A photograph showing three hands holding a thick, braided rope against a background of green grass. The rope is held at the top and bottom, forming a loop. The hands are positioned at the top left, top right, and bottom left of the frame.

A MACKINAC CENTER POLICY BRIEF

MICHIGAN'S PUBLIC EMPLOYMENT RELATIONS ACT

Public-Sector Labor Law
and Its Consequences

PAUL KERSEY



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and Its Consequences**

by Paul Kersey

Mackinac Center for Public Policy

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INTRODUCTION: “PERSONNEL IS POLICY”

The Michigan Public Employment Relations Act is simultaneously among the most important and least-discussed laws ever passed by the Michigan Legislature. It affects nearly every facet of operations for townships, incorporated cities and counties, not to mention intermediate and local school districts. Tens of thousands of government employees, from clerks to police officers to teachers, are covered by its provisions. Michigan state employees are also organized under very similar rules promulgated by the state Civil Service Commission.

The Public Employment Relations Act and the collective bargaining agreements that are negotiated under its provisions determine not only wages, benefits and working hours, but also work assignments, layoffs, work rules and disciplinary procedures. Because personnel costs make up a substantial portion of government expenditures, PERA has enormous consequences for local budgeting and, by extension, local tax rates. Because work rules established by collective bargaining affect the deployment, tasks and performance standards for government employees, PERA also has significant influence on the implementation of public policy beyond the budget. If there is any truth to the old adage that “personnel is policy,” then it is impossible to fully understand public policy in Michigan without a working knowledge of PERA.

In essence, PERA is a direct adaptation of the National Labor Relations Act, a federal labor law designed to cover for-profit enterprises. The application of a private-sector labor law to public schools and local agencies, with little done to adjust for the particular interests of government, has immensely complicated the functioning of government. PERA has had the effect of undermining democratic, representative self-government itself, corroding the principles upon which Michigan government itself is based. In the process, PERA has made local agencies and public schools less effective and more burdensome, draining funds from families and employers and sapping economic strength from the people of Michigan.

This report will discuss many of the consequences of PERA and suggest solutions. If collective bargaining is to be practiced in the public sector, the labor law will need to be completely restructured so that it is in line with the principles of a free, democratically governed society. The NLRA’s model of adversarial labor relations must be set aside.

THE CONSEQUENCES OF APPLYING PRIVATE-SECTOR LABOR POLICY TO GOVERNMENT

To understand the workings of PERA and its implications for the state of Michigan, it is useful to review the federal law on which it is based: the National Labor Relations Act. Congress passed the NLRA in 1935, in the midst of the Great Depression. The motivation behind the NLRA was one of “evening up” a labor market in which employers were seen as wielding too much power. According to Sen. Robert Wagner of New York, a prime sponsor of the legislation, “Genuine collective bargaining is the only way to attain equality of bargaining power between management and labor.” Initially the NLRA’s provisions were directed almost entirely at restraining companies. The law prohibited numerous unfair labor practices that applied to employers, but none that applied to unions. The 1947 Taft-Hartley Act added prohibitions on unfair labor practices by unions and also established the validity of state “right-to-work” laws.

PERA followed the NLRA in many respects. Under both the NLRA and PERA, a work force may be divided into bargaining units. Both laws establish that when a union has the support of a majority of unit members, that union will be the legally designated representative for all workers in the unit. Both laws also establish essentially the same process for determining whether a union has unit members’ support: the collection of signatures for bargaining unit members, followed by a secret-ballot vote.

In addition, PERA and the NLRA both require union and employer to meet the same standard of good-faith bargaining. Under both laws, the terms of a collective bargaining agreement cover all the bargaining unit’s workers, both union supporters and opponents. The process for removing a union that has lost majority support is largely the same under both laws as well — again, the collection of signatures on a petition, followed by a secret-ballot vote. Both systems place similar restrictions on when such a petition to “decertify” a union may be filed, though the rules vary a bit for public school employees.

There is one important divergence between the NLRA and PERA. Under both laws, negotiations continue until either an agreement is reached and ratified or the parties reach a point where agreement is not possible, a situation known as an “impasse.” At that stage, the NLRA gives both sides “economic weapons”: The union may call for a strike, and the employer may lock workers out. Under PERA, strikes and lockouts are prohibited. But with the exception of how impasses are handled, PERA follows the pattern set by the NLRA very closely.

Even in the realm of private, for-profit enterprises, where the NLRA was designed to function, the law leaves much to be desired. The NLRA allows for collective bargaining agreements that require all workers, including union opponents, to pay dues or fees to the union, ostensibly to defray the cost of representation. These agency-fee clauses have the effect of making union officials less accountable to the workers they represent. Union accountability is further weakened by the difficulty of removing a union from a larger bargaining unit — the result of a large petition requirement and arbitrary restrictions on when such a petition might be filed.

