

THE IMPLICATIONS OF POLICE UNIONISM

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Virtually unstudied and largely unobserved, the police employee organization has evolved over the last fifty years into a strong economic and political institution. The rapid growth of militant police unionism as a new political and economic force in the society has raised serious problems for the police agency administrator in the exercise of his professional responsibilities in the area of law enforcement and his executive responsibilities in the area of personnel management. It has also raised serious public policy questions as to whether the protected right to organize and to bargain collectively which is being extended to all other public employees ought to be extended to the police without limitations. Underlying all these questions is the basic issue of whether official sanction should be extended to another entrant in the competition for control of local police operations.

This paper will argue that police unionism is an established institution in the society and that there is a need for both police executives and public officials to consider how they intend to approach this new power center. It will be suggested that there now exists a sufficiently large body of experience which should be examined before legislative bodies adopt guidelines for institutionalizing the relationship.

Police employee organizations can be traced back to the end of the last century (Hutchison, 1969: 10). Early attempts at unionization (in the sense of affiliation with organized labor and a desire for collective bargaining) ended, with scattered exceptions, with the 1919 Boston strike. However, from that time until the 1960s police employees remained highly organized. Local independent police-only organizations pursued their wage and benefit goals through legislative lobbying at the municipal and state levels. With the beginning of extensive public employee bargaining at the municipal level in 1961, police employee organizations began to assert themselves as

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economic organizations, pursuing collective bargaining where possible and occasionally engaging in job actions (such as slow-downs, working to rules, sick-calls) or strikes.

Civil rights demonstrations, student unrest, and anti-war protests have put tremendous pressures on police agencies and police officers. Amid a conflict between pressure group concerns and a general concern for law and order, public officials and police agency executives have attempted to define a response to crises consistent with the needs of society. Police employee organizations, however, have in some instances taken policy positions which have conflicted with those of the hierarchy or of elected officials. It is this competition for authority on the part of the union as a political and economic institution which has caused a great deal of concern among police executives and others. This concern with the potential role of the union has led some police agency executives to oppose police employee organizations, although recognizing that the reasons behind the militancy might reflect shortcomings in the agency itself. Usually this opposition is couched in terms of police employee organizations being incompatible with professionalism and the movement toward professionalism in the police service.

A Special Committee on Police Employee Organizations made the following report to the 1969 convention of the International Association of Chiefs of Police:

The objectives of labor unions are by definition narrow in scope, immediate in nature, and almost entirely non-altruistic in outlook. There is a definite lack of evidence to indicate that any police union has ever gone on record in defense of raising the education requirements for police officers or for any other phase of professionalization. The advancement of social or professional goals is definitely not an important part of union programs, and it is quite likely, that if police unionization were to become the rule rather than the exception, the struggle for professional status would deteriorate into a struggle for immediate financial betterment (International Association of Chiefs of Police, 1969: 19).

While their statement is probably quite accurate in its speculation, it is probably quite irrelevant as a policy guide, for underlying the statement is an assumption that police officers are altruistic professionals in the same sense that self-employed physicians, lawyers, and accountants are assumed to be altruistic professionals. A more relevant model I would suggest is that set forth by Archie Kleingartner in his *Professionalism and Salaried Worker Organization* (Kleingartner, 1967). Kleingartner argues that even though an employee may be told he is

a professional, or perceives himself as a professional, if in fact he is a salaried employee of a large bureaucratic organization, he will react to this need first and his professionalism secondarily. While Kleingartner was writing about nurses, teachers, and engineers, we see this behavior in lawyers and doctors employed by city governments¹ and I would contend that this is the behavior we are seeing in police employees as well.

Jack Barbash of the University of Wisconsin has articulated a model explaining why employees form self-help organizations.² Among the conditions he isolates are: the size of the organization and its complexity; the efficiency-consciousness and the power-consciousness of the supervisory staff; the felt need of employees to redress daily on-the-job grievances; the felt need of employees for an effective voice in decisions affecting them; and the need for a reaction mechanism to cope with rapid change in the environment.

