

# Transforming Public Sector Labor Management Relations: A Call to Action

Thomas A. Kochan  
MIT Sloan School of Management  
Institute for Work and Employment Research  
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Public sector labor relations are moving through a historic, transformative moment. The future of collective bargaining will be shaped by how labor and management respond to the challenges being posed by state and local government fiscal problems, calls for education reform, and the political and legislative attacks on public sector unions. Those of us who believe in the value of collective bargaining need to speak out forcefully against unwarranted attacks on the dignity and rights of public service workers *and* help demonstrate that the problems facing public service can be better addressed by working together. If we do this well, we might usher in the next generation model of public sector labor relations, one that advances policy and practice in as significant a way as did the first generation legislation and institutional innovations that introduced collective bargaining into the public sector in the 1960s.

To do so, we first need to separate the real problems from political efforts to make public service workers and the collective bargaining process the scapegoats for broader and deeper fiscal problems facing the public sector. A group of academic colleagues in the Employment Policy Research Network (EPRN) who have studied public sector issues for many years have attempted to set the record straight in a detailed white paper summarized in Figure 1.

Showing there is little or no evidence to support the efforts to role back collective bargaining rights for public employees is only the first step. The next task is to put the modern tools of collective bargaining to work in addressing the challenges facing the public sector and in doing so lay the foundation for the next generation model for public sector labor management relations.

## **Learning from Prior Transformative Innovations**

The next generation model should build on the evidence gained from past innovations in both private and public sector labor management relations. Over the past several decades a number of firms and unions have transformed their arms length rule bound relationships of the past by (1) engaging workers in problem solving and teamwork at the workplace, (2) using new interest based bargaining techniques to increase problem solving in contract negotiations, and (3)

Figure 1

### The Evidence on Public Service Wages, Benefits, and Collective Bargaining

Are public service employees overpaid relative to similarly educated workers in the private sector? Controlling for education, other standard variables, and differences in hours worked, Rutgers University Professor Jeffrey Keefe has shown that public sector workers nationwide earn 11.5% less than their private sector counterparts in wages and salaries. Taking fringe benefits into account shrinks the difference to 3.7%. Thus, public sector workers have lower wages and higher fringe benefits (pensions and health care benefits are the two standouts). But overall, they are not overpaid relative to comparably educated workers in the private sector.

What about benefits? As the numbers above show, the problem is not the overall level of benefits. The problem stems from inconsistent and improper funding of benefits, losses in pension investments during the Great Recession, and benefit formulas that base retirement incomes on the last few years of service and incentivize excessive overtime and other abuses. These factors cut across states with and without public sector collective bargaining and across union and nonunionized employees within states. Public employees also, on average, pay a smaller percentage of their health care premiums than most private sector employees. All these issues need attention regardless of union or nonunion status.

What about collective bargaining? First, the dispute resolution processes (mediation, fact-finding and arbitration) have done a good job in reducing the likelihood of strikes by public employees. Second, over 90 percent of negotiations get resolved without resort to arbitration or fact finding where these procedures exist as the final step in the dispute resolution process. Third, numerous examples have shown that public sector unions and employers have been successful in responding to prior fiscal crises through negotiations, often through coalition bargaining among all unions in a jurisdiction. Fourth, the overall effects of collective bargaining on wages of public sector workers is less than unions in the private sector. Moreover, as in the private sector public sector collective bargaining raise wages of less educated and lower paid workers then more highly educated professionals. Finally, arbitration settlements basically mirror outcomes negotiated in states without arbitration and those settled voluntarily in collective bargaining. This is not surprising because most arbitration statutes require arbitrators to use these comparisons along with cost of living, ability to pay, and other objective factors in shaping their awards.