This detachment has two consequences. First, unions operate on an extremely inefficient basis. Mackinac Center for Public Policy research on labor unions has found tremendous waste, with less than half of union spending going toward worker representation. Union spending is misdirected into political activism and inflated overhead instead.¹ Second, union officials are prone to act recklessly. Unsustainable union benefit programs and work rules added as much as \$1,000 to the labor cost of producing a car, contributing to the eventual bankruptcies of Chrysler and General Motors.²

GOVERNMENT OFFICIALS: THEIR INCENTIVES AND THE CONSEQUENCES

In Michigan, we have chosen to apply the principles of the NLRA to government employees, despite the federal law's shortcomings and despite the essential differences between the government and for-profit businesses. These differences affect their funding, mission, operations and ultimately, work-force composition and management. Businesses operate in a competitive environment and with an eye toward profitability. Their success or failure depends upon attracting or retaining customers. Within their jurisdictions, governments do not have competitors. Some of the services that they provide, such as law enforcement, licensing and firefighting, are not conducive to marketplace competition. And governments are funded through taxation rather than voluntary exchange. None of this makes government inherently wrong or ineffective, but it does make government and government work very different from private-sector work.

To understand why this is the case, consider a situation in which a union presents firm demands that for various reasons cannot be met within the constraints of an organization's budget. For a private business, this presents a serious problem. Even if the company has already contemplated raising its prices or introducing new, more profitable products, neither approach can be guaranteed to work. New

products don't always catch on, and price increases can drive customers away. The private business has a strong and immediate incentive to reject overly expensive union demands and persuade the union to accept a reasonable compromise.

The matter is entirely different for government. Barring some statutory cap, a local government can increase taxes unilaterally and at least in the short run be reasonably certain that the increase will generate new revenues. In the short term, government officials have a more reliable mechanism for placating unions. While tax increases carry political risks, union officials themselves have the means and incentive to provide political assistance to elected officials, lessening the possibility of a political backlash and repeatedly presenting the opportunity for a political deal — expanded government in exchange for union political support. As we will see, collective bargaining agreements made under PERA have the effect of leaving government union officials with large sums of money that can be used for political purposes, and government union officials themselves are ideologically committed to expanding the scope of government. PERA provides union officials with the material and motivates public officials to repeatedly accept this political deal.

Two observations should be kept in mind at this point. First, contrary to union propaganda, not all union demands are economically viable or ethically mandatory. It will sometimes be wise and just for an employer, in both the private and public sector, to reject a union demand outright or make a more modest counteroffer. Second, human nature is such that the temptation is always present to defer difficult decisions, meaning that both corporate boards and elected officials are prone to prefer a course of action that is easier to implement in the short term, even if it is likely to create long-term problems.

Elected officials are not necessarily short-sighted and profligate when compared to business owners; it would be more accurate to say that private business owners have an advantage over elected officials in terms of dealings with unions because their short-term incentives are much more closely in line with the long-term interests of their constituents. The power of taxation, an essential power of government, gives government employers an escape route that is generally not available to employers in the private sector. Consequently, private businesses are more likely than governments to resist unreasonable union demands.*

* One might expect that this weakness of government employers would be offset by the relative weakness of government unions, which are not allowed to strike under PERA, but this is not necessarily the case. As we show elsewhere, government employee unions are in a position to influence elections — the process by which “management” is selected — giving them a lever that private-sector unions generally do not have. Even without the strike threat, it is not at all clear that government employee union officials are in a substantially weaker bargaining position than their private-sector counterparts.

That escape route has long-term consequences that have become devastating for communities across Michigan. It might be easier for governments to meet union demands than it is for businesses in the short term. The long-term consequences can still be severe. If the cost of groceries goes up on account of a new union contract, it is relatively easy to find another grocery store. Finding a new home to avoid an increase in property taxes is more difficult, but over the long run, families will respond to tax increases as they would any other artificial cost increase: They will find a lower-cost substitute — “vote with their feet,” as the saying goes. Confronted with a union that is inclined to make unrealistic demands, the day of reckoning can be delayed, but not forever.

THE CONSEQUENCES FOR DEMOCRATIC SELF-GOVERNMENT

Many government services, especially in terms of police protection and the administration of justice, must to a large extent be monopolistic; there is little room for competing police forces or competing systems of justice within a jurisdiction. The government is sovereign, establishing rules that all citizens or residents must adhere to, a role that is rarely even approached by for-profit entities. The government employer is expected to directly advance the interests of the public, an expectation that simply does not apply to any individual for-profit company. Two of the most important functions that any local government is expected to provide, police and fire, are quasi-military in nature, requiring high degrees of physical bravery and strict adherence to chains of command if they are to be executed properly. At the same time, any disruption of these and other government services could have catastrophic consequences for a community.

The process of collective bargaining established by PERA changes the functioning of representative government profoundly. Nearly every aspect of policymaking can be affected, even dictated, by the terms of a collective bargaining agreement, but the process of setting a governmental budget is the most straightforward example.

With or without collective bargaining, governments do not operate within a vacuum; they must offer competitive wage and benefit packages if they are to recruit and retain qualified workers. But whether or not one supports collective bargaining, there is no denying that it changes the budget process. In the absence of collective bargaining, elected officials are free to consult with their own financial advisors, develop a wage and benefits package, and present this package to their

employees. Government employees are not powerless — they retain the option of looking for work in the private sector or with other government employers — but at least elected officials would be free to follow their own spending priorities and implement a budget without interference.