All of these factors are relevant to the police situation today. As a large, semi-military, authoritarian organization, the police department imposes its wishes on the individual officer through one-way communication and through discipline to a greater extent than through rewards. In addition, the ambiguities inherent in his daily decision-making responsibilities and those engendered by the organization itself as well as an increasingly hostile environment among the client population and elements of the liberal and academic communities have driven the men closer together. The fact that police employee organizations had been functioning for several years meant that they were prepared to move with the advent of public bargaining in the 1960s. The demonstration effect of other public employees' success, the declining utility of the security of a police career, and the relatively poor financial position of the police at the beginning of the last decade made collective bargaining an attractive alternative. Not only was there an opportunity for bargaining and a propensity for militant action, but the police also found themselves the beneficiaries of a great deal of unanticipated bargaining power because of the increasing concern for "law and order" and the implications of this issue for police political and economic power.

Had it not been for the influence of the 1919 Boston strike, we might not be so far behind in our research in this area. Unfortunately, the effect of that strike was to direct attention away from the police employee organizations as they existed toward speculative research as to the potential dangers of police unionism affiliated with the AFL-CIO.

The 1958 IACP monograph, *Police Unions*, saw the challenge as coming solely from affiliated organizations and failed to anticipate the challenge from the local police-only independents (International Association of Chiefs of Police, 1958). In 1960, Patrick Murphy defined unions as affiliated organizations, but Murphy did indicate that independent employee organizations might pursue personnel grievances (Murphy, 1960).

In 1968, using a functional definition of police unionism, Kay Hutchison and I surveyed the 304 cities of over 50,000 population listed in the 1966 *Municipal Yearbook* (Juris and Hutchison, 1970). We defined a police union as an employee organization which deals with police agency management in a systematic way with respect to questions of wages, hours, and conditions of work. Of the 239 respondents, 214 reported a police employee organization. Ninety-nine of the 214 (or approximately one-third of the 304) reported they were engaged in a collective bargaining relationship with their police employee organization. Another 20% permitted the police employee organization to represent the membership on these issues in a relationship other than bargaining.

Furthermore we found that all of these organizations were police-only local units for purposes of representation. Where they were affiliated, it was usually with a state federation of police organizations, the Fraternal Order of Police, or the ICPA. Organized labor was a party in only 15 of the 214 cities.

Starting, then, from an assumption that some form of functional unionism in the police service is an accomplished fact, we must ask what is the potential impact of police unions on professionalism, the operation of the agency, and the formulation of law enforcement policy.

THE POTENTIAL IMPACT OF POLICE UNIONS ON THE PROFESSIONALIZATION OF THE POLICE SERVICE

Much has been made of the need to upgrade the personnel in the police service, as for example in the *Report of the President's Commission on Law Enforcement and Administration of Justice* (President's Commission, 1967: Chapter IV) or Charles Saunders' *Upgrading The American Police* (Saunders, 1970); and there has also been discussion of changing the nature of the job, as is proposed, for example, in Morton Bard's generalist-specialist research in New York City (Bard, 1969).³ Critics of police unionization argue, however, that police unions would block the changes necessary to make police service what they prefer to call "more professional."⁴ In particular

they argue that patrolmen's unions would oppose higher education standards for hiring, new standards for promotion, changes in job descriptions, and provisions for lateral entry (International Association of Chiefs of Police, 1969).

If we accept Kleingartner's analysis with respect to salaried employees in a large bureaucracy and are prepared to enter a bargaining relationship with a police union (defined functionally hereafter rather than in the sense of AFL-CIO affiliation), then it is possible that within the context of the bargaining relationship there exists the potential for *quid pro quo* exchanges which would satisfy the officers' need for welfare and security while progressing toward some degree of professionalization as defined by the executives of the police agency. We see the potential for this kind of bargaining in the safety rules and entry requirements pursued by the Airline Pilots Association; the More Effective Schools program of the American Federation of Teachers; and the professional concerns being voiced by the Professional Air Traffic Controllers Organization. In Wisconsin, education incentive plans have been introduced in police agencies by means of the collective bargaining process, indicating at least potential in this direction. What is required, of course, is a strong executive branch willing to demand these *quid pro quo*. To date management has been somewhat derelict in these responsibilities.

