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**NAVAL  
POSTGRADUATE  
SCHOOL**

**MONTEREY, CALIFORNIA**

**THESIS**

**PUBLIC SECTOR UNIONIZATION: UNDERSTANDING  
THE RISE IN MEMBERSHIP RATES AND IMPACT ON  
HOMELAND SECURITY**

by

Donna J. Grannan

December 2011

Thesis Advisor:  
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Samuel H. Clovis, Jr.  
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**PUBLIC SECTOR UNIONIZATION: UNDERSTANDING THE RISE IN  
MEMBERSHIP RATES AND IMPACT TO HOMELAND SECURITY**

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Submitted in partial fulfillment of the  
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES  
(HOMELAND SECURITY AND DEFENSE)**

from the

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## **ABSTRACT**

Public sector union membership rolls will swell by over 40,000 Transportation Security Officers (TSO) as the Transportation Security Administration (TSA) embarks on transitioning to a unionized screener workforce. Proponents argue that screening operations will be in jeopardy as poor performing screeners will be difficult to remove for cause, attention will be focused on union issues rather than security measures, and the threat of work slowdown or unofficial strikes if union demands are not met could have nationwide economic repercussions. The TSA organizing as a unionized workforce has parallel similarities to another unionized aviation industry federal agency—the Professional Air Traffic Controllers Organization (PATCO). Disgruntled with years of attempted bargaining between PATCO and the Federal Aviation Association (FAA), PATCO staged an unofficial work strike in August 1981 that temporarily halted air traffic in the United States. As airlines were forced to cancel flights, this strike brought national attention to the impacts that federalized workers can have on national security and the economy. Federal agencies with national and homeland security responsibilities must remain operationally agile. The economic devastation resulting from a TSA work strike could potentially cripple the complex transportation network of aviation, rail, pipeline, highway, cargo, maritime and mass transit.



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## LIST OF ACRONYMS AND ABBREVIATIONS

ACLU	American Civil Liberties Union
AFGE	American Federation of Government Employees
AFL-CIO	American Federation of Labor, Committee for Industrialized Organization
AFSCME	American Federation of State, County and Municipal Employees
AIT	Advanced Image Technology
ATAG	Air Transport Action Group
ATSA	Aviation and Transportation Security Act
BLS	Bureau of Labor Statistics
CBP	Customs and Border Protection
CPS	Current Population Survey
DHS	Department of Homeland Security
ECEC	Employer Costs for Employee Compensation
ECI	Employment Cost Index
F.D.R.	Franklin D. Roosevelt
FAA	Federal Aviation Association
FBI	Federal Bureau of Investigations
FLRA	Federal Labor Relations Agency
FLRA	Federal Labor Relations Authority
FLRB	Federal labor Relations Board
FSLMRS	Federal Service Labor Management Relations Statute
IAFF	International Association of Fire Fighters
NLRB	National Labor Relations Board
NRLA	National Labor Relations Act
NTEU	National Treasury Employees Union
PAC	Political Action Committee
PATCO	Professional Air Traffic Controllers Organization
SHSP	State Homeland Security Program
SPP	Screening Partnership Program



TSA	Transportation Security Administration
TSO	Transportation Security Officer
UASI	Urban Areas Security Initiative

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# **I. INTRODUCTION**

## **A. PROBLEM STATEMENT**

Public sector unions have experienced a significant increase in membership over the past three decades, despite many federal and state laws that restrict the rights of public and private sector unions and limit their ability to collectively bargain for employees. As public sector unions gain membership strength in numbers and resulting revenues, their political clout and influence over policy and legislative decisions also increases. The legislative decisions that can result from this influence have critical financial impact on federal budgets and state treasuries as these government entities struggle to fund the salaries, benefits and pensions of their public employees. Proponents of collective bargaining for public sector employees claim high membership rates of firefighters, police officers and emergency response workers and argue that union membership has no negative impact on their ability to secure the homeland. Opponents of collective bargaining for public sector employees counter-argue that lengthy and costly negotiating processes will compromise national security, which will decrease the nation's ability to respond effectively to natural disasters, emergency situations and terrorist threats. The Transportation Security Administration (TSA) will test these opposing arguments in the coming years as it transitions to a unionized federal workforce with collective bargaining rights, the results of which could negatively impact homeland security and unduly influence aviation commerce in America through job action that would not likely occur had TSA remained union free.

## **B. ARGUMENT**

Public sector collective bargaining arguably presents an aberration of good governance and is unnecessary as the potential harm from job action outweighs the benefits accrued to employees through the collective bargaining

process. The primary difference between public sector unions and private sector unions is that the former negotiates collective bargaining agreements directly with the government officials to whom they pay campaign contributions, while the latter lobby government officials, make campaign contributions to elected officials, but suffer the leveling influences of free market processes. Collective bargaining in the public sector provides a disproportionate benefit to government workers through this corrupting political influence and, as such, is arguably an aberration for good governance.

The right to union representation and collective bargaining in public sector employment varies among federal, state and local governmental enterprises. Proponents of collective bargaining rights claim union representation does not impact employees' ability to respond to disasters and security situations and creates an empowered workforce. Opponents, including Senators Kay Bailey Hutchison (R-TX) and Jim DeMint (R-SC),<sup>1</sup> counter that negotiating with union bosses before implementing security changes, work schedules and compensation will cause significant damage to security effectiveness through delayed response times, threat of work strike or slowdowns, inability to remove poor performing employees and bureaucratic negotiating for grievance procedures and compensation allowances.. By 2009, for the first time in the history of public unions, more government employees were represented by unions than were union workers in the private sector, 7.9 million and 7.1 million, respectively (Bureau of Labor Statistics, 2010).

Federal employees are not prohibited from joining a union, regardless of the agency for which they work or their position within the government. Inconsistencies exist, however, among federal agencies with regard to collective bargaining rights. Traditional first responder federal agencies, such as the Federal Bureau of Investigations (FBI) and the Secret Service, do not grant

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<sup>1</sup> Statement released March 2007: "Collective bargaining among TSA screeners would jeopardize safety because it would take away TSA's flexibility to respond quickly to security threats."

collective bargaining rights to its employees while Customs and Border Protection (CBP) employees have collective bargaining rights. Prior to enactment of The Homeland Security Act of 2002, components of CBP existed in several legacy agencies without collective bargaining rights. The U.S. Capitol Police are unionized, as were many of the 9/11 first responders. By contrast, the TSA expressly prohibited collective bargaining rights until the 2011 decision by Administrator John Pistole.

These rights vary even more significantly among individual states. Approximately 26 states allow collective bargaining for all state and local workers; 12 states have collective bargaining for some state and local employees while the remaining states do not allow collective bargaining for their public sector workers. Likewise, 22 states are considered “right-to-work” states whereby workers cannot be forced to join a union or pay fees for collective bargaining protections.<sup>2</sup>

Despite strong federal and state laws that limit or prohibit the degree of negotiating power afforded to unions that represent public sector workers, these unions have experienced a dramatic increase in membership within the past decade. This growth in public sector unionization is despite the fact that courts have generally upheld the ruling that public sector employees do not always enjoy all the union privileges that private sector employees have under the Wagner Act of 1935 and its amending legislation.

The public sector union member rolls will potentially swell by over 40,000 Transportation Security Officers (TSO) to the TSA in 2011. The potential impact of TSA’s unionization on homeland security is under scrutiny as TSA embarks on transitioning to a unionized screener workforce. TSA Administrator Pistole set

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<sup>2</sup> Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wyoming.

specific and non-negotiable terms<sup>3</sup> and strongly stood behind his position that TSA labor structures will not compromise national security. Despite these limitations on areas, such as security procedures, pay and work schedules, proponents argue that screening operations will be in jeopardy as poor performing screeners will be difficult to remove for cause, attention will be focused on union issues rather than security measures, and the threat of work slowdown or unofficial strikes if union demands are not met, could have nationwide economic repercussions.

Public sector unions employ strategic marketing techniques to solicit membership aggressively through claims of increased morale, lower attrition and improved work schedules. However, the cyclical process only increases the level of political influence—increased membership equals increased revenues, which in turn, equal increased political contributions that translates into continued bargaining with the elected officials who received the lion's share of union campaign contributions.

As organized labor has gained strength in the public sector, the burden to finance the collective bargaining agreements falls to the taxpayers. Although this financial burden is mostly felt at the state and local levels, more and more federal employees are seeking organized labor representation, as demonstrated in the TSA's nine-year finally successful battle to gain exclusive union representation and collective bargaining rights. The challenge for lawmakers is how to continue to fund these costly collective bargaining agreements without sacrificing homeland security efforts given that many political campaigns receive significant financial support from many of these unions. The conflict for citizens and

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<sup>3</sup> These exclusions include pay and policies affecting pay, security policies and procedures, deployment of security personnel, deployment of equipment and technology, job descriptions and qualifications, fitness for duty standards, performance standards and staffing, annual certification requirements, testing and consequences of failure to certify or recertify, means and methods of covert testing and use of results, any action deemed necessary by the Administrator or designee to execute the agency mission during emergencies, disciplinary standards and penalties, and internal security practices.

democratic processes are the influence that union bosses have over political appointees and lawmakers because of the significant campaign contributions and political support afforded to the candidates that hold union favored status.

This political collusion achieved by public union leaders and elected or appointed officials enables union bosses to have a privileged position with politicians through the collective bargaining process. Political officials are elected to represent the interests of their constituents. Negotiating constricted work environments, higher pay and benefits, all of which will cause taxes to increase, is not a fair representation of all taxpayers. At the state and local level, public sector unions can virtually select the politicians who will sit at the bargaining table to enact contractual terms in favor of the very people who contributed significant amounts of money to their political campaign. Union bosses negotiate directly with these elected officials to gain increased wages and benefits at the expense of federal and state budgets.

### **C. SIGNIFICANCE OF RESEARCH**

The overarching goal of this research project is to provide an overview of the collective bargaining environment in the public sector, particularly at the national level, with a focus on the potential ramification of a unionized TSA workforce on homeland security.

As the TSA embarks on its execution of transitioning to a unionized workforce with collective bargaining rights, this research provides a compendium of history, legislation, statistics, facts and opposing views for agencies, such as the TSA, and for future research efforts focused on exploring the impact and implications of current events surrounding public sector union activity. With increasing public awareness of the high cost of aviation security and increasing Congressional inquiries surrounding security effectiveness, this research can provide insight into the potential benefits and risks of a unionized federal security workforce.



Public sector unions have significant influence over government policies through their aggressive lobbying efforts, particularly in states that allow monopoly unionization. To what extent this political influence has on the negotiation of salary, benefits and arbitration rights and how this influence affects disaster and emergency response times are potential supporting indicators warranting further research. Additionally, the unions are marketing themselves as attractive and necessary voice for public employees. This attraction for union representation is gaining momentum, despite the fact that federal worker rights and management limitations are clearly defined in numerous federal laws and Executive Orders, which prohibit workers from striking and unions from negotiating salary, benefits, schedules and security procedures. The driving force(s) behind this attraction and the resulting consequences are compelling research opportunities.

#### **D. RESEARCH QUESTIONS**

1. What was the rationale behind the TSOs' push for exclusive union representation with collective bargaining rights?
2. To what extent will TSA's unionized workforce potentially impact homeland security, particularly aviation security, and the national economy?
3. To what extent has this rise in public sector union membership contributed to the critical state of fiscal issues facing the federal government?

#### **E. BACKGROUND**

In the wake of 9/11, President George W. Bush signed H.R. 5005, which provided authority for the creation of the Department of Homeland Security (DHS). Through this historic legislation, the country would now have one overarching agency whose mission was to prevent, protect, respond to and recover from events of national significance. The new department was an amalgamation of 22 agencies and offices that held common cause in existing security missions.

Citing concerns of national security, President Bush announced his intent to invoke his authority under the Civil Service Reform Act of 1978 (5. U.S.C. Section 7103 (b))<sup>4</sup> to prohibit this new 170,000 employee agency from collective bargaining, many of whom had such rights under their previous agency agreements. Controversy arose from all sides as opponents claimed President Bush was pushing his anti-union agenda while proponents argued that the bill would not eliminate all collective bargaining rights. The political atmosphere was sharply divided on the subject, as the Administration was in favor of no collective bargaining while the members of Congress from the Democrat Party wanted DHS employees to be able to choose.