Collective bargaining changes the process considerably. Modifications to wages and benefits must be negotiated with a union representative before they are implemented. As a contract expires, elected officials cannot presume that they can continue with existing arrangements. Even if the vast majority of the workers are content with their wage and benefits packages, the contract must be renegotiated, and union officials can be expected to present new demands whose impact on the budget must be evaluated. Local governments are not required to meet these demands, but an impasse in negotiations presents its own risks, including unfair labor practice allegations that must be evaluated by the Michigan Employment Relations Commission. Before reaching impasse, local officials must be prepared to demonstrate that they bargained in good faith, which goes beyond ordinary factual honesty. Under both the NLRA model and PERA, “[C]ourts look to the overall conduct of a party to determine if it has actively engaged in the bargaining process with an open mind and a sincere desire to reach an agreement.”³ This can be a difficult judgment for a court to make when a party takes a strong stance on a contractual issue, and the understandable desire to avoid legal difficulties can create an incentive for officials to accept compromises that might otherwise be contrary to sound public policy. Elected officials cannot be certain how a tough negotiating stance will be interpreted. In the case of police officers and firefighters, a failure to reach an agreement will result in the establishment of an arbitration panel, which will then decide terms of employment.

Regardless of one’s opinions on the merits of collective bargaining, it is clear that it complicates the process of managing municipal finances. Unless local officials are prepared for a bargaining impasse, unions have an effective veto power over large swaths of a local government or school board’s budget, especially where employee compensation is concerned. The sweep of the “union veto” is broad: Based on U.S. census figures for 2005-2006, we estimate that wages and benefits for local government employees in Michigan were equal to 45.6 percent of operations spending, meaning that close to half of a typical local government’s budget went to compensation for employees.⁴ This is, if anything, a modest estimate of the impact that personnel costs have on government. The Commonwealth Foundation has estimated that salaries and benefits make up 70 percent of the cost of running a

school district in Pennsylvania, while the Heartland Institute estimates that more than 80 percent of the city of Chicago's budget is related to personnel costs.⁵

Even more troubling, however, is the impact of work rules. The work of government employees is the work of government itself, and contractual clauses that affect the duties of government employees cannot help but influence the way in which laws are enforced and public policies are implemented. The federal and state constitutions are both predicated on principles of democratic self-government, meaning that all aspects of government are under the effective control of the people, who make policy either directly through referenda or indirectly through elected officials.

Collective bargaining can and often does take important aspects of government policy out of the hands of local elected officials and instead makes those policies the subject of negotiations between the elected representatives of the people and union officials who are not accountable to the citizenry, further broadening the union veto.

To illustrate the problem, consider the following provisions of the current collective bargaining agreement between the Detroit Public Schools and the Detroit Federation of Teachers:

- Since at least 2002, the contract has specified that all textbooks meet “guidelines established by the District and outlined in the 1968 Textbook Report, Publication 1-112, or its successor, prepared by School-Community Relations.” This requirement binds the school board to its existing curriculum policy. If the board should decide to pursue a new approach in terms of curriculum, perhaps to adopt innovative teaching methods or to revise content to reflect new scholarship, it may find itself blocked by a union grievance that forces the board to continue using standards it established in 1968.

The contract also has very specific requirements for American and World History courses that could be used to block revisions of the history curriculum. These provisions give the union considerable influence in deciding what students are taught, a subject that properly belongs to the discretion of the elected officials representing the people of Detroit.

- The contract commits the District to “aggressively” seek funds for integration and desegregation. Given Detroit's history, it is understandable that these would be important issues for the school board, but the board should be free to determine its own priorities in terms of lobbying for state or federal funds.

- The contract states that schedules for adult education facilities will be made through a “District-Union Committee” made up of an equal number of union and district representatives and subject to approval by both union and district officials, making the union the equal of the district in terms of setting the schedule.
- The contract sets strict class-size limits and further stipulates that class sizes at the beginning of a semester will be substantially below those limits, so that “population shifts” will not result in classes that exceed the student limits. The contract also sets up a “Class Size Review Board,” made up of equal numbers of union and district representatives, with authority to resolve class-size complaints. Not only does the contract set class sizes, it has the district share power with the union in terms of how class-size requirements are met.
- The contract limits the number of students assigned to special education classes. State recommendations cannot be exceeded without the union’s permission; there is no indication that the bargainers who drew up the contract considered the possibility that the district might at some point have an unusually high number of students in need of these services. If a student is in need of special education services, the district should be free to arrange for him or her to receive them without consulting the union.
- The contract sets the lengths of school days and class periods in high schools.
- The contract establishes specific penalties and procedures for various forms of student misconduct, and creates a “Uniform Code Review Committee” made up of equal numbers of union and district representatives. Student discipline is a vital aspect of educational policy; fairness to students and their parents is best served when student infractions are investigated and penalties set by the body that is accountable to the people of Detroit. While school boards should be encouraged to consult with teachers on the setting of disciplinary standards, final authority over student discipline ought to lie with the elected school board. Under the contract, discipline has become another area of shared authority between the board and the Detroit Federation of Teachers.

