Chapter 7
Labor Management Relations in the Public Sector

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ABSTRACT

This chapter addresses public administration in the context of the government as an employer. In doing so, the relationship between a public employer and its employees is at issue. To understand public sector labor relations requires a basic understanding of legal principles that govern a public employer's rights and obligations to its employees. While this chapter does not, and cannot, address every aspect of labor management relations in the public sector, it provides an overview of the most important aspects of this relationship and how government can successfully function as an employer.

INTRODUCTION

The work of public administration cannot be done without a robust and dynamic workforce. Public sector workers, from police officers to firefighters, teachers, clerks, aides, and more form the backbone of government's day to day functions and provide for the vast majority of daily interactions between the people and their government. After a long period of oftentimes violent labor unrest, the passage of the federal National Labor Relations Act (NLRA) in 1935 granted most private sector employees the right to unionize and collectively bargain, and to otherwise band together for better working terms and conditions of employment with or without a union. National Labor Relations Act of 1935, 29 U.S.C. § 151, *et. seq* (1935). But the NLRA excluded public sector employees for a number of reasons. 29 U.S.C. § 152(2) (1935). Since the NLRA's passage, public sector workers have made great strides across the country in gaining the right to collectively bargain for the terms and conditions of their employment state by state. "Collective Bargaining in the Public Sector," *97 Harv. L. Rev.* 1676, 1680-81 (1984). Most states provide at least some public employees certain rights to collectively bargain, or to at least join a labor union. Id., n.30. For states that do not expressly grant the right to be a member of an employee association, they are nonetheless protected in doing so by the First Amendment's guarantee of freedom of association. Thomas v. Collins, 323 U.S. 516 (1945). Each state's laws are different, and therefore it is impossible to

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summarize public sector labor-management relations uniformly. This chapter will seek to address public sector labor-management relations under regimens more generous towards public employees than those where employees have fewer rights. This chapter will also discuss many of the statutory rights employees have regardless of whether they are empowered to collectively bargain.

Collective bargaining is the process in which a labor organization or union and an employer negotiate over the hours, wages, and other terms and conditions of employment for employees. The NLRA guarantees employees the right to unionize and collectively bargain, and specifically exempts public sector employees from its protections. 29 U.S.C. § 152(2), 157 (1935). Accordingly, many states and some local jurisdictions have elected to pass their own laws to create public sector collective bargaining regimens for their own workers. Those laws are mostly modeled around the National Labor Relations Act and guarantee public sector workers many of the same rights, and impose many of the same obligations on unions and employers. Separate law governs public sector collective bargaining for certain federal employees. Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101, *et. seq.*(1970). This chapter will discuss the important aspects of labor management relations in the public sector and how public administrators can navigate and manage collective bargaining relationships.

The foundation of collective bargaining in the public (and private) sector is more fundamental than just the right to unionize and collectively bargain. It is the right to engage in concerted activities for the purpose of mutual aid or protection. An employee's engagement in concerted activity for the purpose of mutual aid and protection encompasses a broad category of activity. Employees have a right to discuss the terms and conditions of employment with their co-workers, including by sharing salary or pay information. Niles Co., Inc., 328 NLRB 411, 414 (1999). They may discuss health care and retirement benefits, disciplinary investigations (with some exceptions), scheduling, staffing levels, layoffs, workplace safety, and more. Flex Frac Logistics, LLC, 358 NLRB 1131 (2012). The discussion of any of these employment terms is fundamental to employees' right to communicate with each other before engaging in activity meant to better their lot and demand more from their employer. Employees have a right to bring their concerns directly to their employer if their doing so is meant to benefit employees as a whole. National Labor Relations Board v. Washington Aluminum Co., 370 U.S. 9 (1962). Employees may engage in concerted activity off or outside of work or while not on the clock, and with limitations during work and on work premises. Industrial Wire Products, Inc., 317 NLRB 190 (1995). Employees may generally wear pins, buttons, stickers, and other insignia that express their views regarding their terms and conditions of employment. Republic Aviation Corp. v. National Labor Relations Board, 324 U.S. 793 (1945). Employees also have a right to take their concerns about the terms and conditions of employment to outside third parties, such as the press, elected officials, customers or patrons of the employer, and others. Kinder-Care Learning Centers, 299 NLRB 1171 (1990). In addition to these rights being protected by labor law, in the case of public sector employees, these rights are more often than not likewise protected by the First Amendment right to free speech. Thomas v. Collins, 323 U.S. 516 (1945). Of course, employees also have the right to refrain from any or all of such activities, just as they have the right to vote against unionization. National Labor Relations Act, 29 U.S.C. § 157 (1935).

It is critical that public employers understand and respect these rights. This chapter will discuss the risks and consequences for employers who retaliate against employees later on. That being said, there are limitations on what employees may do. Some employee conduct crosses the line so that it is no longer protected by law, thus allowing employers to discipline or discharge them, subject to any other applicable limitations or restrictions. This activity can include disparaging a public or private employer's reputation or services, use language that is malicious, profane, demonstrably false, or stated with cal-