As part of the DHS, aviation security would now fall under the responsibility of the newly created TSA. The 2001 Aviation and Transportation Security Act gave TSA its own authority to decide whether or not to engage in collective bargaining with its employees. On January 8, 2003, Under Secretary for Transportation Security Admiral James Loy, issued a written memorandum prohibiting TSOs from engaging in collective bargaining as a condition of their employment with the TSA. This policy became known as “The Loy Directive.”<sup>5</sup> Significant debate over both the legality and basis of The Loy Directive ensued and continued unresolved until April 2011.

In late 2002, TSOs at La Guardia Airport, Baltimore-Washington International Airport, Pittsburgh International Airport and Chicago Midway Airport petitioned the Federal Labor Relations Authority (FLRA) to grant approval to form

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<sup>4</sup> The Civil Service Reform Act of 1978 includes a provision (5. U.S.C. Section 7103 (b)) authorizing the President to exclude an agency or subdivision from the ability to collectively bargain if the primary function of the agency is intelligence, counterintelligence, investigative, or national security work and if applying the labor-management provisions of the act would be inconsistent with national security requirements.

<sup>5</sup> The Loy Directive: “By virtue of the authority vested in the Under Secretary of Transportation for Security in Section 111(d) of the Aviation and Transportation Security Act (ATSA), Pub. Law No. 107-71, 49 U.S.C. § 44935 Note 2001, I hereby determine that individuals carrying out the security screening function under section 44901 of Title 49, United States Code, in light of their critical national security responsibilities, shall not, as a term or condition of their employment, be entitled to engage in collective bargaining or be represented for the purpose of engaging in such bargaining by any representative or organization.”

local union chapters of the American Federation of Government Employees (AFGE). Secretary Loy issued his prohibitive memorandum in response to this petition. Despite a dissenting vote from (now Chairperson) Carol Waller Pope,<sup>6</sup> the FLRA ruled against the TSOs, citing the Secretary's authority to determine collective bargaining rights and the petitioners' failure to provide evidence that the Loy Directive was unconstitutional (59 F.L.R.A.).

Disagreement arose from all sides of the collective bargaining issue. During his 2008 presidential campaign, then-Senator Barack Obama proclaimed his support of collective bargaining in a written promise to the AFGE president, John Gage (B. Obama, personal communication, October 20, 2008): "If I am elected President, I will work to ensure that TSOs have collective bargaining rights and a voice at work to address issues that arise locally and nationally." In her testimony before the Senate Commerce, Science and Transportation Committee, DHS Secretary Janet Napolitano, declared her support of collective bargaining and belief that it can be accomplished in such a manner as to not compromise any aspect of security.<sup>7</sup>

President Obama attempted to nominate several new TSA administrators shortly after his election in 2008. Senator Jim DeMint used his senatorial privilege in 2009 to put a hold on the confirmation of TSA administrator nominee Erroll Southers, citing Southers' support of collective bargaining for TSA employees. During Southers' confirmation hearing, Senator DeMint opined that TSA required the "flexibility to make real-time decisions that allowed it to quickly improve security measures in response to this attempted attack." Senator DeMint further declared that union leaders with collective bargaining powers would be able to "veto or delay future security improvements at our airports." Southers was

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<sup>6</sup> "The majority does not explain why it interprets [§111(d)] to permit [TSA] head to eliminate employees' right to organize under the [ATSA]."

<sup>7</sup> In her testimony on December 2, 2009, "Transportation Security Challenges Post-9/11." In response to the question asked by Senator Kay Bailey Hutchison, "Let's start on the collective bargaining issue. What is your view about the effort to have collective bargaining among the transportation security administration screeners and personnel?"

the President's second attempt at nominating a new leader for TSA. Earlier that year, retired Army major General Robert A. Harding was nominated for the position. He later removed himself from consideration.

Previously banned from union representation under TSA's "Loy Directive," newly appointed TSA Administrator, John Pistole, rescinded the Loy Directive. After careful consideration of the facts and effects, Administrator Pistole announced his decision on February 4, 2011 to allow TSOs to hold an election to determine the extent of support for collective bargaining in the agency. This election was the largest federal labor election in U.S. history, with over 48,000 TSA employees eligible to vote, which surpassed the previous record held by NTEU in 2006. By virtue of Mr. Pistole's decision, on April 15, 2011, TSOs were afforded the opportunity to cast closed-ballot votes for one of three options: Exclusive representation from AFGE, exclusive representation from National Treasury Employees Union (NTEU), or no union representation. Neither AFGE nor NTEU received a clear majority vote; a run-off election was held, resulting in victory for AFGE. After nine years of collective bargaining prohibition, TSOs elected AFGE as their exclusive representative. TSA and AFGE have entered into the initial stages of establishing the guidelines and parameters to begin collective bargaining procedures.

The TSA organizing as a unionized workforce has parallel similarities to another unionized aviation industry federal agency—the Professional Air Traffic Controllers Organization (PATCO). Disgruntled with years of attempted bargaining between PATCO and the Federal Aviation Association (FAA), PATCO staged an unofficial work strike in August 1981 that temporarily halted air traffic in the United States. As airlines were forced to cancel flights, skeleton crews of non-striking controllers, supervisors and military air traffic controllers were deployed to handle the remaining air traffic. Moreover, it brought national attention to the impacts that federalized workers can have on national security and the economy. Travelers were reluctant to fly, flights were cancelled or had minimal passengers onboard as the public lost trust in the safety of air travel.

The parallels between PATCO and the TSA are striking. The TSA would find itself in similar territory should the AFGE-backed TSA workforce engage in similar job action. Supervisory TSOs, who are not part of TSA's bargaining unit, and therefore, not covered under the collective bargaining unit, could be pulled into service to replace the striking screeners, airlines could cancel flights, and Americans could lose trust in air travel security.

During the presidential campaign in 1980, candidate Ronald Reagan proclaimed his support of labor unions by issuing a letter to members of PATCO announcing his commitment to address their grievances. In August 1981, over 12,000 members of PATCO staged an unauthorized nationwide strike that temporarily halted and nearly brought down the air traffic control system in the United States. Angered over decades of outdated systems and unsafe working conditions, members of PATCO entered the unauthorized strike with hopes that President Ronald Reagan would support their cause and address their grievances. President Reagan won the support of PATCO members during his presidential campaign by promising to address their issues. However, within 48 hours of the start of the strike, President Reagan ordered all controllers back to work. Only 10% returned and the remaining air traffic controllers were fired and banned from future federal employment.

In *Collision Course: Ronald Reagan, the Air Traffic Controllers and the Strike that Changed America*, Joseph McCartin (2011) describes the incentive behind the strike and the events that led to PATCO's demise. Prompted by the December 16, 1960 fateful collision of United Airlines flight 826 and Trans World Airlines flight 266 over New York City that killed all 128 people on both flights, the PATCO set the course for two decades of voicing their concerns to the FAA over outdated systems, stressful work conditions and processes that did not keep pace with the increase in air traffic. PATCO President Robert Poli presented a list of 97 grievances and demands to the bargaining table with FAA management, among them the request for higher pay, better working hours and increased staff to keep up with the increased demand. A few months later, FAA management

countered with their final offer of a \$2,500 pay increase for each controller, a 15% pay increase for night differential and a 30-minute lunch break. PATCO refused the offer and staged an unofficial work strike on August 3, 1981. The strike lasted only 48 hours; however, McCartin claims the results set the stage for the decline in labor/management relations and a political paradigm shift in labor union support for several decades.

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## II. LITERATURE REVIEW

Substantial research exists to support and counter the arguments and issues presented from independent “think tanks,” such as The Cato Institute and the Center for Economic and Policy Research to publications, such as *The Washington Post* and *The Economist*. The published literature that addresses the history, laws, benefits and disadvantages of public sector unionization is as vast as the issue itself. From published opinions to Congressional testimony, from federal statutes to state laws, debating the collective bargaining rights of public sector employees is not a one-size-fits-all discussion. National statistics on both public and private sector union membership, demographics, occupations and wages are provided through the Bureau of Labor Statistics (BLS), U.S. Department of Labor. While the fundamental right of union representation for public employees is not at issue,<sup>8</sup> dissecting the “union issue” further reveals regulations and laws that prohibit certain components of union representation, such as collective bargaining, state statutes that allow collective bargaining but not for public employees (states of Virginia and North Carolina), and federal limitations based on agency of employment. Coupled within these disparate rules is the caveat that defines a state’s union status—“right-to-work” states versus union states.

The Center for Economic and Policy Research’s report titled, “The Wage Penalty for State and local Government Employees,” compares the wage earnings of state and local government employees against private sector employees with similar positions. Conversely, *USAToday* reporter Dennis Cauchon reports that based on data from the Bureau of Economic Analysis, federal workers’ average pay in 2009 totaled \$123,049 compared to private sector employees’ earnings of \$61,051. Union labor is more expensive than

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<sup>8</sup> The National Labor Relations Act (NLRA) of 1935 (29 U.S.C. §§ 151) established the right of workers to engage in collective bargaining; however, it exempted certain workers. The Civil Service Reform Act of 1978 provided federal workers the right to collectively bargain.



private sector non-union labor. The ramifications of this premium labor price rests on the backs of taxpayers rather than on consumers who have a choice if they buy a product or not. The taxpayer has not choice—taxes must be paid and elected representatives are depended upon to protect their interests. If these elected officials, particularly in Congress, do not provide adequate stewardship for the resources provided by taxpayers, then taxpayers must pay an inordinate price for services that might be curtailed at the whim of the union and its members.

In the Fall issue of *National Affairs* (2010), Daniel DiSalvo provided a detailed account of advantages that public sector unions enjoy over their private sector counterparts and the significant influence that collective bargaining provides to the union bosses. A similar example of political clout is that unlike private sector unions, public sector unions have a “privileged position” with politicians through the collective bargaining process. Furthermore, the author brings to light his three categorical effects of public sector unionization: compensation, size of government and lastly productivity and efficiency. DiSalvo presents three primary reasons for the substantial spike in public sector unions and their influential power over the collective bargaining process: weakening of party machines, economic and demographic changes, and the organized coalition between public sector unions and the Democratic Party.

Joseph McCartin (2011) provides a balanced account of the 1981 unauthorized work strike staged by 12,000 members of PATCO and the subsequent firing of those controllers who refused President Reagan’s order to return to work. McCartin details not only the events that led up to the nationwide strike; his central argument is that the PATCO strike led to the decline of private sector unions’ membership and power. “Yet while the PATCO strike did not *cause* American labor’s decline, it acted as a powerful catalyst that magnified the effects of the multiple problems that beset American unions. It did do because it had such a dispiriting psychological impact on workers” (p. 361). This case study

is critical to understanding the potential impact that a similar nationwide strike could have on national security, should the unionized TSOs decide to pursue that avenue.

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### III. METHODOLOGY

This thesis is a qualitative exploratory study of the public sector union arena, to examine the potential impact to homeland security, rationale behind the significant increase in public sector union membership, the political influences behind increased union membership and the corresponding conflicts of interest, and the correlation between public sector union collective bargaining agreements and increased financial burdens to taxpayers. This analysis begins with the history of organized labor unions in America to demonstrate the foundation by which laws were influenced and mandated and union-supported mindsets evolved. The author provides examples of individual states with strong union membership and political influence and corresponding taxpayer financial burden, and presents PATCO as an historic reference and the TSA as a case study to identify the recent union membership surge at the federal level and discuss relative factors, influences and challenges facing the TSA. To demonstrate the nationwide impact of collective bargaining, case studies at the state and local levels are presented as supporting contextual evidence.

Substantial evidence and data exist by which to research the overarching issue of why public sector employees are joining unions and the risks and consequences to homeland security. Specifically, this research is focused on four primary categories: potential impact to homeland security, political implications and risks, financial considerations and rationale for joining a union. First, second and third order effects are used to further evaluate the consequences of public sector membership increase on homeland security.

First order of effect: Public sector union membership has increased over the past decades to where these unions have a 7.9 million membership compared to 7.1 million union members in private sector. Second order of effect:

This significant increase has a critical impact on homeland security. Third order of effect: This significant increase has critical financial threats to the U.S. economy.

Each area is analyzed from both a historic and a present-day perspective, by examining events and conditions that may point to a rationale for the substantial increase in public sector union membership. Other factors, such as the possible correlation between public sector employees' union status and the impact on the effectiveness in responding to security and disaster situations, are critical and worthy of research consideration; however, sufficient data is lacking to conduct a thorough and comprehensive analysis.