The contract also sets many parameters for report cards, determining how often grades will be passed out and what time periods the grades will reflect. The contract specifies that primary school students will receive “non-graded” report cards. It also sets forth the procedure for handling student appeals of

grades, with the final determination made by “Grade Review Panels” made up of union and district representatives. Certainly, teachers should have a great deal of input in evaluating student work, and in general, the grades they hand out should stand. Indeed, it is difficult to imagine a system where they would not.

But as is the case with curriculum and student discipline, fairness to students and parents dictates that final authority in this area should be left with the elected representatives of the people of Detroit. The process for evaluating student work ultimately ought to be left to the determination of the school board.

- Finally, the grievance procedure calls for final resolution of all grievances by the American Arbitration Association. Because the contract touches on many areas of education policy and does not attempt to distinguish between matters of public policy and core matters of labor relations — wages, hours, benefits and working conditions — the grievance process could result in educational policy being resolved by the AAA, rather than the elected Board of Education.*

By contrast, the typical charter school board, operating without a union contract, has much greater flexibility and control over academics, discipline and general operations, consulting with teachers but retaining authority and accountability to parents. (Michigan charter schools are subject to PERA, but the vast majority remain nonunion by the teachers’ choice.) To be fair, it should be noted that the DPS contract is a rather egregious example generated by an especially dysfunctional school district. Still, the Detroit Public Schools contract illustrates that collective bargaining under PERA opens the door to infringements on the authority of elected officials, and shows how one union has taken advantage of PERA to assert control over matters of public policy. The Detroit Public Schools are not alone in allowing this to happen, though; a survey published by the Mackinac Center of public school collective bargaining agreements showed that the overwhelming majority of school districts had agreed to class-size limits as part of collective bargaining.⁶

Nor is this tendency of collective bargaining to encroach on policy matters an entirely new development. In 1987, the Citizens Research Council of Michigan observed that PERA had led to court decisions allowing unions to encroach on local government prerogatives:

* These provisions are found in the master agreement between the Detroit Federation of Teachers and the Detroit City School District that took effect July 1, 2002 and originally expired June 30, 2005. Unlike most government union contracts, which are superseded by new contracts, this collective bargaining agreement was amended and extended in 2005 and 2006, and it remains in effect at this time.

“... PERA is the predominant state statute governing public employee relations in Michigan. When a conflict has arisen between another state statute, charter provision, or local ordinance, and a provision of a contract negotiated under PERA, in virtually every instance the contract provision has been held to prevail.

One result of the dominance of PERA, as Attorney General opinions have noted, is that ‘public employers and their affected employees [have] the right to, in effect, negotiate a statute out of existence as to the contracting parties through collective bargaining.’ [Citation omitted.] This raises serious concerns because the provisions ‘bargained out of existence’ by the parties may contain safeguards which were enacted at the state or local level to limit the scope and size of government.”⁷

Among the statutes that have been effectively trumped by collective bargaining under PERA are:

- The County Civil Service Act, which prior to the enactment of PERA established local civil service commissions. These commissions set wages and work classifications for local government employees and were intended to ensure that hiring and promotions would be determined by skill, rather than partisan pressures.⁸
- The Municipal Employees Retirement System established under state law.⁹
- Local government charters. The state constitution gives counties, cities and villages the authority to draft and amend their own charters, subject to the limits of the state constitution and general state laws. Under this principle of home rule, citizens would be free to shape their own local governments and restrict their actions as they see fit. PERA, however, has been interpreted so that collective bargaining agreements trump the provisions of local ordinances and charters.¹⁰ In this regard PERA arguably has subverted the state constitution.*

As a consequence of PERA’s undermining of home rule, local ordinances establishing disciplinary standards, residency requirements and staffing standards have been rendered ineffective. Courts have also applied PERA’s standards to public school employees, effectively trumping the provisions of education statutes.¹¹

* Michigan municipal law is a complicated area beyond the scope of this study, but the obligation to bargain undeniably places restrictions on local governments, and it does so in a manner not addressed by the Michigan Constitution. The Legislature has considerable authority to shape local government operations, including the provisions of local government charters, but it is not clear that it should be able to delegate that authority to private bodies, such as unions, or that it intended to do so when PERA was enacted. It is the opinion of this author that such a delegation has in fact happened, and that at a minimum this issue is ripe for reconsideration by the state courts.

In a democratic government, the power to annul legislation must be reserved for the people, their elected officials or, in cases where either exceeds their authority, the courts. When legislative authority is exercised by private entities, such as government employee unions, the inevitable result is to undermine democratic self-government. This situation is dangerous enough when the union focuses on traditional collective bargaining issues, such as wages, benefits, hours and basic working conditions. But government employee unions are developing a distinct public policy agenda that ranges well beyond ordinary workplace issues, and PERA has given them their own unique and powerful tools with which to advance that agenda, to the detriment of the residents of Michigan.

In theory, the duty to bargain is limited to wages, hours and other terms or conditions of employment, but that “other” category remains broad and poorly defined. In practice, any political issue that can be expressed in terms of employee compensation, job duties or work standards and included in a collective bargaining agreement is vulnerable to manipulation by government union negotiators. Since the work of government employees consists of enforcing laws and implementing the decisions of government officials, the range in which union officials can use PERA to usurp authority that the state and federal constitutions leave to the people and their elected officials is disturbingly broad.