Source: “Getting it Right: Empirical Research and Evidence on Collective Bargaining in the Public Sector,” Study available for download at the Employment Policy Research Network website: <http://www.employmentpolicy.org/topic/402/research/getting-it-right>.

sharing information and consulting on long run strategic issues facing their firm and workforce.<sup>1</sup> These innovative examples still are the minority (data from Federal Mediation and Conciliation Services suggest they constitute less than ten percent of all private sector bargaining units).<sup>2</sup> But studies of these transformative efforts in industries as varied as health care, airlines, steel, and telecommunications have demonstrated that working together in these ways leads to increased productivity, service quality, and a more satisfied and fairly compensated workforce.<sup>3</sup> One estimate drawn from a large scale study in manufacturing suggests a 15-25 percent productivity premium over traditional union and non-union workplaces can be realized when labor and management transform their relationships in these ways.<sup>4</sup>

The most visible current private sector example of what is possible when labor and management work together comes from a more than decade-long labor management partnership between the health care insurer and provider Kaiser Permanente and the coalition of unions that represent more than 100,000 of its employees. The partnership was born out of crisis in 1997 when McKinsey consultants recommended Kaiser Permanente split up to avoid further losses and to intensify demands for wage and benefit concessions.

Instead, labor and management leaders decided to try working together and formed a partnership that turned the organization's finances around, supported steady growth in wages, increased employee and patient satisfaction, and put hundreds of teams of front line employees, doctors, and supervisors to work on improving patient care. They have negotiated three nationwide labor contracts each using state of the art interest-based problem solving techniques, data sharing, and decision-making.<sup>5</sup>

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<sup>1</sup> Thomas A. Kochan, Harry C. Katz, and Robert B. McKersie, *The Transformation of American Industrial Relations*. Ithaca, NY: Cornell/ILR Press, 1994;

<sup>2</sup> Joel Cutcher Gershenfeld and Thomas Kochan, "Taking Stock: *Industrial and Labor Relations Review*

<sup>3</sup> For a comprehensive review of this evidence, see Eileen Appelbaum, Jody Hoffer Gittel, and Carrie Leana, "High Performance Work Practices and a Sustainable Economic Recovery,"

<sup>4</sup> Sandra Black, and Lisa Lynch. (2004). What's driving the new economy: Understanding the role of workplace practices. *Economic Journal*, 114(493), F97-116

<sup>5</sup> Thomas Kochan, Adrienne Eaton, Robert McKersie, and Paul Adler, *Healing Together: The Kaiser Permanente Labor Management Partnership*. Ithaca, NY: Cornell University/ILR Press, 2009.

A recent merger of multiple transportation agencies, workforces, and unions, into a single integrated department of transportation in Massachusetts serves as a public sector example of how the modern tools of negotiations and worker engagement can help achieve significant change and innovation. The transportation reform law creating the new agency originally called for large wage cuts (more highly paid Massachusetts Turnpike employees would be placed on the state schedule and receive considerably lower pay). Implementing the statute as written would have violated basic norms of fairness to these employees, bypassed collective bargaining, and saddled the management of the new agency with a divided, angry, and ill-motivated workforce and triggered a battle among state government and former Turnpike unions over who, if anyone, would represent employees of the new agency.

To avoid these consequences, a new union coalition was formed and agreed to bargain as a single entity. Management agreed to negotiate with the coalition in return for full freedom to integrate the workforce without regard to traditional jurisdictional boundaries and work rules. A multi-party negotiation process then ensued that produced an agreement that “red circled” (froze in place) the wages of the higher paid employees in return for the right to hire new employees on the lower state salary schedule.

The agreement also created an operations’ improvement program in which ten percent of the workforce savings achieved would go into an equity fund to help close the wage gaps between employees doing similar work. Joint labor-management committees were created and chartered to address the myriad of issues that will arise as the integration process moves forward and to further rationalize and modernize the job structures inherited from the old state system. In short, this negotiations process established the structures, processes, and alignment of interests needed to build an efficient, indeed model, public transportation system and organization.

I see four key lessons to take away from these examples that, if implemented, could both meet the challenges of the day and lay the foundation for the next generation public sector labor management relations system.