Recommendations are based on the priority of these analyses. If the evidence supports the author's assumption that political implications rank a higher priority than legal considerations, her recommendations for supporting this option may come at the price of non-support of the other criteria.

## **IV. ANALYSIS AND FINDINGS**

### **A. PAST ENVIRONMENT**

#### **1. Federal Labor Legislation**

The National Labor Relations Act (NRLA) (also known as The Wagner Act of 1935) is the foundation by which employees are guaranteed “the right to self-organize, to form, join, or assist labor organizations, to bargain collectively, through representatives of their own choosing.” (29 U.S.C.A. § 157, Section 7). Conversely, the NRLA provides employees with the right to “refrain from any or all such activities” if they so choose. The underlying premise of the NRLA is to prohibit employers and unions from committing unfair labor practices that would violate these rights and prohibit employers from engaging in discriminatory or retaliatory acts against its workers based on their union status. The NRLA does not protect collective bargaining rights of federal and state employees, nor does it pertain to railroad and airline industries, whose rights are protected under the Railway Labor Act of 1926 and amended in 1936 to include airline employees. The National Labor Relations Board (NLRB), responsible for the operational aspects of the NRLA, represents the rights of private sector workers by processing their petitions to form or decertify a union, investigates complaints against union and employers, and facilitates settlements. The NLRB cannot assess penalties; rather it aims for “make-whole” remedies such as back pay for employees.

DiSalvo (2010) points out that during this time period, public sector unionization was a subject for which most Americans and politicians were not supportive. A staunch supporter of labor unions, President Franklin D. Roosevelt (F.D.R.) understood the potential ramifications that collective bargaining for government workers could have on the country. DiSalvo believed that F.D.R. understood that the collective bargaining process could not be applied to public

servants. "Meticulous attention," the president insisted in 1937, "should be paid to the special relations and obligations of public servants to the public itself and to the Government. The process of collective bargaining, as usually understood, cannot be transplanted into the public service." F.D.R. believed that "[a] strike of public employees manifests nothing less than an intent on their part to obstruct the operations of government until their demands are satisfied. Such action looking toward the paralysis of government by those who have sworn to support it is unthinkable and intolerable."

The Taft-Hartley Act was passed in 1947 in an attempt to loosen many of the limitations on employers and to increase the limitations on union by disallowing jurisdictional strikes and union secondary boycotts. The act also granted individual states the authority to pass right to work laws and gave federal courts enforcement jurisdiction over collective bargaining agreements. Under this act, states covered by the NRLA could elect to be either a "closed shop" state in which employees must be union members as a condition of employment, an "open shop" state whereby workers had to join the union after a minimum time period, an agency shop state where workers were not required to officially join the union but must pay union dues, or a right-to-work state that outlaws the forced payment of union dues and membership. Right to work states are also known as "open shop" states.

The Civil Service Reform Act of 1978 was created to explicitly grant federal employees the right to collectively bargain and offer protections granted to private sector employees covered under the NRLA. However, the NRLA failed to establish clearly what specific powers states can and cannot impose and which state laws the Congress can and cannot preempt with regard to labor relations. Historically, this distinction has been left to the U.S. Supreme Court, which has established two fundamental principles, federal statute cannot preempt all state labor laws, and any conduct protected by federal statute is immune from state law. At the federal level, Congress is considering a National Right to Work Bill that would restrict states from requiring employees to join a

union or pay union dues as a condition of employment. Opponents of right-to-work laws argue that all employees benefit from the collective bargaining terms without the burden of paying union dues, which they argue, drives down the power of the collective bargaining process and subsequent agreements and leads to lower wages and benefits for all employees.

The Civil Service Reform Act of 1978, Title VII, created the Federal Labor Relations Agency (FLRA). This independent federal agency has direct responsibility over resolving unfair labor practice complaints, resolving negotiation impasses, determining the appropriateness of units for labor organization representatives, and adjudicating legal issues relating to duty to bargain and exceptions to arbitrator's awards for those federal employees who are represented by unions. By comparison, the NLRB represents the rights of private sector workers by processing their petitions to form or decertify a union, investigates complaints against union and employers, and facilitates settlements. The NLRB cannot assess penalties; rather, they aim for "make-whole" remedies, such as back pay for employees.

## **2. Public Sector Unions**

Public unions did not exist until around 1956 when New York mayor Robert Wagner (whose father authored the Wagner Act of 1935) allowed some city employees to organize (Siegel, 2011). During his re-election campaign in 1961, having lost the support of the party leaders in New York's five boroughs, Wagner turned his attention to the public sector unions to fuel his political drive. President John F. Kennedy took notice of Wagner's victory and sought to also obtain public employees' support for the Democratic Party, and in 1962, issued Executive Order 10988 that gave federal workers collective bargaining rights (Siegel, 2011). Federal unions gained official statutory status in the late 1970s with the Civil Service Reform Act, which created the framework and rules for labor management relations in the federal government. The law is usually referred to as the Federal Service Labor Management Relations Statute



(FSLMRS) and is now in Chapter 71 of Title 5 US Code. Congress also created the Federal Labor Relations Authority (FLRA) to oversee labor relations in the federal civil service. Significant differences exist between federal and private sector labor relations law and practices including the following.

1. Union membership is voluntary in the federal service. Under private sector rules abiding by the NLRA, a company may require union membership as a condition of employment. Whether a federal employee pays union dues as a member or not, a representative union must represent all employees.
2. Federal unions cannot negotiate over wages and economic benefits, such as retirement; holidays, sick or annual leave, or overtime pay.
3. Federal unions do not have the right to strike or engage in concerted activities like slowdowns, picketing, or sickouts.
4. Federal management reserves certain rights not afforded to the private sector. For example, federal management has the right to assign duties to any job and to contract out and lay people off.

### **3. Collective Bargaining Process**

Once a public sector agency votes to elect exclusive union representation and the election results are certified by the NLRB, union members and agency leaders are required to bargain in good faith to reach an agreement. This process may take years to complete, as evidenced by the CBP and NTEU. In 2003, several federal agencies consolidated into the CBP. This unique amalgamation brought together a workforce ranging in professions from customs agents to agriculture Inspector who were represented by several unions with collective bargaining agreements. After eight years of contentious negotiations, in May 2011<sup>2</sup>, the CBP and NTEU reached agreement on a comprehensive collective bargaining agreement that outlines in detail terms under which each entity must perform and the specific rights of all parties.

A collective bargaining agreement<sup>9</sup> is the ultimate goal of the union and its members. Negotiating for its members' interests is how union officials prove their worth to their dues-paying members. Collective bargaining is the result of months and often times, years of negotiating to reach consensus on mandatory terms of employment, such as wages and hours. Whether or not a term of employment is a mandatory negotiating point is highly debated and extremely subjective. While the courts have attempted to define "mandatory," it is commonly accepted to include issues that "settle an aspect of the relationship between the employer and the employees" (Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Company, 1971). Regardless of the definition, neither the organization nor the union may refuse to bargain over a mandatory term of employment. To do so is considered an unfair labor practice and all parties are required by law to bargain in good faith.

#### **4. Transportation Security Administration**

The 2001 Aviation and Transportation Security Act (ATSA) gave TSA its own authority to decide whether or not to engage in collective bargaining with its employees. By exercising his authority under Section 111(d) of the ATSA, Under Secretary Loy specifically and explicitly prohibited TSOs from engaging in collective bargaining as a condition of their employment, under the terms of The Loy Directive.<sup>10</sup> While TSOs, like all federal employees, have the right to join a union, the Loy Directive explicitly prohibits their right to collectively bargain.

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<sup>9</sup> Collective bargaining agreements cannot establish that which federal or state law prohibits. They typically address wages, schedules, and grievance procedures. Legally binding, these agreement can be costly for future generations o taxpayers.

<sup>10</sup> The Loy Directive: "By virtue of the authority vested in the Under Secretary of Transportation for Security in Section 111(d) of the Aviation and Transportation Security Act (ATSA), Pub. Law No. 107-71, 49 U.S.C. § 44935 Note 2001, I hereby determine that individuals carrying out the security screening function under section 44901 of Title 49, United States Code, in light of their critical national security responsibilities s, shall not, as a term or condition of their employment, be entitled to engage in collective bargaining or be represented for the purpose of engaging in such bargaining by any representative or organization."

On November 26, 2008, President George W. Bush signed Executive Order 13480 excluding subdivisions of the Department of Energy, Homeland Security, Justice, Transportation and the Treasury from the application of United States Code, Title 5, Chapter 71, citing the considerations of national security. Stating its inconsistency with national security requirements, in 2008, President George W. Bush invoked this privilege through Executive Order 13480 (Exec. Order No. 13480, 2008) that prohibits law enforcement, intelligence and national security federal employees<sup>11</sup> from collectively bargaining. Many of the agencies affected by the order had collective bargaining rights, only to have them removed through the execution of the order. The TSA, however, was regulated under the ATSA, which gave the TSA Administrator sole discretionary power to prohibit collective bargaining as a condition of employment. Every TSA Administrator from 2002 to 2010 sustained this authority and prohibited collective bargaining for TSOs. Newly appointed Administrator John Pistole invoked his discretionary authority in 2011 and reversed the prior prohibition on collective bargaining.

Past presidents have likewise invoked their respective authority. President Jimmy Carter signed into law Title VII of the Civil Service Reform Act of 1978 that limited the scope of collective bargaining agreement to personnel practices. Title VII also denied federal employees the right to participate in workplace strikes, limited their ability to participate in picket lines for informational purposes only, and required union representation votes to be conducted under secret ballot procedures. Title VII was tested on August 3, 1981 under President Ronald Reagan's helm, as PATCO declared a nationwide strike in protest over salary, schedules and working conditions. President Reagan immediately ordered all 13,000-air traffic controllers back to work, calling the strike a "peril to national security." Two days later, President Reagan fired the 11,000 controllers who did

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<sup>11</sup> Bureau of Alcohol, Tobacco and Firearms, The United States Coast Guard, Department of Energy, Immigration and Customs Enforcement, Federal Air Marshal Service, Federal Aviation Administration, Federal Emergency Management Agency.

not return to work and banned them from future federal employment. This banishment remained in place for 12 years until President Bill Clinton repealed the order in 1993.

## **B. CURRENT ENVIRONMENT**

According to the Bureau of Labor Statistics, by 2010, 36.2% (7.6 million employees) of all public sector employees belonged to a union, compared to only 6.9% (7.1 million employees) of private sector workers. Further dividing these figures, local government workers represented the highest union membership rates with 42.3%, primarily due to heavily unionized industries, such as teachers, police officers and fire fighters (Bureau of Labor and Statistics, 2011).

The states with the largest share of unionized public sector workers are also the states that require collective bargaining (Bureau of Labor Statistics, 2010). For example, New York leads the nation with 70.5% of its public sector workers belonging to a union, followed by Connecticut and Rhode Island with 64.4% and 62.1%, respectively; all of which require collective bargaining for its public sector workers. These “blue”<sup>12</sup> states have active “agency shop rules” that require workers to join the union or pay a fee to the union. Conversely, right-to-work “red” states, such as North Carolina, Louisiana and Mississippi, have the lowest population of public sector workers in unions, each with less than 10% of their public sector employees belonging to unions. Currently, in the 22 right-to-work states, workers are not required to join the union or pay union dues. Many of these states have laws that outright ban collective bargaining for their public sector workers, such as North Carolina and Virginia.

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<sup>12</sup> The terms **red states** and **blue states** were made popular in 2000. Red states symbolize voters who tend to vote for the Republican Party, while blue states tend to vote for the Democratic Party.

Table 1. States with Highest and Lowest Percentage of Public Sector Union Members (From: Bureau of Labor Statistics, 2010)

<b>Highest Membership Rates</b>	
<b>State</b>	<b>Union Membership</b>
New York	70.5%
Connecticut	64.4%
Rhode Island	63.7%
Massachusetts	62.1%
New Jersey	59%
<b>Lowest Membership Rates</b>	
Virginia	10.8%
Arkansas	10%
North Carolina	9.5%
Louisiana	9.3%
Mississippi	7.4%

With large populations of union constituents and strong collective bargaining laws, political appointees may be heavily swayed to cast their votes in the interests of the unions that represent their citizens. Public sector unions negotiate and bargain with the elected officials of the state and union dues are filtered to those political campaigns. As a result, the labor market is skewed in that wages and benefits are voted on by the very people who negotiated with the union bosses who contributed the majority of the union dues to their campaigns. These agency shop states permit the coerced payment of union dues in that whether a worker wants union representation or not, the worker must pay union dues that often times may go to support a political candidate whom the worker may not embrace.