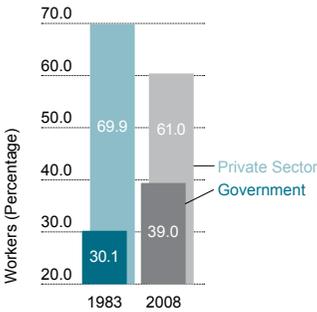
THE CONSEQUENCES OF GOVERNMENT UNION IDEOLOGY

The labor movement in Michigan is undeniably changing. As the UAW, long the state’s most powerful private-sector union, loses members due to the restructuring of Chrysler and General Motors, government employees make up a larger and larger part of union membership, a trend that reflects developments throughout the United States and globally.

In 1983, more than 326,000 government employees were covered by collective bargaining agreements, but more than twice as many private-sector workers, 758,000, were covered by such arrangements. In 2008, public-sector unions had lost 13,000 workers, taking the number of government employees covered by union contracts in Michigan down to 313,000. Private-sector unions, however, showed a more dramatic decrease of 270,000, leaving 489,000 workers covered by union contracts.¹² As a consequence, while government employees made up barely 30 percent of Michigan’s unionized work force in 1983, their portion of the unionized work force was up to 39 percent in 2008. As the restructuring of

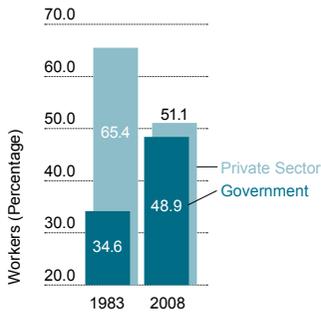
the automobile industry continues, government employees are likely to loom larger in the Michigan labor movement. This is in keeping with national trends: Government employees made up 34.6 percent of the unionized work force in 1983, but that increased to 48.9 percent in 2008.¹³

Graphic 1: Government and Private-Sector Workers as Percentages of Michigan Workers Covered by Collective Bargaining Agreements, 1983 vs. 2008



Source: Author's calculations based on "Union Membership and Coverage Database," *Unionstats.com*.

Graphic 2: Government and Private-Sector Workers as Percentages of U.S. Workers Covered by Collective Bargaining Agreements, 1983 vs. 2008



Source: Author's calculations based on "Union Membership and Coverage Database," *Unionstats.com*.

As the union movement's membership shifts from private-sector, for-profit companies to government employment, the goals and strategies of unions themselves are beginning to shift as well, giving rise to what retired Rutgers economist Leo Troy describes as the New Unionism.¹⁴

According to Troy, the New Unionism, increasingly under the influence of government employees, is more ideological than the old unionism of private-sector workers. The Old Unionists, in his view, accepted free-market economics, albeit grudgingly. The Old Union movement rejected the traditional Marxian socialist prescription of nationalizing the means of production, and instead focused on transferring a larger share of privately derived income toward its members through collective bargaining. As such, it paid close attention to traditional objectives of collective bargaining; Old Unionists tended to view their role primarily in terms of workplace representation. To the extent that government employees were unionized, their unions shared the priorities of private-sector unions, meaning that contract negotiations were less likely to involve public policy issues.

Troy's New Unionism grows out of a new form of socialism. Where classical socialism sought state control over the means of production, the more modern form leaves day-to-day control of firms in the private sector, but redistributes incomes via the state. According to Troy: "[T]he New Unionism is closely tied

to the New Socialism. Its members and the employees it represents are the labor force providing and facilitating the redistribution of income.”¹⁵

This shift in the union movement, from the private-sector-oriented Old Unionism to the public-sector-oriented New Unionism, involves a thorough reworking of union goals and strategies. The New Unionism, according to Troy, is more ideological and its goals are broader: Rather than win benefits for its members, the New Unionism intends to reorder society with wealth increasingly doled out by government. The Old Unionism valued economic growth — a larger pie meant more jobs, income and benefits were available for its members. The New Unionism is more willing to ally itself with environmental and other movements that threaten growth and job creation. Its purpose is not to improve conditions for union members as much as to ensure that the government can redistribute incomes in a way the unions deem equitable. The shift seems less radical because enterprises remain in at least nominally private hands, but nonetheless the ideology is sweeping and centered on government: “From each according to his income, to each according to his entitlement.”¹⁶ This is a formula for both more government redistribution of wealth and higher tax rates. The result is a more politicized union movement, not just among government employees, but among private-sector unions as well.

Troy’s observations also explain why government employers, unlike private companies, rarely resist unionization. Especially when elected officials within a governmental unit are themselves ideologically inclined toward supporting extensive public services, the recognition of a union means an ideological ally is permanently installed in the structure of government.