### **Demonstrate the Power of Negotiating Solutions**

Most of the breakthrough innovations in collective bargaining described above were born out of crisis. The fiscal problems and education reform challenges facing the public sector serve as opportunities to demonstrate the value of negotiating rather than imposing solutions to public sector problems. But doing so requires principled, determined leadership on the part of political leaders and labor and management professionals to break out of the incremental pace of change normally achieved through collective bargaining.

This requires strong political leadership. Without the determination of the Governor and leaders of the state legislature in Massachusetts to achieve significant transportation reform, the innovative merger negotiations would not have happened. The same thing is now happening in

the state on other issues including health care and education reform. Governor Deval Patrick has made clear his commitment to negotiating health care reforms and cost savings with labor and local government leaders. Most recently, he and the Massachusetts legislature enacted a health care reform bill that gives unions and local governments a limited window of time to negotiate a transition into the state wide health care plan. So the bargaining process is once again being challenged directly to accelerate the pace of change and to achieve major cost savings.

Governors, mayors, and legislative leaders in several other states and cities have taken a similar firm hand in introducing cost reductions and reforms while still engaging and working with unions and public employers. In San Francisco a comprehensive pension system reform was negotiated with a coalition of city unions. In Boston a major health care reform was negotiated with a coalition of twenty one city unions—a group never before able or willing to negotiate jointly. The governors of New York, Connecticut, California, Hawaii, and other states have taken similar approaches in negotiating rather than imposing significant reforms to pensions, health insurance, wage structures and work rules. In February the Department of Education hosted over one hundred school districts and teacher unions in a conference that produced a consensus blueprint for collaborative approaches to education reform. A significant number of districts and unions are now in the process of or have already negotiated enabling language to create “pilot” schools or public charter schools, developed new contract language and procedures for teacher evaluations, performance based pay, longer school hours, and other reforms critical to improving student performance.

None of these are easy. All represent balancing acts that seek to address real fiscal problems and/or needed reforms in a forthright and direct way and that impose concessions and sacrifices on public employees but at the same time respect the need to engage employee representatives in negotiating these changes. It will be important to keep up this newly generated momentum and to carefully track and evaluate the savings and reforms achieved through collective bargaining and collaborative labor management relations.

### **Transform Negotiations and Dispute Resolution Processes**

These examples demonstrate that collective bargaining can respond to crises and contribute to reform if it is transparent, data driven, and focused on addressing basic interests and norms of fairness. These one-time responses need to be followed up with a comprehensive strategy for putting the tools of modern negotiations to work across public sector jurisdictions. Many public (and private) sector negotiators have already been trained in and have used “interest based” negotiations and problem solving processes. They know both their value and their limitations. The value lies in ensuring problems are put on the table for discussion, root causes are studied, and options are developed through joint labor-management subcommittee analyses. This type of joint preparation and sub-committee work provides the data needed for negotiating teams to both make good, but often still difficult, decisions and tradeoffs and to communicate the

reasons for the negotiated outcomes to key constituents and to the public. This implies the need to put to work the tools of interest-based negotiations and to invest in training the next generation labor and employer leaders and representatives in these processes.

Collective bargaining in the public sector has always been a highly visible to the public and the media. Now it needs to be even more transparent. It has to pass the common sense test and produce results that are acceptable to the public. That was the lesson of a recent, highly visible arbitration involving the Boston firefighters. The public was not willing to fund an arbitration award that gave a wage increase as a quid pro quo for accepting mandatory drug and alcohol testing and it pressured the parties (through the members of the City Council) to renegotiate a more acceptable solution. The lesson here is that the dispute resolution processes governing public sector bargaining, ranging from mediation to fact finding to arbitration, also need to be transparent, problem driven, and perceived as fair by the public. Arbitrators, fact finders, and mediators need to be more problem and interest based and to promote and support these principles and use these tools in helping the parties reach agreements and/or in fashioning awards. The next generation neutrals therefore also need to be trained and capable of applying these modern tools of facilitation, negotiations, and dispute resolution.