**C. FIRST ORDER OF EFFECT: POTENTIAL THREATS TO HOMELAND AND NATIONAL SECURITY**

Prior to the catastrophic events of 9/11, aviation security was the responsibility of the individual airlines and airports across the country. The TSA was formed, in part, because the national government felt that private screening had failed America in a number of airports. Despite collective bargaining support

from President Obama and DHS Secretary Napolitano, key members of Congress were not convinced that collective bargaining would not impact security responsiveness and contribute to future failures. Senators Kay Bailey Hutchison (R-TX)<sup>13</sup> and Jim DeMint (R-SC) have publically voiced their opposition to collective bargaining based on its impact on security measures, responsiveness, and potential for workforce strike or slowdown. In her opening statement before the Senate Commerce, Science and Transportation Committee, Senator Hutchison declared her stance on collective bargaining, “While federal law, of course, prohibits screeners from striking, allowing screeners to collectively bargain through a union could have serious consequences on the Transportation Security Administration’s fundamental security mission.”

Federal agencies with national and homeland security responsibilities must remain operationally agile and flexible in response to emerging threats and conditions. Security measures, response and recovery policies and processes and emergency scheduling adjustments should be made based on national and homeland security needs, and cannot wait while union representatives and agency management attempt to reach consensus. The potential risk exists of creating an atmosphere whereby security measures are decided based on the terms of the collective bargaining agreement and potential of resulting in perceived unacceptable working conditions or additional employee labor hours. The FBI, CIA and Secret Service all prohibit collective bargaining for their employees to sustain a readily responsive workforce.

The economic devastation resulting from a TSA work strike, slowdown or similar job actions would potentially cripple the complex transportation network of aviation, rail, pipeline, highway, cargo, maritime and mass transit, over which the TSA has direct authority. This multi-modal transportation network is critical to the nation’s economic vitality, interconnecting the country with manufacturers,

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<sup>13</sup> Statement released March 2007: “Collective bargaining among TSA screeners would jeopardize safety because it would take away TSA’s flexibility to respond quickly to security threats.”

supplier, merchants and passengers through approximately 4 million miles of public roadways, more than 140,000 miles of active rail, 600,000 bridges and tunnels, more than 350 maritime ports, hundreds of thousands of pipeline, 15 million daily passenger on mass transit and passenger rail systems, over 9 million cargo containers through 51,000 port calls, 25,000 miles of commercial waterways, 19,576 general aviation airports, heliports, and landing strips and 459 federalized commercial airports. A work stoppage at any one of these critical nodes would halt all security measures along the nation's transportation network, and cause economic domino effects of supply shortages and price increases, halt of cargo at critical ports and create massive airline flight cancellations.

The economic impacts of a transportation security strike would be felt on a global scale. According to the Air Transport Action Group (ATAG) aviation transports over 2 billion passengers each year, 40% of whom are international tourists. In addition to passenger travel, economic benefits of air travel enable globalization of world markets. Products and goods transported by air represent 35% of all international trade. This vital industry produces over 32 million jobs throughout the globe, and supports 2,000 airlines that operate fleets of 23,000 aircraft (Air Transport Action Group, 2008).

Despite legal and contractual prohibitions against strikes, government workers have staged unauthorized work strikes and slowdowns. Unionized airport screeners in Toronto, Canada staged a work slowdown during Thanksgiving 2006 to protest the terms of their contract. Screeners caused massive delays at checkpoints and baggage locations when they hand-inspected all checked baggage and carry-on luggage during these busiest days for air travel, which caused massive delays. Under pressure from the airlines to avoid further flight delays, authorities allowed over 250,000 passengers and bags onto their flights without being screened.

Predicting the probability of a work strike or slowdown is not possible. However, the consequential impact can be foreseen. When comparing the similarities between PATCO and the TSA, conclusions can be drawn that warrant recognition. For example:

1. The FAA's inability or unwillingness to grant salary increases, scheduling adjustments and better working conditions that were in keeping within PATCO's demands.
2. The FAA had a monopoly over the hiring and training of air traffic controllers nationwide. Controllers had no choice but to work for the federal government if they wanted to be that occupation. Likewise, the TSA has a monopoly over aviation security and hires and training its own workforce. TSA's Screening Partnership Program (SPP), mandated by ATSA, allows airports to "opt out" of federalized screening by applying through the TSA, which has the final decision. In 2011, the SPP program was temporarily halted.
3. Technology advancement played a critical role in PATCO's dissatisfaction with the FAA. Emerging technology allowed more airlines to fly greater numbers of routes, which in turn, created additional demands on the controllers in terms of longer working hours, more stressful conditions and staffing levels that did not keep pace with the increased flight schedules. Similarly, TSOs are consistently tasked with learning new technology and operating new equipment, such as the recently-deployed Advanced Image Technology, which is designed to improve explosive detection rates. Emerging technology must keep pace with the emerging threats. TSOs will consistently be asked to keep pace with this demand, similar to the air traffic controllers' situation.
4. To continue the mission of protecting the nation's transportation systems to ensure freedom of movement for people and commerce, the TSA requires the necessity to remain agile and flexible with regard to changing security procedures to mitigate the changing threats to homeland security. For example, when the British authorities discovered the plot in August 2006 by terrorists attempting to bring down aircraft bound for the United States using liquid explosives in sports drink bottles, the TSA adjusted its security measures within 24 hours of the known threat by restricting all liquids from entering its checkpoints. Changing policies and procedures to direct these security mitigation efforts, developing and deploying the requisite training to 45,000 TSOs and monitoring compliance at over 700 TSA-controlled security checkpoints around the country cannot happen without the authority to direct these



effects immediately and responsibly. The ability to make these decisions without regard to union conflict or employee grievance is a fundamental component of maintaining a security presence.

As the TSA begins transitioning to a unionized screening workforce, the impact of the collective bargaining agreement between the TSA and AFGE on public safety will begin to unfold. The potential for overall aviation security to stagnate while bargaining over working conditions and performance issues take precedence over passenger safety is a critical vulnerability. Bellante, Denholm and Osoria (2009) argue these work strikes and similar job actions implemented by public sector employee unions deprive the taxpayers of government-monopolistic services for which they have paid. As strikes loom, society will demand a solution from their elected officials, who may give in to the unions' demands as a short-term solution. This imbalanced influence gives unions the propensity to dominate the political system and reap the rewards of increased government size and scope.

#### **D. SECOND ORDER OF EFFECT: POTENTIAL FINANCIAL THREATS TO HOMELAND AND NATIONAL SECURITY**

Former Chairman of the Joint Chiefs of Staff Admiral Michael Mullen has often opined that the U.S. economy is a greater risk threat to the United States than both wars in Iraq and Afghanistan (Carden, n.d). As state and local lawmakers struggle with balancing the need for continued or additional government services to its citizens with the challenge of sustaining a balanced budget, legislators will look toward federal grant monies to subsidize the current and future fiscal shortfalls. The DHS provides federal grant monies to states to augment security and preparedness efforts. From 2002 through 2011, the DHS has awarded more than \$32.1 billion in state and local preparedness grants, which represents approximately 32% of states' operating costs. DHS grants in 2011 earmarked for state and local homeland security efforts have decreased by 25% from 2010, which means a \$780M reduction in funding that support state and local level initiatives. DHS grants provide substantial funding aid for 13

programs<sup>14</sup> that include assistant to firefighters grants, emergency management grants, port and transit security grants, and emergency operations grants. In FY2011, \$528M was awarded to the State Homeland Security Program (SHSP) to assist states in identifying planning, organization, equipment, training, and exercise needs at the state and local levels to prevent, protect against, respond to, and recover from acts of terrorism and other catastrophic events. In accordance with the 9/11 Act of 2007 (Public Law 110-53), states are required to dedicate a minimum of 25% of SHSP towards law enforcement terrorism prevention-oriented planning, organization, training, exercise, and equipment activities, including those activities that support the development of fusion center capabilities. To augment their homeland security efforts and meet the 9/11 Act law enforcement requirements, high-threat urban areas can apply for SHSP monies under the Urban Areas Security Initiative (UASI) program, which received \$662M in FY2011 federal funds. Urban areas are categorized as high-threat areas based on DHS risk mitigation criteria.

## **1. Homeland Security Funds**

The 2009 House and Senate set aside \$300 billion in stimulus money, which was targeted primarily to avoid the layoffs of 2.8 million federal and 17 million state and local public sector employees. This money source will run dry in 2012 and leave many states to find alternative funding solutions for their expensive collective bargaining agreements, and more importantly, leave the American citizens with compromised security, emergency response and protection services. The impact will be felt at every level, none more so that at

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<sup>14</sup> List of Programs for FY2011: Assistance to Fire Fighter Grants \$810M, Driver's License Security Grant Program (DLSGP) \$45M, Emergency Management Performance Grant (EMPG) \$329M, Emergency Operations Center (EOC) \$14M, Freight Rail Security Grant Program (FRSGP) \$7.7M, Homeland Security Grant Program (HSGP): State Homeland Security Program (SHSP) \$526M, Urban Areas Security Initiative (UASI) \$662M, Operation Stonegarden (OPSG) \$54M, Metropolitan Medical Response Grants (MMRS) \$34M, Citizen Corps Program (CCP) \$9.9M, Intercity Bus Security Grant Program (IBSGP) \$4.9M, Intercity Passenger Rail Security Grant Program (IPR) \$22M, Non-Profit Security Grant Program (NSGP) \$18.9M, Port Security Grant Program (PSGP) \$235M, Regional Catastrophic Preparedness Grant Program (RCPGP) \$14M, Transit Security Grant Program (TSGP) \$200M, Tribal Homeland Security Grant Program (THSGP) \$10M.

the state and local levels, as these respective legislations scramble to find alternatives to their rising liabilities and shrinking revenues, which, according to the *Wall Street Journal* (Mullins & McKinnon, 2010) are at pre-recession levels.

The impact of these reduced DHS grant monies is being felt at the state and local levels. The City of Trenton, New Jersey reduced its 350-member police officer force by 33% in a strategic move to save over \$4 million toward its city budget shortfall. The remaining police force began working overtime hours to maintain a minimum level of community police presence; however, Mayor Tony Mack cut the overtime allocation and ordered police officers to maintain their regular schedules. The mayor's hotly contested decisions received staunch criticism. City Councilman and former Trenton police officer George Muscal proclaimed Mayor Mack had "signed the death sentence" to the people of Trenton, as "people are going to go wild" (Zdan, 2011). Trenton, like several major New Jersey cities, relied on state funds to supplement their local budgets, which accounted for 25% of Trenton's annual fiscal funds. In 2010, Trenton received approximately \$55 million from the state coffer; in 2011, that amount was virtually cut in half to \$27 million. Cities throughout New Jersey made equally difficult decisions; Newark cut 15% of its police force in 2010 while the City of Camden reduced its police presence in the state's most crime-ridden city. These and nine other New Jersey cities received a last minute cash infusion of \$21 million in federal grant monies spread over three years that will enable Newark to re-hire 25 police officers, while Camden, which laid off almost one half of its police force and one third of its firefighters, will use its \$3.8 million share of the UASI federal funds to return 14 police officers to the city streets.

## **2. Privileged Positions**

The political influence achieved by public unions enables union bosses to have a privileged position with politicians through the collective bargaining process. Public sector unions, certainly at the local and state level, can virtually select the politicians who will sit at the bargaining table to enact contractual terms

in favor of the very people who contributed significant amounts of money to their political campaign. Union bosses negotiate directly with these elected officials to gain increased wages and benefits at the expense of federal and state budgets. The cyclical process only increases the level of political influence—increased membership equals increased revenues, which in turn, equals increased political contributions, which translates into continued bargaining with the elected officials who received the lion's share of union campaign contributions.

In private sector collective bargaining agreements, wages and compensation negotiations are conducted between the union representatives and the corporate decision makers. To compensate for these additional personnel costs in a free market economy, companies will raise prices, cut back on goods or services, or eventually lay off workers because the market bears these costs of increased wages and compensation. If the market does not support these increased prices or reduction in goods or services, consumers in a competitive market simply stop purchasing them or find an alternative source. Consequently, private sector unions have an intrinsic motivation to bargain in good faith and fairness to what the market will bear.