Troy is not the only person to observe a shift in union priorities from the workplace to politics. Paul Johnston, a former organizer for the Service Employees International Union in the San Francisco-Oakland California area, chronicled his experiences with government employee unions. Like Michigan, California’s labor law is based on the NLRA model, and most of the unions that represent California government employees are active in Michigan, so Johnston’s observations should apply to Michigan. While Johnston’s analysis differs sharply from Troy’s in many ways, the two mesh very well on one point: Politics weighs heavily among rising government employee unions:

“In defense of their own status, wages, and working conditions, they can (and do) easily embrace interests that pit themselves against the urban poor. ... [H]owever, public employee unions that are mindful of their

political resources and employee strategies of public service unionism are uniquely positioned to build new alliances that defend and assert public needs. These possibilities are well worth examining in a society that systematically underproduces public education, child care, public health facilities, public transportation, and similar ‘public goods.’ ...”¹⁷

Johnston describes “public service unionism” as one that “articulate[s] public good and shape[s] the budget in local government,” clearly a political orientation. He then goes on to observe, “As [government employee unions] frame their interests as administrable public interests, they are perhaps the quintessential ‘state making’ social movement.” Since the American state has rested on fairly firm foundations since the end of the Civil War, one can infer that Johnston’s idea of “state making” could just as accurately be described as “state growing.” If there is any doubt remaining that government employee unions are primarily political institutions pursuing political goals, consider his concluding comments:

“Different groups of public workers thus find themselves unavoidably implicated in the policy agendas that orient their work and sustain their funding. ... They are not merely ‘interested’ in these agendas, however; *they enact them*” (emphasis added).¹⁸

The choice of verb is illuminating. Traditional unions do not enact their agendas; they bargain for them, and sometimes (at least in the private sector), they go on strike for them. The *people* enact agendas through their elected representatives or through referenda.

The breadth of the government employee union agenda and the depth of its political commitments can be illustrated by the organizations that have received contributions from government employee unions. Our 2008 review of union spending found the National Education Association contributed to the National Coalition on Health Care, the National Council of La Raza, People for the American Way and Rainbow/PUSH, all of which the NEA treated as representation expenses. The Service Employees International Union made contributions to the Association of Community Organizations for Reform Now (ACORN), Rainbow/PUSH and La Raza, while the American Federation of State, County and Municipal Employees contributed to the Universal Health Care Action Network, Americans for Democratic Action and numerous state Democratic Party organizations.

It seems inevitable that government employee unions will be more and more involved in public policy. Indeed, they would probably be unable to succeed

any other way. This marks a major shift for government employee unions, one that has profound implications for Michigan. Collective bargaining under PERA gives government employee unions methods for affecting public policy through collective bargaining that no other interest group shares, and at the same time the union movement is shifting its attention from the workplace to public policy. PERA no longer empowers unions, at least as they have traditionally been understood as a workplace representative. Instead, PERA now empowers a social and political movement. Whether one calls that movement “New Socialism” or “Public Service Unionism,” it would seem to have little concern for the burden that government places on private citizens or enterprises.

THE CONSEQUENCES FOR GOVERNMENT SPENDING

There is little doubt that unionization can drive up the cost of employees, which is why unionization is frequently resisted by for-profit companies. While the mechanisms by which unions drive up wages and benefits in government might be different from those used in the private sector, the effect is not: Wages and benefits for unionized government employees are generally higher than for non-unionized employees.

The American Federation of Teachers’ latest survey of state government employee salaries shows that employees in states with public-sector collective bargaining laws receive pay that is 14 percent higher than comparable workers in states that do not have collective bargaining.¹⁹

It should be noted that the AFT’s survey focuses on state employees, and that employees of the state of Michigan are not covered by PERA. They are mostly unionized, however, under rules established by the state’s Civil Service Commission, and the CSC’s rules also follow the NLRA model in most respects. Our calculations based on the AFT’s figures show that state government employees in Michigan receive a salary that is 10.4 percent higher on average than comparable state government employees, both union and non-union.*

If the state of Michigan were to reduce government employee wages to the national averages found by AFT, the state itself would have saved roughly \$568 million in employee wages during 2002 and similar amounts every year since. This amounts to annual savings of around \$55 annually for every man, woman and

* The fact that this figure is lower than the pay increase that AFT attributes to unionization should not be taken to mean that government employee unions have less of an effect in Michigan. This average figure includes salaries from states that allow and disallow government employee unionization.

child in Michigan. Savings from abolishing or reforming government employee bargaining could approach or even exceed these amounts. (Recall that AFT assigns an even larger value to the effect of unionization itself on government employee salaries. We are merely returning Michigan state government employees to national averages, an amount that includes unionized and nonunionized workers.) Assuming that the repeal of PERA would have a similar effect on local governments, including school districts, the potential savings in employee wages would amount to \$1.368 billion, about \$135 for every man, woman and child in the state annually.²⁰

Along with inflated salaries, unionization also is prone to inflate the costs of benefits for government employees. If anything, the potential savings of reforming employee benefits dwarfs the savings from salaries. For decades, the Michigan Education Association has pressured school districts to provide teachers and staff with insurance through its own preferred provider, the Michigan Education Special Services Association, an organization with extensive ties to the MEA itself.* It has been estimated that switching from MESSA to a state-run health insurance system would save taxpayers as much as \$281 million per year.²¹ The MEA has gone to great lengths to maintain MESSA coverage; threats of illegal strikes against districts that propose alternate insurance programs are not unheard of.²² Effective reform or abolition of PERA would, among other things, ensure that school districts were free to utilize a wider range of insurers, allowing Michigan taxpayers to realize considerable savings.