### **Engaging the Workforce in Continuous Improvements in Public Services**

Reforms cannot stop at the bargaining table. Making reforms really pay off requires on-going partnerships between public sector managers and union leaders, and the engagement of the full workforce in day to day problem solving and continuous improvement processes. This is the key lesson of Kaiser Permanente and all the other examples of innovation in the private sector that have achieved best in industry levels of productivity, service quality, and economic performance. This is also the lesson of successful examples of school reform that were celebrated and endorsed in a recent national meeting of 150 school districts and union leaders.<sup>6</sup> All of the cases discussed at the conference of sustained collaborative school reform involved on-going day to day engagement at the school building levels of teachers, principles, and administrators, just like at Kaiser Permanente on-going improvements in health care delivery and outcomes are being driven by “unit-based” teams of nurses, other front line employees, and supervisors. On-going worker engagement and continuous improvement need to become parts of the standard model of day to day administration and governance in public service operations.

### **Enactment of “Next Generation” Public Sector Bargaining Policies**

Finally, innovations in specific bargaining relationships will only spread across a state and survive over time if there is a public policy in place that encourages, facilitates, and supports them. Lack of any national policy support is one reason for the failure of the innovative

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<sup>6</sup> <http://www.ed.gov/labor-management-collaboration>.

examples in the private sector started in the 1980s to spread widely and to be sustainable over time. In the face of the failure to reform and modernize the National Labor Relations Act to protect worker rights and endorse these innovations, these cases got isolated and overcome in the sea of increased management-labor polarization. The net result has been a steady long term decline in private sector union membership and a decline in the innovative potential of collective bargaining.

A supportive policy would have two objectives, each of which should be spelled out explicitly:

1. To promote and protect worker rights to join a union and engage in collective bargaining while ensuring the continuity of essential public services, *and*;
2. To transform labor management relations in ways that contribute to improvements in the productivity and quality of public services and the ability to recruit and retain a high quality public service workforce.

Governors and State Legislatures should instruct either a new agency or, the agency that is currently responsible for administering public sector labor relations processes, to be proactive in helping the parties achieve these objectives and provide the agency with the resources necessary to do so. Most initial public sector bargaining statutes created neutral agencies and/or panels of professionals to provide mediation, fact finding, and/or arbitration services. Second generation statutes need to provide dispute resolution professionals to train labor and management leaders and to and facilitate interest based negotiations and on-going workplace change efforts.

Provisions should also be made to track and measure progress toward key performance improvement targets so that the parties can be held accountable and public support is sustained over time. Again there are lessons to be learned from the past. The first generation of public sector bargaining sparked a new generation of public sector bargaining research, some of which fed directly into debates and reforms of the initial statutes and all of which provided the evidence that we summarized in our EPRN “Getting it Right” research paper. Now is the time to begin collecting the data that will be needed to systematically evaluate and compare the effects of collaborative efforts at public sector reform to outcomes achieved through unilateral cuts and rollbacks of bargaining rights.

Finally, while primary responsibility for implementing these reforms lies at the state and local government level, leadership at the federal level would be a very helpful catalyst for reform. The President and Secretary of Labor should be visible, leading champions of reform. They could signal their support by, for example, convening a national conference on public service reforms and indicate their willingness to provide research, evaluation, and resources to

facilitate, track, evaluate, and help spread the best practices across the country. By doing so, not only would the national economy benefit from improved public services, the achievements of collaborative public service reform might just provide an example of how to proceed with the unfinished task of transforming private sector labor management relations.

### **Our Generation’s “Mantle of Responsibility”**

In the aftermath of World War II, former War Labor Board Chairman George Taylor called on labor-management professionals to “take up the mantle of responsibility” for building an effective and sustainable post-war collective bargaining and labor relations system. Taylor and his generation of colleagues did so and many of them went on to help design and shape the first generation of public sector collective bargaining policy and practices (New York’s 1967 “Taylor Law” was the product of the recommendations of a panel chaired by Professor Taylor). History will judge our generation of labor-management relations professionals by how we respond to and lead through this transformative moment. The actions (or inactions) that we take now will have a profound and long-term effects on the future of public sector employment relations, performance, and the quality of the workforce attracted to public service. Let’s get on with it.