When public sector unions bargain for increased wages and compensation, the taxpayers bear the entire cost of these liabilities without the benefit of any voice in the matter. To pay for these increased costs, governments raise taxes and/or cut services in other areas. Taxpayers cannot simply stop using public services (e.g., utilities, schools, fire and police protection) as these monopolistic services exist without market competition. If the market will not bear the cost of these increased wages and benefits for public workers, governments struggle to find alternatives solutions, which often results in layoffs and diminished public services. Yet, the cost to the taxpayer remains at the inflated rate under the collective bargaining agreement for which they had no part in the outcome. Additionally, these wage and retirement liabilities are set at the rate determined under the collective bargaining agreement for many years to come, and in many states, remain untouched under legislative rules.

The potential political influence over the union agreements is more problematic at the state and local level, in that unions contribute directly to lawmakers and elected officials who may and often times do become bosses over the very public employees whose union dues supported their respective campaigns. Additionally problematic is the very nature in which collective bargaining agreements are negotiated. At this level, union bosses negotiate directly with these lawmakers and appointed officials, to whose campaigns the union contributed the revenues derived from union dues, which provides government employees direct access to the legislative decision makers with control over their terms of employment and compensation, a privilege not afforded to private sector union members. This conflict of interest can be taken a step farther at the local level, where mayoral and city council candidates can dangle the proverbial carrot in front of union bosses with the implied threat of citywide layoffs or difficult and lengthy collective bargaining negotiations. Unions, on the other hand, can also play their hand over the officials whom they helped elect by threatening to withhold future campaign dollars and support. Throughout this cat-and-mouse game, the public employees are required to pay union dues whether or not they choose to belong to the union. In essence, they are directly contributing their money to support political campaigns that they may not endorse.

### **3. State and Local Concerns**

Public sector unions are bankrupting this country, according to Steven Greenhut (2009) who compares public sector unions to lobbyists by aggressively fighting for their own gain that comes in the form of increased union membership and dues and subsequent revenues for the union. Through his research of several state treasuries, Greenhut claims that public service unions should be banned as states like his native California fund enormous pension and compensation liabilities, amidst a severe budget crisis. In a state in which a highway patrol officer can retire at age 50 with a retirement pension equal to 90%

of the officer's salary and over 9,000 retired public sector employees have annual pensions in excess of \$100,000, Californians faced the year 2010 with over a half trillion dollars in unfunded liabilities. Contributing to this excessive debt is the technique known as "pension spiking" in which state employees can grant themselves a bonus or falsely inflate their salary prior to retirement to receive a higher pension annuity, which is calculated based on the employee's salary set prior to retirement. The taxpayers who now must pay retirement benefits to an employee based on an artificially inflated salary feel the affects of this salary spiking.

As the State of Wisconsin faced a \$3.6 billion shortfall in 2011, 14 Democrats senators fled to Illinois in protest over Governor Scott Walker's belt-tightening Budget Repair Bill, which among other items, included limitations on state workers' collective bargaining privileges, many of which were negotiated between union representatives and the Democratic-controlled legislature whose campaigns received millions of dollars from the state employee unions. The Wisconsin Democracy Campaign reported these 14 senators have raised \$1.9 million since 2007 election cycle, of which public sector employees contributed over \$344,000. Faced with this significant budget shortfall, Governor Walker's proposal took a strategic approach to implement several new measures that addressed the actual cash shortfalls and some of the laws that contributed to these financial challenges to ensure fiscal sustainability for future years. Governor Walker took on the immediate financial crisis by reducing the interest rate on Wisconsin's current debt, proposing cost-cutting measures to reduce the burden of collective bargaining agreements on taxpayers, and ensuring fiscal sustainability for future out years.

Wisconsin's Budget Repair Bill would end automatic payroll deductions for union dues paid by public employees and allow public workers to opt out of paying these mandatory union dues. Additionally, the bill would repeal the current authority that grants childcare workers and University of Wisconsin faculty and hospital employees collective bargaining benefits. Governor Walker's proposal

also included cost-cutting measures, such as restricting collective bargaining for wages that exceed the rate of inflation, and requiring public workers to increase their contributions to pay for health insurance and retirement pensions. In addition to the significant \$68M the state pays to subsidize teachers' health care, the teachers union collective bargaining agreement requires local school districts to purchase their health coverage through the union-affiliated health insurance plan, called the WEA Trust. Governor Walker is asking employees to contribute 5% toward their pensions, an amount in line with the national average; and a premium payment of 12%, which is half the national average. These changes alone are expected to save Wisconsin taxpayers over \$30 million during the last months of the 2011 fiscal year alone. Governor Walker's rationale is that asking state employees to contribute to their retirement pensions at a rate equal or less than their private sector counterparts is fair and equitable. These and other budget cuts will allocate funds to pay for Wisconsin's \$170 million Medicaid tab, which was not included in the previous year's budget. By restructuring the current debt, Governor Walker's proposal lowered the current interest rate that would save an additional \$165 million of the taxpayer's money. To ensure these budget changes continue to return financial results to the out years, the proposed legislation provides provisions for limiting many costly collective bargaining laws. For example, state government employees, with the exception of local police, fire and state patrol officers, can continue to collectively bargain for wages; however, the law will restrict negotiations over other forms of employment compensation.

Opponents of Governor Walker's collective bargaining restrictions argue that he is moving Wisconsin toward a right-to-work state by removing the historic laws that granted these vast and expensive union arrangements. Proponents counter that continuing down the same path that contributed to the expensive liabilities would be catastrophic for current and future Wisconsin taxpayers. This strategy was a significant risk for Governor Walker by taking on the union mindset established decades ago, as Wisconsin became the first state in the nation to grant collective bargaining rights to its state employees.

Changing a culture embedded in history is never an easy task. The state of Wisconsin has enjoyed its union shop status for decades, which is supported by lawmakers whose campaigns and careers directly benefited from these unions' existence and influence. Citing the Governor's firm stance against the costly collective bargaining agreements and need for hard decisions, McCartin (p. 365) credits the power of PATCO with changing Wisconsin's pro-union climate. "That episode revealed how powerful the ghost of PATCO remained thirty years after the controllers' strike."

Collective bargaining agreements not only demand increasingly generous wage and benefit packages, they increase tax rates and drive budget deficits even higher. As the money well of private sector union membership continues to dry, unions are aggressively seeking new revenues in the form of public sector union dues. Union dues come from government salaries, which in turn, go to support certain political campaigns and politicians directly, who, in turn, propose and vote for legislation that directly benefits the government employees. According to Glenn Spencer, Executive Director of the Workforce Freedom Initiative, "public-sector unions have a guaranteed source of revenue – you and me as taxpayers" (Mullins & McKinnon, 2010).

As homeland security grant money allocated directly to states and local municipalities' declines in the near future, states will be severely impacted and burdened with finding sustainable funding for their homeland security initiatives. Coupled with the insurmountable financial weight of funding hefty collective bargaining agreements, state legislatures will be forced to make hard decisions to address the scarcity of resources and economic uncertainty.

#### **4. Union Contributions to Political Campaigns and Interests**

Public sector unions are incented to grow government, raise workforce numbers and benefits, and increase influence in government. To do this, they lobby members of Congress, who, in turn, authorizes funding for federal employees. This systemic cycle was studied (Freeman, 1986; Valetta, 1989,



Spengler, 1999) and its results analyzed at North Carolina State University (Twiddy & Leiter, 2003) where the researchers concluded that, while the specific causes of this cycle may be unclear, the Spengler study discovered that strong union influence over the political arena increased the demand for municipal services, which in turn, increased the number of workers needed to sustain these increased government services.

On April 13, 1992, President George Bush signed Executive Order 12800 (a.k.a. the Beck Order)<sup>15</sup> that required federal contractors to notify its employees of their rights pertaining to joining unions and their right to object to the use of their union dues for purposes other than collective bargaining, contract administration and grievance adjustment. President Bush's Executive Order informed federal contractor employees of their rights and discretion to control union political campaigns generated from union dues. This order effectively granted non-union federal contract employees a refund of their union dues used to support political activities. White House official estimated the order could potentially strip \$2.4 billion in annual union money available for political activities. On the other hand, unions counter that amount is inflated and claim they spend less than \$1 billion on yearly political activities. President Bill Clinton rescinded EO 12800 shortly after taking office in 1993, and claimed the order was "distinctly anti-union."

As the exclusive representative for over 45,000 TSOs, the AFGE stands to collect almost \$18M in annual TSA union dues. Union membership dues represent the main revenue to the union that historically contributes a significant portion of this revenue into political contributions to elected officials,<sup>16</sup> who have positional power to vote for union interests, such as salary and benefit increases

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<sup>15</sup> See *Communications Workers of America v. Beck Communications Workers V. Beck*, 487 U.S. 735 (1988). The U.S. Supreme Court ruled that employees required to pay union dues under the NLRA cannot be required to contribute to the union's partisan political activities. The union in question had contributed almost 79% of Mr. Beck' union dues to support the Democratic Party.

<sup>16</sup> During the 2010 presidential election year, AFGE contributed 97% of its revenue to the Democratic Party.

and pension benefits. These increases, however, are funded through tax increases. Over the long run, these increased benefits carry an added burden to the federal budget and state treasuries in pension and retirement liabilities for generations of taxpayers. These out-of-proportion liabilities skew already stressed federal and state budgets, and pushes them toward insolvency. To highlight this point, recent analysis indicates that states may be holding as much as \$1 trillion in unfunded benefit liabilities with many states' funding levels well below the 80% level (Public Sector Pensions: Unsatisfactory State, 2009). As AFGE's membership rose from approximately 200,000 in 2002 to over 280,000 by 2010, their assets and revenues also increased, which enabled them to contribute larger portions of their finances to political causes. In 2010, AFGE recorded over \$103 million in total Income and over \$47 million in total assets. Of their \$101 million in 2010 spending, \$4 million was spent on political activities and lobbying (Federal Elections Commission by Way of the Center for Responsive Politics, 2011).

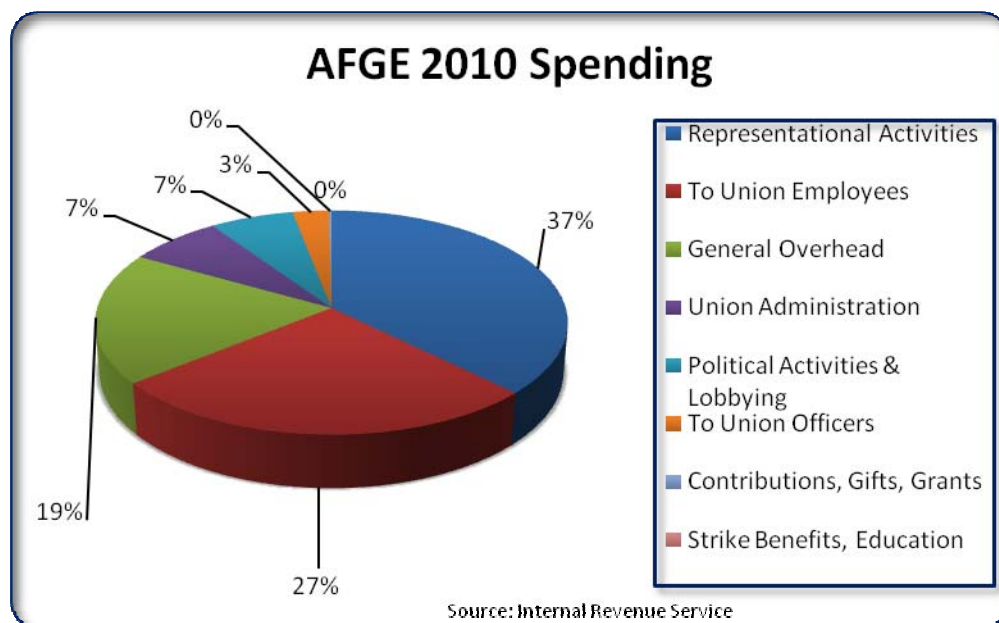


Figure 1. AFGE 2010 Spending (From: Federal Elections Commission by Way of the Center for Responsive Politics, 2011).