More generally, Mackinac Center analysts have found that if state and local government employee benefit packages in Michigan were limited to the amount typical for workers in the Midwest region, taxpayers would save as much as \$5.7 billion annually. This sum is well in excess of \$500 annually for every person in the state, or \$2,000 annually for a family of four.²³ A more modest proposal to create a state-run health insurance program for all state and local government employees is still expected to result in savings of \$900 million.²⁴ To give a sense of proportion, Michigan state government was briefly shut down in 2007 on account of political disputes between the governor and Legislature stemming from a deficit of about \$1.5 billion, which was covered almost entirely by tax increases.²⁵

While it is undeniable that the repeal or restructuring of PERA would be a dramatic step in Michigan, the potential rewards in fiscal policy alone are tremendous. At a minimum, repeal or reform of PERA would go a long way toward resolving

* MESSA itself is not an insurance provider; instead, it administers insurance provided by Blue Cross Blue Shield of Michigan.

the continuing financial crisis of state and local governments. It is not fanciful to suggest that such an action by itself could, over time, eliminate government deficits throughout Michigan and create surpluses that could be returned to Michigan families in the form of tax cuts that would revitalize the state's economy.

THE CONSEQUENCES FOR LOCAL POLITICS

Earlier in this paper we have shown that public employee collective bargaining under PERA can affect basic public policy issues, limiting the authority of elected officials. We have also shown that government employee unions have evolved into ideological entities with a distinct political agenda. PERA has distorted Michigan government so that it is more intrusive and burdensome than the people of Michigan would probably prefer. Adding to the distorting effect of PERA is the law's allowance of mandatory union dues and agency fees.

As is the case under the National Labor Relations Act, Michigan's PERA allows a collective bargaining agreement to include language stipulating that all workers covered by that agreement must either join the union formally or pay an agency fee in lieu of dues. This is technically referred to as an agency-fee clause. The money involved is far from trivial; a Mackinac Center Freedom of Information Act request revealed that the state of Michigan turned over a total of \$17.6 million in dues and fees to six unions during 2008. These payments represented membership dues for 38,500 state employees and amounted to an average of \$456 in union dues per employee.²⁶ If we assume that union dues and fees are the same for local government employees, state and local governments turned over \$142.5 million dollars in union dues and agency fees for 312,500 government employees in 2008. If this amount of money were eliminated, it would take a decent-sized chunk out of Michigan governments' perennial budget deficits.²⁷

To describe these payments as membership dues gives a misleading impression of what the payments are. They do not arise out of an agreement between voluntary members of a private organization; rather, they arise from collective bargaining agreements negotiated by employers on one side and unions on another. While workers can reduce their dues somewhat, they cannot prevent the transfer from going forward.^{*} An employer may refuse to grant a union the right to collect mandatory dues, but this is rarely done. Mandatory dues are highly valuable to union officials, and because unions generally allow these to be

* For more information on workers' rights with regard to agency fees, see Robert Hunter, "Compulsory Union Dues in Michigan," (Mackinac Center for Public Policy, May 1, 1997), <http://www.mackinac.org/article.aspx?ID=235>, (accessed September 2, 2009).

withdrawn from employee salaries, they appear to be cost-free for employers, at least in the short run.

The funds are collected and turned over by the government. Once they are turned over, there is little oversight as to how they are spent. Unlike the federal government, which has at least rudimentary financial reporting rules for unions, Michigan labor law does not. As a consequence, only unions that represent private-sector employees are required to report, and employees and taxpayers are left with no spending information for many government employee unions.*

Earlier Mackinac Center research shows that less than half of union spending goes toward employee representation, and to the extent that one can evaluate government employee unions, they were no more scrupulous than private-sector unions. This discovery negates the most common rationale for agency-fee clauses: that unions need these funds to perform their services as collective bargaining representatives.²⁸ The National Education Association and Michigan Education Association were especially unfocused, with only 29.5 percent of their spending going into worker representation. And many unions, NEA/MEA among them, appeared to be categorizing contributions to political and ideological campaigns as representation.²⁹

With agency fees effectively granting millions of dollars in guaranteed revenue to unions with strong political tendencies and little financial accountability, it would be fair to say that PERA has created a permanent, taxpayer-funded lobby for big government.

WEIGHING PERA'S CONSEQUENCES

Michigan has a long tradition of supporting workers, and it would be wrong to deny government employees some way to provide input on their work and compensation. But collective bargaining is not the only way to gauge workers' opinions on compensation and working conditions, and a smart manager will actively solicit his employees' opinions anyway.

The pattern of collective bargaining first created by the National Labor Relations Act and imposed on government in Michigan by the Public Employment Relations

* The Labor-Management Reporting and Disclosure Act, which establishes the financial reporting requirement, only applies to union organizations that represent private-sector employees. The effect of the federal law is that the Michigan and federal bodies of the NEA/MEA, AFSCME and SEIU, all of which represent some private-sector employees, are required to file LM-2 forms, but the vast majority of their locals are not, because those locals do not represent any private-sector workers. The majority of government employee union organizations in Michigan are not required to file LM-2 reports, and there is no state reporting requirement. For more information see Kersey, "Union Spending in Michigan: A Review of Union Financial Disclosure Reports."

