austin, Beaumont, Corpus Christi, Houston, El Paso, Fort Worth, and many others have voted in collective bargaining as a means of negotiating with their police officers and fire fighters over civil service and other issues.

This paper also asserts that a collective bargaining agreement can protect the rights of labor and management equally. It provides employees with a means of having concerns such as wages, working conditions, and training standards addressed while providing employers with an opportunity to improve accountability, service to the public, and efficiency and effectiveness of their police and fire departments. The PAS study

concluded that collective bargaining over civil service issues had a positive effect on the labor-management relationships within the Corpus Christi Police Department and that the experience could be applied to the bargaining process in other jurisdictions as well (Burpo, 1979). Collective bargaining, by its very nature, can promote fairness and openness in employment and personnel practices. In areas where civil service falls short, it is the ideal approach for cities and their employees to take in their adaptation to the ever-changing workplace environment.

This paper's final assertion is that a collective bargaining agreement can provide management with predictability on salary and other budgetary issues. From a labor perspective, most unions or employee representative organizations commonly enter into collective bargaining agreements with the intent of enhancing its membership's compensation or benefits packages. Management's concerns, on the other hand, usually center on administrative and disciplinary concerns. Since most collective bargaining agreements are multi-year contracts, usually two to four years, both parties can benefit from the stability and predictability that accompanies them. Employees can enjoy the satisfaction of knowing what to expect financially during a contract period while management can accurately make budget decisions and address fiscal concerns.

## COUNTER POSITION

Collective bargaining in the public sector is not a new phenomenon. Many states throughout the Northeast, Mid-Atlantic, and Midwest have had collective bargaining agreements in place for several decades. The concept, however, has not taken root in the South, and particularly in Texas. In 1947, Texas passed the Fireman's and Policeman's Civil Service Act as a means of regulating hiring practices,

promotion/classification guidelines, and discipline procedures. This was followed up in 1973 when the Texas Legislature passed the Fire and Police Employee Relations Act, which permitted municipalities to adopt collective bargaining as a negotiating tool provided its citizens voted it in. This particular act has only been adopted by 17 cities wherein it applies to fire fighters and approximately 30 cities wherein it applies to police officers (Galveston Fire Department, 2010).

The research indicated that most criticism of collective bargaining centers on two issues. The first is the view that "collective bargaining has historically been adversarial in nature and very damaging to labor relations" (SAKA, 2008, p. 1). In fact, many consider it a key factor in the breakdown of the organizational decision-making process. The recent case involving the Austin Fire Fighters Association (AFA) and the City of Austin would seem to support this view. According to a November 2008 Austin American Statesman article, the AFA overwhelmingly rejected a proposed labor contract with the city that would have given them pay raises, increased pension contributions, and hiring flexibility. The AFA expressed concerns that the new contract "was a dictation of terms and subsequent capitulation" and would have in fact weakened hiring and training standards (Plohetski, 2008). The issue continued to persist and as of late 2009, the conflict remained unresolved.

Spengler (1999) declared that "Collective bargaining is an adversarial approach that neither denies nor ends conflict; it resolves it" (p. 108). It requires employers to negotiate with employee representatives, usually a union or association, and both parties are expected to bargain in good faith to come to a resolution on issues. It is a form of power sharing that looks out for the interests of employers and employees

equally. A 2003 Bureau of Justice Statistics report stated that “nationwide, 41% of local police departments, employing 71% of all officers, authorized collective bargaining for sworn personnel” (p. 12)

The second common issue the research revealed was the view that collective bargaining guarantees conditions already protected by civil service. Proponents of an exclusive civil service system argue that collective bargaining would be unnecessary because civil service provides benefits and protections to police officers and fire fighters in such areas as hiring, special compensation, and discipline. The research revealed, however, that the Fireman’s and Policeman’s Civil Service Act simply falls short. It does not address issues like salary, working conditions, and training standards. Collective bargaining could open a dialogue that would allow labor and management to address these issues to the mutual benefit of each party.

Proponents assert that collective bargaining provides a foundation for a joint relationship where the rights of labor and management are clearly defined and protected. Furthermore, it could pave the way to a higher performing work environment where the two parties solve problems and address issues jointly and on an equal standing.

In a research study conducted by the Public Administration Service (PAS), Burpo (1979) concluded during his examination of the Corpus Christi Police Department that civil service had served a valuable purpose but had “failed to respond to a public expectation of more efficient services” (p. 38). He offered the option of “collective bargaining over civil service issues” as a way to “bring about concrete changes in the quality and effectiveness of police services provided to the public” (p.38).

# RECOMMENDATION

It is the position of this paper that cities covered under the Texas Fireman's and Policeman's Civil Service Act should adopt collective bargaining as a negotiations tool to the mutual benefit of those cities and their civil service employees. To accomplish this, the citizens of those cities would have to vote in the Texas Fire and Police Employee Relations Act, which would allow police officers and fire fighters to organize and bargain collectively with their civil service employers. This paper asserts that collective bargaining can lead to a better performing workplace where employers and employees jointly engage in problem solving on an equal standing; it can protect the rights of labor and management equally; and it can provide management with predictability on salary and other budgetary issues.

Opponents to collective bargaining assert that it is an adversarial approach that damages labor relations and that it would only guarantee conditions already protected by the Texas Fireman's and Policeman's Civil Service Act. The research revealed that these positions are misguided (Burpo, 1979; Spengler, 1999). Collective bargaining is a means of putting labor and management on equal ground to solve a wide variety of labor issues to the mutual benefit of both parties. While the Civil Service Act does address issues like hiring, promotions, and discipline, it simply does not address salary issues, working conditions and training standards.

Collective bargaining is not a new concept, but it appears to be the best option for employees and employers alike to adapt to the ever-changing workplace. According to a Department of Justice report (2003), 71% of all police officers currently work under a collective bargaining agreement. Although the majority of those officers work in other

regions of the country, the adoption of collective bargaining is important to the Texas law enforcement community because it could serve as a catalyst to improve the standards, morale, and retention of professional police officers.

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