Between 2003 and 2010, 75% of AFGE’s political contributions were given to Democratic candidates at the state level, with no financial contributions given to any Republican, non-partisan or third-party candidates. Nationally, AFGE’s Political Action Committee (PAC) collected over \$4.2 million and has contributed 98% of these funds to the Democratic Party (Federal Elections Commission by Way of the Center for Responsive Politics, 2011).

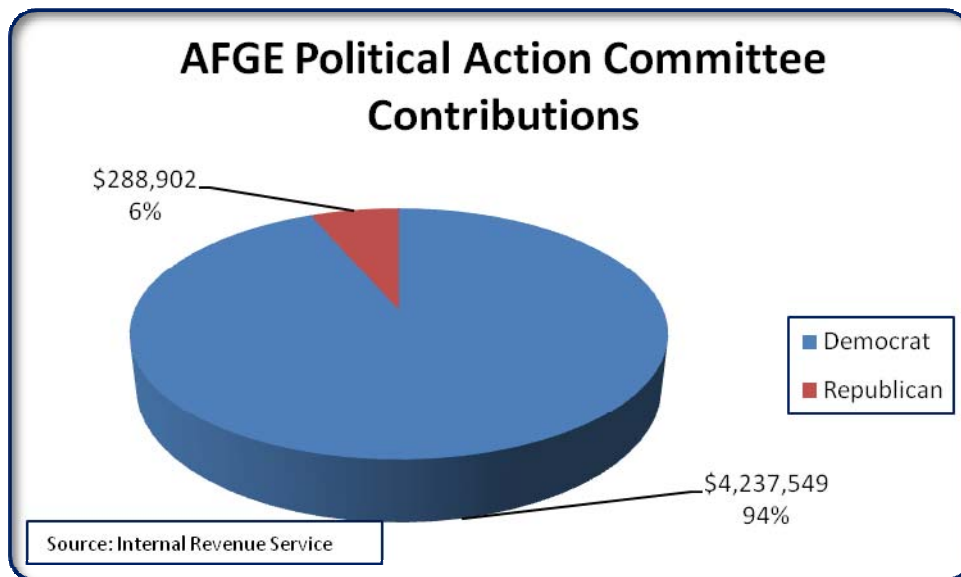


Figure 2. AFGE Political Action Committee Contributions (From: Federal Elections Commission by Way of the Center for Responsive Politics, 2011).

In early 2011, the Senate defeated a measure that would essentially halt the TSA from conducting a vote to decide if they wanted to unionize or not. In a 51–47 vote, the measure was defeated. The *Washington Examiner* reported, “senators voting against the amendment received on average \$17,404 from contributions connected to federal employee unions while senators in favor only received on average \$2,633” (Tapscott, 2011).

The American Federation of State, County and Municipal Employees (AFSCME) holds the position of contributing the largest amount of political campaign support for the 2010 election cycle. The AFSCME is not only the

largest public sector union in the United States<sup>17</sup>, boasting a 1.6 million membership roster, it outspends its rival unions, such as the AFL-CIO, with \$87.5 million in campaign spending to support the Democratic Party, of which \$16 million came from their “emergency account” to increase advertising efforts of Democratic Congressional members whose seats were up for re-election. The AFSCME dubbed this strategic push their “218 Strategy,” named after the number of seats necessary to sustain Democratic control of the House of Representatives. These significant efforts targeted toward a national campaign advertising tactic were coupled with the AFSCME’s \$2.2 million contributions to 57 individual politicians’ campaigns, many of whom the AFSCME snubbed in previous elections. Their rationale, according to Larry Scanlon, head of AFSCME’s political operations, is “Let’s get people re-elected and work to change their votes. It’s not a perfect world” (Mullins & McKinnon, 2010). At the state level, the AFSCME was the largest contributor to the Democratic Governors Association and Democratic Legislative Campaign Committee, which donated \$5M to elect Democratic governors. As a whole, public sector unions contribute to the Democratic Party at a rate of 96%, versus 4% to the Republican Party.

DiSalvo considers rising costs to be the biggest challenge facing state and local lawmakers. If they do not bring rising wage and pension costs under control, the liability for taxpayers, in its current state of crisis, will grow exponentially for future generations. As federal funds continue to run dry, states cannot simply turn on the printing press, DiSalvo argues. Unless collective bargaining agreements are either halted or their power minimized, the financial burden to taxpayers will reach staggering heights.

Proponent arguments of public sector unions include the progressive view that increased public services and regulations equates to increased public sector jobs. Steven Attewell of The Realignment Project (Attewell, 2010) staunchly defends public unions and disputes many of the published and assumed

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<sup>17</sup> The AFSCME consists of 3500 local unions, which represents 1.4M members.

statistics that proclaim their influence over political decision makers and burden on taxpayers in the form of increased wages and retirement benefits for public workers. Attewell argues that public unions are the “yardstick for the private labor market” in that private sector companies can exploit their employees more easily through meager health plan and retirement benefits without strong causal representation in the bargaining process, which he claims, is evidenced in the fact that 37.4% of public sector employees are union members, compared to 7.2% of private workers. Blatantly absent from Mr. Attewell’s analysis is the fact that this 37.4% membership rates includes those employees in union shop states who are required by law to pay union dues whether or not they chose to belong to the union.

## **E. RATIONALE FOR JOINING A PUBLIC SECTOR UNION**

Despite federal and state laws that prohibit or limit the terms over which unions can negotiate, federal employees seek union representation for a variety of reasons; specifically, the need to be a voice in the decision-making process. As early as 2002, the AFGE and NTEU began marketing their benefits to TSOs by focusing on the issues in the forefront of news media, public concern and those expressed by the TSOs themselves. The unions were listening to what the TSOs had to say, which is a critical element in the rationale for seeking union representation. Winning the nine-year battle over exclusive union representation was not only a psychological morale booster for the TSOs, but it sent the message that TSA leadership had not been listening to their concerns for many years.

### **1. Wage Debate**

A common theory for why public servants would be enticed to join a union despite strong laws that limit negotiable terms is that public employees earn higher salaries and benefits than their private sector counterparts. This theory has been researched and tested by various think tanks and independent studies

to determine the validity of this assumption and determine if the wage dispute is correlated with collective bargaining agreements. According to the Bureau of Labor and Statistics, total compensation for union workers rose higher than non-union workers at a ratio of 1:42, with union members receiving 31% higher wages and 68% additional benefits, such as health insurance and pensions. The argument that government employees earn substantially more than private employees is both supported and disputed by a variety of studies and scholars (Kearney, 2001; Freeman, 1986). In the Kearney study, Kearney (2008) argues that while public sector unions in general are successful in obtaining wage increases for its members, these wages are often regulated by state and local laws and influenced by budgetary and economic climates. Considering all factors, public sector union employees have not achieved significant wage increases over their non-unionized peers.

According to the Center for Economic and Policy Research study written by John Schmitt published in 2010, public employees pay a wage penalty in comparison to their private sector counterparts (Schmitt, 2010). Schmitt based his claim on three overarching categories in which public and private sector employees differ: education, age and gender. According to his study, based in part on data from the Census Bureau's Current Population Study of 2009, over 50% of all state and local employees have a four-year college education and 23% have earned advanced degrees compared to their private sector peers whose four-year and advanced degree rates were 29.8% and 8.9%, respectively. The median age for local public sector workers was 44 years for local public workers and 43 for state workers compared with the private sector median age of 40 years. Gender also factored into Schmitt's analysis and findings, 60% of state and local employees, compared with 46% in the private sector. Educated and older workers, Schmitt claims, tend to have higher salaries than younger, less educated employees. Although his research showed that state and local workers, on average, earned 13% more than their private sector peers in 2009, when conducting a side-by-side comparison of public versus private sector

workers with similar educational qualifications and years of experience due to age, public employees actually earn less than their private sector colleagues.

Trinity University's labor economist David Macpherson supports this hypothesis and suggests that when conducting a side-by-side comparison, public employees' compensation is not substantially higher than their private counterparts, due primarily to the education factor. Since public sector workers, on average, have advanced degrees, these high-skilled public sector workers in fact earn less than the private sector. In his study, Macpherson et al. (2002) examined three sources of wage and compensation data: Employment Cost Index (ECI), Employer Costs for Employee Compensation (ECEC), Current Population Survey (CPS) to arrive at their conclusion that "there has been closing in the union-nonunion wage gap since the mid-1980s, but the magnitude of the closing is anything but clear."

Some economists argue that the value of retirement pensions and healthcare coverage are understated when conducting comparative studies; therefore, public workers earn substantially more than their counterparts. Additionally, they make the argument that public employees work significantly fewer hours than their private sector peers, which ultimately drives up the value of their wages. A 2010 survey conducted by the Bureau of Economic Analysis revealed that benefit packages appear to be the primary culprit that pushes public sector compensation far above private workers. Using Bureau of Labor and Statistics data, the survey concluded that variables, such as number of hours worked, and undervalued retirement and healthcare benefits, have been omitted by previous studies, and when factored into the equation, substantiate the argument that public employees earn more than their private sector peers.

## **2. Psychological Theories**

Surveys by the Bureau of Economic Analysis show that public workers' annual compensation—salary plus benefits—is higher on average than private sector workers, and suggest that the gap is growing. Surveys by the Bureau of

Economic Analysis show that public workers' annual compensation—salary plus benefits—is higher on average than private sector workers, and suggest that the gap is growing. Surveys by the Bureau of Economic Analysis show that public workers' annual compensation—salary plus benefits—is higher on average than private sector workers, and suggest that the gap is growing. Applying socio-psychological theories of human behaviors can help explain some of emotional factors that may influence workers to join unions. Humans have basic physiological needs for food and shelter. Socio-psychological senses drive these basic needs even further to want a sense of security, companionship, individual and group belonging, and recognition. When an employee feels these basic and advanced needs are not being met, and that management is not hearing them and their input and ideas are not being considered, unions can fill these voids by representing the collective group interests through the bargaining process. The extent to which unions are capable of providing this sense of security and meeting these socio-psychological needs can be further explored and explained with the Exit/Voice/Loyalty (Hirschman, 1970) theory and Negativity Bias theory. Exploring these theories and applying them to the TSA case study and increased public sector union membership as a whole may further explain the deeper psychological factors behind the attraction of union membership.

Numerous independent and academic studies have been conducted to dissect the gender, economic, cultural and geographic demographics of union membership in attempts to further understand the predispositions of employees who may seek union membership as a means to fulfill these psychological needs. Writing for *The American Journal of Economics and Sociology*, Martin M. Perline and V. R. Lorenz (1970) conducted a literature review of the influencing factors of trade union participation. In their article, they opine that the extent of individual demographics and psychological variables dictate that “no one school of thought, however, can claim a complete monopoly of insight into this area since the factors influencing participation are numerous” (p. 425). They further argue that class consciousness plays an active role in the decision to join a



union, whether as a member of the working class or the desire to help those in that category. Conversely, this class consciousness perception diminishes once union membership is established. In other words, once becoming an active union member, class consciousness is replaced with several other group-related psychological influences, such as the desire for an active voice and active participation. Often, the very vocal and outgoing personality will find union activism a natural fit for their “desire to obtain personal power, recognition or financial gain” (p. 427).

In addition to exploring the individual traits of union members, Perline and Lorenz also examined the union influence over its members. They argue that as the union expands its membership rolls, it also produces a wider gap between union members and its leaders. This gap can be explained, in part, because as the union leaders’ role expands due to increased union size, so increases allegiance to the union and its objectives, which are now viewed by the leader from a much broader, strategic perspective. Union members only identify with the union when it is successful in delivering on its promises (e.g., increased wages, lower health care costs, and premium retirement benefits). The union leader is also concerned with these objectives; however, loyalty belongs to the union as an organization with its separate goals, such as increased public image and reputation. The crux of Perline and Lorenz’s literature review concludes that individual characteristics do influence whether or not an employee is likely to seek union membership; however, doubt remains as to characteristics are interrelated. The authors suggest the need for additional research into the design of these variables to understand further the correlation between individual and group psychological variables and union organizational design.

At the federal level, and specifically the case of TSA, if screeners cannot bargain over pay, schedules, procedures, and uniforms, what, then is the point of fighting the eight-year battle for union representation? Conversely, if all TSA screeners are covered by the collective bargaining agreement, regardless of their union membership status, why then would someone pay union dues and receive

the identical benefits as non-paying employees? At the state and local levels, if legislation, regulations and mandates expressly limit or prohibit the manner in which unions can represent their members, why, then, would an employee pay membership dues to a union?