Act has clearly failed to promote efficient administration of government. Instead, it has made government more intrusive, more burdensome and less responsive to the concerns of Michigan's residents.

Sympathies for unions aside, collective bargaining in government is not a fundamental right; several states explicitly prohibit the practice, and their discretion to do so has been upheld by the U.S. Supreme Court. Other states leave the question of whether or not to engage in collective bargaining to the discretion of local officials.*

This paper has illustrated numerous shortcomings in the Public Employment Relations Act. Under PERA, important public policy decisions have been removed from the direct control of elected officials and are now made in the process of collective bargaining. As a consequence, officials of government unions have assumed a peculiar role in the making of public policy; the responsibilities, methods and duties of government workers must be negotiated with them, rather than being determined by the elected representatives of Michigan residents. This development is in conflict with the principles of democratic government.

Further complicating matters, the unions that represent government employees have developed a definite ideology, one that concentrates power in government and supports wider redistribution of wealth by government, with the predictable consequences of higher taxes and a weakened private economy. Like private-sector unions, government employee unions have driven up the cost of wages and benefits for government workers while instituting seniority and disciplinary rules that complicate worker assignment and discipline.

Finally, the allowance for mandatory union dues and agency fees gives union officials access to tens of millions of dollars of taxpayer funds with virtually no restrictions on how these funds are spent.

All of these features of PERA work against the efficient administration of local government in Michigan and contribute greatly to the state's economic difficulties. The government employee unions created by PERA may be the single largest obstacle to restoring the state's prosperity.

An argument can be made that collective bargaining in government is ultimately incompatible with democratic self-government, and the record of PERA itself

* For an example of a state prohibition against collective bargaining, see Va. Code §40.1-57.2 (Virginia) or *Communications Workers of America v. Arizona Board of Regents* 498 P.2d 472; 17 Ariz App. 398 (1972) (Arizona) According to an opinion of its Attorney General West Virginia leaves collective bargaining to the discretion of local officials W.V. Atty. Gen. Op. 97 (1974) The U.S. Supreme Court upheld state prohibitions on collective bargaining in *Smith v. Arkansas State Highway Employees*, 441 U.S. 463 (1979)

would appear to provide some evidence for this point of view. If public-sector collective bargaining is to be practiced in Michigan, the patterns and practices of the NLRA must be set aside, and the fundamental principles of democratic government in a free society must be restored. At a minimum, PERA is long overdue for a thorough re-examination, at the end of which the law should be repealed or rewritten.

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EXECUTIVE SUMMARY

The Michigan Public Employment Relations Act, which governs collective bargaining between local governments and their employees, is simultaneously among the most important and least-discussed laws ever passed by the Michigan Legislature. Because the work of public employees is the work of government, PERA affects nearly every aspect of local government operations.

PERA was based on the National Labor Relations Act, a law that was designed for private, for-profit employers. The NLRA has not always worked well in the private sector; applying the structure of the NLRA to government has created even more complications:

- The incentives created by PERA tend to push local officials toward tax increases rather than spending cuts.
- Unless local officials are prepared for a bargaining impasse, unions have an effective veto over any part of a local government's budget dedicated to personnel costs. Personnel costs can make up as much as 80 percent of a local government's budget.
- Work rules found in collective bargaining agreements add to the scope of the "union veto." In practice, government union negotiators can manipulate any political issue that can be expressed in terms of employee compensation, job duties or work standards and be included in a collective bargaining agreement.
- Court rulings have consistently held that collective bargaining trumps local statutes and even local charters. PERA has arguably subverted the home-rule principles expressed in the state constitution.
- With agency fees effectively granting millions of dollars in guaranteed revenue to unions with strong political tendencies and little financial accountability, it would be fair to say that PERA has created a permanent, taxpayer-funded lobby for big government.

The government employee unions created by PERA may be the single largest obstacle to restoring the state's prosperity. Collective bargaining for government employees is not an inalienable right, and its practice in Michigan has added billions of dollars to the cost of government. The repeal or restructuring of PERA could resolve the state's chronic fiscal crisis. PERA is long overdue for a thorough re-examination, leading to the rewriting or repeal of the law.

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MICHIGAN'S PUBLIC EMPLOYMENT RELATIONS ACT: Public-Sector Labor Law and Its Consequences

FROM THE TEXT:

The work of government employees is the work of government itself, and contractual clauses that affect the duties of government employees cannot help but influence the way in which laws are enforced and public policies are implemented. The federal and state constitutions are both predicated on principles of democratic self-government, meaning that all aspects of government are under the effective control of the people, who make policy either directly through referenda or indirectly through elected officials.

Collective bargaining can and often does take important aspects of government policy out of the hands of local elected officials and instead makes those policies the subject of negotiations between the elected representatives of the people and union officials who are not accountable to the citizenry. ...

In a democratic government, the power to annul legislation must be reserved for the people, their elected officials or, in cases where either exceeds their authority, the courts. When legislative authority is exercised by private entities, such as government employee unions, the inevitable result is to undermine democratic self-government.

— *Paul Kersey, Mackinac Center for Public Policy*



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