Numerous unions claim common benefits to union membership, most notably, many claim to have successfully bargained for increased wages and benefits, lower health care premiums, enhanced retirement pension annuities and workplace safety. Founded in 1918, the International Association of Fire Fighters (IAFF) is one of the oldest and longest-standing public sector unions in the country. This organization claims intangible and tangible benefits to union membership. In 2006, the IAFF published a document that details the benefits and advantages of IAFF membership, which specifically outlines its successes in getting legislation passed at the state and local levels and obtaining significant grant money to fund homeland security training and equipment purchases. At the local level, IAFF Local 27, representing Seattle's firefighters, has backed up these stated benefits with actions. Faced with a \$56M budget shortfall in 2010, Local 27 agreed to forego its 2% cost-of-living salary increase to eliminate proposed cuts in fire services. This compromise between Local 27 and Seattle's elected officials is estimated to save \$6.6 million of the taxpayer's money over two years. IAFF Local 27 union representatives and city officials have had a long-standing amicable relationship, despite the union's political clout with elected representatives.<sup>18</sup> Union President Kenny Stuart summarized this unique partnership in a press release issued on August 10, 2010, in which he stated, candidates or officials interested in seeking the endorsement of Seattle Fire

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<sup>18</sup> IAFF Local 27 Mission Statement: "Seattle Fire fighters care about the service we provide to the citizens of our community, as well as about the safety and well-being of ourselves and our families. A Seattle Fire Fighter typically serves the citizens of Seattle for 20–30 years while many elected officials may come and go. We have been around long enough to understand that many times these elected officials make decisions that are not in the best interest of fire fighters or the citizens we serve. Oftentimes these decisions can have serious consequences. Our aim is to build relationships with these elected officials, ensure that they understand our issues, and work to guarantee that both public safety and fire fighters are always a top priority" (Seattle Fire Fighters Union, Local 27, n.d.).

Fighters may contact the Local 27 Political Action Committee (PAC) (Seattle Fire Fighters Union, Local 27, 2010). The PAC provides questions to the applicants and, based on the responses, provides endorsements recommendations to the general membership of Seattle Fire Fighters Local 27.

1. What is their position on firefighter issues and public safety?
2. Are the candidates organized and do they have a solid written campaign plan to win the election?
3. Are they raising the necessary funds to finance a successful campaign?

Once endorsed, candidates or officials can be provided with campaign donations (in accordance with state and local laws), press releases, volunteers, sign-making assistance, phone banking, as well as independent expenditures for literature production and distribution, print ads, and radio and TV ads.

“Seattle Fire Fighters are totally committed to protecting the citizens of Seattle. Fire Fighters chose to take a cut in pay to make sure that vital emergency services are not cut instead” (Seattle Fire Fighters Union, Local 27, 2010). Both IAFF and Seattle’s elected officials are to be credited with minimizing the political influence and union hard-handedness by instituting collaborative negotiations focused on reaching a common ground. Both groups credit the successful results to working with each party to establish and maintain an amiable working group geared toward compromise and balance.

Without argument, many unions support their members through similar efforts aimed at improving the quality of workplace and compensation systems through collective bargaining. Wages in line with skills and education retirement funds that will ensure annuity monies are safely available upon retirement are successful selling points for marketing union advantages and may account for a portion of the recent increase in public sector union membership, especially at the state and local levels where union representatives have the capability to bargain directly with the key decision makers.

At the federal level, these advantages are not as easily bargained. Unions, therefore, look to other avenues to market the advantages of union membership. For example, the AFGE and NTEU actively solicited and recruited TSA employees by focusing on the issues in the forefront of news media and public concerns, such as the controversial Advanced Image Technology (AIT) that captures a millimeter wave image of the passenger's entire body and the resolution pat down procedures considered by some as an invasive search of their body without probable cause. Since its initial rollout in 2009, the AIT has received continued negative press from national news media, privacy groups and the American Civil Liberties Union (ACLU), which fought, unsuccessfully, to ban the AIT deployment on the grounds of undue search and seizure.

After the launch of the AIT equipment and implementation of the new pat down procedures, passengers began recording their screening experiences and posting the video on various social media venues, such as YouTube and Face Book. TSOs found themselves in the precarious position of having their every move recorded, publically scrutinized, and in some cases, legally challenged. In 2011, the State of Texas legislation attempted to pass legislation that would make TSOs criminally liable for conducting pat down procedures by charging them with sexual assault. This bill was not passed; however, the negative press and implications remained. Under the negativity bias theory (Ito, Larsen, Kyle Smith, & Cacioppo, 1998), people pay more attention to and give greater credence to negative information. Over time, this negative information will overtake the positive information and change people's perception of themselves and/or the event.

The AFGE counted on the negativity bias factor by understanding that the media focuses on the negative factors associated with the TSA and that these negative events or actions have a tendency to remain predominant in the minds of those listening. The AFGE has actively enticed TSOs since the TSA's inception in 2001, through targeted marketing campaigns, exclusive websites devoted to soliciting activity and interest, and advertising its support in obtaining

higher wages, more fairly structured work schedules and grievance procedures. In anticipation of and subsequent to its victory of exclusive representation of TSOs, the AFGE continued this strategic campaign by expressing its desire to bargain actively for those issues that matter the most to TSOs. This marketing campaign tugged at the emotional elements over which TSOs have expressed concern, and most recently their concern over the (perceived) repercussions of taking annual and sick leave. AFGE surveyed TSOs to identify their primary concerns, and pledged its commitment to bargaining for the elimination of leave abuse policy, improved training, job rotation assignments, transfers and furloughs. It is only necessary to look at TSA's Idea Factory to validate the AFGE's survey results; TSOs have been expressing their frustration over these issues for years. Additionally, the survey revealed their desire for childcare subsidies, TSA-paid parking, and additional storage for personal items at TSA facilities. This survey and the Idea Factory blogs clearly indicate that TSOs feel they have not been heard and lack a voice in the policies and procedures that directly affect their quality of work environment. Whether or not the AFGE can deliver on their promises remains to be seen, especially in light of the list of non-negotiable issues prescribed by Administrator Pistole. What is clear, however, is that TSOs perceive that TSA leadership has not listened to its workforce and has not included its workforce to the degree necessary to identify, address and resolve their concerns. Leadership's avoidance of listening to the TSOs, coupled with the increasing negative media coverage of TSA's screening policies and procedures, have created a premium platform from which the AFGE advanced its strategic recruitment campaign.

In 2006, TSA designed the Idea Factory, a web-based system that enables all TSA employees to post their ideas for improving the agency. Over time, the Idea Factory has morphed into a blog whereby TSOs make their voices heard about issues, such as converting from the current pay system to the traditional General Schedule (GS) pay scale, increased uniform allowance, fairness in leave approval process, and a more balanced seniority system. For

years, TSOs have voiced their disapproval with these and other concerns, and provided hundred of ideas for improvement. Unfortunately, many of these concerns remain unchanged and TSOs continue to perceive their voices are not heard and changes are not made or are made without their input. As employee concerns continue to go unrecognized, they begin to be perceived as abusive incidents that will frame the perceptions of the group. Over time, these constructs become internalized to define the perceived reality that management and leadership do not care about the well-being and livelihood of their employees. Having a voice in the policy and procedure development is a win-win situation for both employees and management. Employees feel their voices are heard, and, more importantly, valued, whereby providing reassurance and security for management that the mission is being accomplished.

Albert O. Hirschman developed the theory that, when confronted with deteriorating satisfaction, individuals will either leave or remain to voice their dissatisfaction in the hopes of enacting change. Hirschman's Exit, Voice and Loyalty theory (1970) was originally applied to economic principles and political arenas to understand why consumers may choose one product over another, or why citizens may choose one candidate over another. However, this theory can be applied to examine the psychological affecting employee behaviors. For example, when employees' ideas and input are not solicited or considered, under Hirschman's theory, they have three paths from which to choose when faced with dissatisfaction: they can leave or remain and use their voices to enact change. The latter option, Hirschman argues, is driven by loyalty to the organization or mission, through a sense of patriotism or commitment

Voice theory needs two conditions to achieve its objectives—tradeoff between possible improvements and exiting (leaving the company), and a belief that their voice will be heard. This sense of loyalty plays a critical role in an individual's cognitive behaviors because through this loyalty individuals will view exiting as too costly, and therefore, place an inflated sense of importance and inflated hope on the changes their (collective) voice may bring.

In the case of the TSA, TSOs have a choice to exit the organization or use their collective voices to enact change. In the current economic conditions facing many Americans, it may be argued that an exit approach is unlikely, as TSOs are paid competitive wages and receive generous benefit packages, relative to the private sector. To counter this argument, however, the TSA has one of the highest attrition rates of any federal agency.

Why then would a disgruntled TSO choose voice over exit? “The effectiveness of the voice mechanism is strengthened by the *possibility* of exit (Hirschman, 1970, p. 83). The fear of continued attrition rates may have been a consideration by TSA Administrator John Pistole when he agreed to allowing TSOs the opportunity to voice for exclusive union representation.

## V. RECOMMENDATIONS

Unlike private sector businesses, government entities have little incentive to place a cap on increased labor costs the result from generous collective bargaining agreements. Lawmakers are inclined to give these workers what they want, regardless of the cost consequences. Their immediate political gains are increased constituent support and campaign funding, while passing the financial burden on to future generations long after these politicians have left office.

AFL-CIO President and University of Idaho professor Nick Gier<sup>19</sup> claims, “the rise of unions is a natural extension of representative democracy in the workplace, driven by an undeniable logic that workers should be able to protect their interests where they work as well as where they live.” Unions should be seen as a rightful part of U.S. democracy, and embraced as evidenced in European counterparts. The real parody, he argues, is the “lack of commitment of representative government” in that the U.S. government and legislators do not fully support the labor movement. U.S. labor laws are diverse and conflicting at federal, state and local levels, without regard to any federal jurisdictional power. Legislators simply pay lip service to their support of labor unions when doing so will bring political support to their campaigns, Gier argues.

### A. **OPTION 1: IMPOSE LEGISLATIVE RESTRICTIONS ON FEDERAL PUBLIC SECTOR UNION RIGHTS**

Diminishing the collective bargaining rights of federal employees poses significant legal ramifications. While federal agencies, such as the TSA, have the authority to prohibit collective bargaining rights based on the extensive authority granted under ATSA, such limitations are rare for other federal agencies. Siegel (2011) points out that these legislative and legal authorities that have granted collective bargaining are the result of politics designed to expand the clout of

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<sup>19</sup> Response to an editorial in the *Moscow-Pullman Daily News* (June 15–16, 1996).



these unions whose interests are generally not aligned with those of the citizens at large. Reversing these decisions will be difficult, but not impossible, Siegel claims. As political climates change with presidential administrations and majority holds in the House and Senate, so shifts the mindset and tolerance for or against these special interests. Undoubtedly, this option is wrought with challenges and obstacles, however, not impossible as legislation moods have shifted over time to propose and oppose public sector collective bargaining, as demonstrated through the various legislation and Executive Orders since the early 1900s.

## **B. OPTION 2: DECERTIFYING PUBLIC SECTOR UNIONS**

PATCO pushed the envelope in 1981, and subsequently, was decertified by President Reagan because of their organized work strike that virtually halted aviation traffic in the United States. According to McCartin, the PATCO actions and the Reagan reaction led to a diminished union influence over management and political supporters. Regardless of federal statutes that prohibit federal employees from work strikes or slowdowns, the members of PATCO pushed the boundaries of these laws and tested the waters for future federal employees. President Reagan called their bluff, and subsequently, fired all PATCO members who engaged in the strike, banned them from all future federal employment and decertified the PATCO union.

Wisconsin took the dramatic approach of reversing decades of pro-union legislation by passing its Budget Repair Bill, which in essence, decertified<sup>20</sup> the state's public sector unions. While the governor of any state does not have the authority to decertify a union, Governor Walker's legislation made it impossible for public sector unions to collectively bargain for wage or benefit increases, which represent the bread-and-butter of union successes. Under Wisconsin's new law, unions must undergo annual recertification, which means it must hold an election and receive 51% of votes from all bargaining unit employees, not just

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<sup>20</sup> The intent of decertification is to remove the union as the exclusive representative with the authority to negotiate for all employees.

those who voted. Previously, public sector unions held their collective union power and status indefinitely. Unions had until September 22, 2011 to file for recertification status. On September 21, 2011, only three small unions had filed their intent to recertify, while the larger unions representing tens of thousands state workers will have lost their official union status. This change was instrumental in tamping the unions' political influence as it virtually stripped the unions of their monopoly status.

Public sector union decertification is gaining momentum across the country, in states like Wisconsin, New Jersey and Indiana. On his first day in office, Indiana Governor Mitch Daniels reversed the Executive Order enacted by his Democrat predecessor that granted collective bargaining rights to government workers. He also instituted a pay-for-performance merit plan for these workers, despite strong union opposition, and required strong justification to replace vacant positions. The state's payroll fell from 35,000 employees to just below 30,000 within the first year. These once heavily unionized states are realizing that the substantial financial burden these collective bargaining agreements are placing on their over-burdened budgets, and seeking creative alternative solutions like union decertification to curb the rising cost of labor for current and future taxpayers..

### **C. OPTION 3: CONTINUATION OF TSA'S CHANGE MANAGEMENT INITIATIVES**

Immediately following the administrator's decision, TSA leadership began a new process of "union thinking." Specifically, this paradigm shift included engaging the union in all employee-impacted issues, and not just management rights-based matters. By recognizing the union, they recognized that the TSA workforce before 2011 is no longer. The AFGE is now an extension of the workforce. This transitional process began with a comprehensive assessment of current policies and procedures that address the bargaining topics approved by Administrator Pistole and what it will take to implement a bargaining unit at the

TSA. This work continued with a review of all Management, Operational and Security Directives that regulate the specific topics that Administrator Pistole has determined eligible for collective bargaining consideration, such as resolution dispute procedures, uniform and grooming standards, shift bid and leave seniority process. Additionally, TSA brought key leadership and subject matter experts into the pre-decisional process to identify potential shortfalls and weaknesses contained in the existing policies that could develop into lengthy negotiations.

In the coming months, as the TSA and AFGE work toward a workable collective bargaining agreement, leadership must recognize the significant amount of time and resources required to address union grievances and issues and allocate resources and adjust screener and management staffing levels necessary to fill these roles. Union representatives are on “official time” when conducting union business, yet are being paid by the TSA but not conducting actual screening duties. TSA leadership must recognize the impact this time-consuming process will have on its ability to meet the mission by having paid personnel not conducting TSA business, the need to shift these non-union tasks to other TSA personnel, and the labor-intensive process that management may experience when dealing with the union issues.

Through continued advanced preparation, TSA leadership will be positioned to sit at the bargaining table having done their homework in anticipation of the union’s positional power and bargaining agenda. After the negotiations are complete and the collective bargaining agreement signed, the TSA should continue with its change management process by consistently recognizing that the culture, climate and workforce that stood up the TSA in 2001 has been replaced with a labor relations mentality and unionized workforce.

## VI. CONCLUSION

The intent of this thesis was to present a framework for understanding the public sector union environment, how it differs from the private sector, some underlying causes of the recent spike in public sector union membership, and the current and future financial impact to federal, state and local budgets. Through examining and comparing case studies of PATCO, the TSA, the states of Wisconsin and New Jersey, and Seattle's IAFF Union Local 27, the objective was to substantiate the hypothesis with fair and balanced research. At the conclusion of the author's research and literature review, most notable was the impossibility of a one-size-fits-all solution.

The TSA suffers one of the highest voluntary attrition rates of any federal agency, reported at 17% by the Department of Homeland Security Office of Inspector General report (Department of Homeland Security Office of Inspector General, 2008). The job of a TSO is difficult and stressful as TSO deals with the traveling public, emerging threats and an ever-increasing industry. For over 10 years, TSOs have felt their voices were not heard and had little-to-no input into critical decisions about security procedures, employee benefits and compensations or work schedules. The AFGE may be able to provide these advantages, and together with TSA leadership, forge a more productive and effective security environment for the nation. Opponents of this transition to a unionized TSO workforce argue that the price to pay is too high, and the risks too great. Proponents claim that a motivated, better-trained and better-paid workforce will emerge, and subsequently, contribute to aviation security.

A workforce strike or slowdown at the TSA could cripple an already-fragile aviation economy. TSA leadership has taken monumental steps toward ensuring a smooth transition to a unionized workforce. By sending a clear and convincing message that the TSA will not negotiate on security measures, the TSA has taken the first critical step to establishing a professional working relationship with

the AFGE as it works toward establishing consensus on the national collective bargaining agreement. PATCO's efforts to make air traffic safer and bring a level of professionalism to the occupation were overplayed when it turned its back on President Reagan's offer of higher pay and instead opted to stage a nationwide strike. McCartin argues that PATCO's demise was the turning point in America's sympathy for labor unions, and an end to the political support for government unions. President Obama campaigned on the promise of unionizing the TSOs and granting them collective bargaining rights and he has delivered on that promise. While many have opined, nobody can accurately predict the degree of success or failure of that decision or the probability of a work strike or slowdown should the AFGE and TSA reach an impasse in their current or future bargaining efforts. The TSA is working hard to forge an advantageous path in establishing the terms and foundation for a successful partnership with AFGE. History has demonstrated, through the actions of PATCO and Toronto's screening workforce slowdown, the repercussions of an aviation security slowdown or strike could have catastrophic effects on homeland security and cripple an already-fragile aviation economy—one that has just begun to dig out of the depths of the 9/11 tragedy.

Table 2. Median Weekly Earnings Of Full-Time Wage and Salary Workers by Union Affiliation, Occupation, and Industry

Occupation and industry	2009				2010			
	Total	Members of unions <sup>(1)</sup>	Represented by unions <sup>(2)</sup>	Non-union <sup>(3)</sup>	Total	Members of unions <sup>(1)</sup>	Represented by unions <sup>(2)</sup>	Non-union <sup>(3)</sup>
<b>OCCUPATION</b>								
Management, professional, and related occupations	\$1,044	\$1,047	\$1,040	\$1,045	\$1,063	\$1,059	\$1,055	\$1,064
Management, business, and financial operations occupations	1,138	1,116	1,123	1,139	1,155	1,138	1,145	1,156
Management occupations	1,208	1,192	1,208	1,208	1,230	1,161	1,187	1,231

Occupation and industry	2009				2010			
	Total	Members of unions <sup>(1)</sup>	Represented by unions <sup>(2)</sup>	Non-union <sup>(3)</sup>	Total	Members of unions <sup>(1)</sup>	Represented by unions <sup>(2)</sup>	Non-union <sup>(3)</sup>
Business and financial operations occupations	996	1,002	1,009	995	1,036	1,082	1,048	1,035
Professional and related occupations	994	1,036	1,026	983	1,008	1,047	1,040	998
Computer and mathematical occupations	1,253	1,078	1,107	1,263	1,289	1,062	1,074	1,311
Architecture and engineering occupations	1,266	1,230	1,210	1,271	1,255	1,238	1,285	1,252
Life, physical, and social science occupations	1,059	1,099	1,135	1,040	1,062	1,166	1,160	1,038
Community and social services occupations	783	957	948	746	802	980	955	759
Legal occupations	1,200	1,266	1,258	1,191	1,213	1,329	1,358	1,199
Education, training, and library occupations	887	1,010	996	782	913	1,023	1,008	811
Arts, design, entertainment, sports, and media occupations	888	1,105	1,059	877	920	999	1,015	915
Healthcare practitioner and technical occupations	970	1,089	1,070	952	986	1,095	1,098	967
Service occupations	470	702	682	435	479	723	707	447
Healthcare support occupations	472	518	518	464	471	514	503	467
Protective service occupations	747	992	980	611	747	995	980	629
Food preparation and serving related occupations	398	463	456	395	406	508	503	402
Building and grounds cleaning and maintenance occupations	444	597	588	418	446	595	590	421
Personal care and service occupations	440	576	567	429	455	575	564	440
Sales and office occupations	624	768	761	613	631	752	745	621

Occupation and industry	2009				2010			
	Total	Members of unions(1)	Represented by unions(2)	Non-union(3)	Total	Members of unions(1)	Represented by unions(2)	Non-union(3)
Sales and related occupations	665	678	673	665	666	683	678	665
Office and administrative support occupations	612	782	773	595	619	762	754	607
Natural resources, construction, and maintenance occupations	719	1,009	1,003	657	719	1,013	1,006	664
Farming, fishing, and forestry occupations	416	-	-	411	416	-	-	412
Construction and extraction occupations	718	1,023	1,011	643	709	1,029	1,019	633
Installation, maintenance, and repair occupations	781	999	999	733	794	1,005	1,001	745
Production, transportation, and material moving occupations	605	786	780	578	599	817	809	564
Production occupations	610	783	778	587	599	811	801	569
Transportation and material moving occupations	599	789	782	563	599	824	816	557
<b>INDUSTRY</b>								
Private sector	711	856	845	697	717	864	855	703
Agriculture and related industries	462	-	-	457	465	-	-	463
Nonagricultural industries	715	857	846	701	721	865	856	707
Mining, quarrying, and oil and gas extraction	1,050	1,013	1,015	1,058	1,032	1,076	1,053	1,026
Construction	744	1,072	1,052	698	735	1,051	1,046	692
Manufacturing	767	800	799	762	767	828	817	759
Durable goods	806	836	832	801	806	878	866	796
Nondurable goods	706	735	741	698	700	760	749	690
Wholesale and retail trade	611	648	641	609	612	669	657	610
Wholesale trade	760	761	767	760	777	770	774	777

Occupation and industry	2009				2010			
	Total	Members of unions(1)	Represented by unions(2)	Non-union(3)	Total	Members of unions(1)	Represented by unions(2)	Non-union(3)
Retail trade	577	612	607	575	575	613	608	572
Transportation and utilities	798	975	964	748	823	1,000	994	765
Transportation and warehousing	749	923	911	707	765	934	928	725
Utilities	1,043	1,120	1,104	1,008	1,102	1,199	1,193	1,014
Information(4)	905	1,105	1,083	883	912	1,018	998	895
Publishing, except Internet	847	-	-	843	876	-	-	871
Motion pictures and sound recording industries	1,047	-	-	924	917	-	-	893
Radio and television broadcasting and cable subscription programming	827	-	-	828	821	-	-	814
Telecommunications	964	1,095	1,079	924	987	1,039	1,023	974
Financial activities	839	843	831	839	849	806	799	852
Finance and insurance	881	845	837	882	902	819	829	905
Finance	889	842	817	892	902	-	870	903
Insurance	868	-	-	868	902	-	-	908
Real estate and rental and leasing	726	842	822	718	702	786	713	701
Professional and business services	864	761	748	868	855	751	754	859
Professional and technical services	1,094	1,081	1,096	1,094	1,124	1,157	1,147	1,123
Management, administrative, and waste services	560	658	640	553	542	598	592	536
Education and health services	\$715	\$839	\$838	\$698	\$731	\$849	\$846	\$717
Educational services	819	886	879	795	852	900	875	846
Health care and social assistance	685	801	802	673	698	817	823	686
Leisure and hospitality	464	583	576	458	469	580	575	461
Arts, entertainment, and recreation	601	673	671	593	616	636	632	614
Accommodation and food services	423	526	505	421	430	530	524	424



Occupation and industry	2009				2010			
	Total	Members of unions(1)	Represented by unions(2)	Non-union(3)	Total	Members of unions(1)	Represented by unions(2)	Non-union(3)
Accommodation	505	582	582	496	508	547	553	502
Food services and drinking places	412	424	423	412	417	517	509	416
Other services(4)	605	886	862	599	615	866	862	609
Other services, except private households	627	893	868	620	636	880	874	627
Public sector	865	947	943	782	878	961	956	801
Federal government	1,002	981	989	1,019	1,012	977	987	1,040
State government	829	906	899	767	829	922	917	769
Local government	834	956	948	720	854	971	962	743

**Footnotes**

(1) Data refer to members of a labor union or an employee association similar to a union.

(2) Data refer to both union members and workers who report no union affiliation but whose jobs are covered by a union or an employee association contract.

(3) Data refer to workers who are neither members of a union nor represented by a union on their job.

(4) Includes other industries, not shown separately.

- Data not shown where base is less than 50,000.

NOTE: Data refer to the sole or principal job of full- and part-time wage and salary workers. All self-employed workers are excluded, both those with incorporated businesses as well as those with unincorporated businesses. Updated population controls are introduced annually with the release of January data.

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