Public managers argue that they are at a disadvantage because, unlike their private sector counterparts, they cannot take a long strike, thus increasing the union's relative bargaining power. To alleviate this situation we are currently experimenting with many impasse resolution procedures designed to provide equity without incurring the high public costs inherent in a strike.⁵ Thus, some day the parties may have available to them fact finding, advisory arbitration with a prior agreement to accept the terms as binding, or compulsory arbitration.⁶ With respect to the police particularly, Michigan, Rhode Island, and Pennsylvania require compulsory arbitration as the last step.

THE POTENTIAL IMPACT OF POLICE UNIONS ON THE OPERATION OF THE POLICE AGENCY

The police agency administrator has long enjoyed *carte blanche* with respect to the internal operations of his agency, especially as they relate to personnel management. Furthermore, as the head of a quasi-military organization highly dependent on discipline and loyalty for its efficient operation,

he looks askance at any challenge to his traditional authority. Balanced against this, however, is the realization on the part of many police officers that just cause and due process are the rule rather than the exception in personnel actions by managers, not only in the private sector, but also in other segments of the public sector as well.

Given the ability to bargain collectively, it is to these needs that most police unions have addressed themselves. The most obvious challenge to traditional personnel management practices is the negotiation of grievance procedures whereby superior officer implementation of regulations can be effectively subjected to review by an employee who believes his rights have been violated.

Contracts have also abridged management flexibility in other ways. The 1969 New York City agreement provided portal-to-portal pay for officers assigned to another section of the city on temporary special duty, revised overtime provisions, and prohibited the rescheduling of off-days in order to avoid payment of overtime in a given week. While managerial flexibility was curtailed, these provisions also served to bring working conditions in the police service into equilibrium with working conditions in other occupations to which the patrolman might look as alternatives, an important labor market consideration.

Other bargaining demands by police unions which have been considered more threatening in their implications are often cited as *prima facie* reasons why police unions must be constrained. A careful review of these situations has led this author to conclude that the fault may lie less in the concept of collective bargaining than in the implementation of that concept by police agencies and the institutional and administrative environment which these agencies have created over time.

An example of how the parties may handle a policy disagreement within the context of a bargaining relationship is seen in the issue of one-man squad cars and the assignment of investigative duties to patrolmen in New York City. Both proposals were made by management in the interest of better manpower utilization. The union objected to each and wanted to discuss them within the context of the collective bargaining process. The city refused on the grounds that these were management prerogatives not subject to bargaining. The impasse was presented to an arbitrator who ruled that manning require-

ments and job duties were not bargainable issues.

An example of an issue handled outside the total context of bargaining can be seen in the question of tenure for detectives in New York City. Detectives serve at the pleasure of the chief of detectives, and may be returned to the patrolman rank at any time in their career. Management argues that this is necessary for incentive reasons and also because the nature of the duties of the detective bureau is such that they must be able to demote for misfeasance and malfeasance. The union argues that an individual suitable for promotion to detective should, after a probationary period, be able to obtain some measure of job security. The issue was not resolved in the bargaining process and was taken by the detectives' association to the city council in the form of a bill which would require just cause and due process before a detective could be demoted. The bill passed the council but was vetoed by the mayor. The policy issue raised is whether the union should have had access to the council, after being turned down by management with respect to a personnel issue of this type.

Herman Goldstein, in his "Administrative Problems in Controlling the Exercise of Police Authority" (1967), applies to the police agency the generally accepted management principle that an individual or organization with responsibility should be given the authority to carry out that responsibility and then be reviewed by higher authorities for the quality of execution. While he was discussing possible cases of police malfeasance, the principle is equally applicable here.

Largely because of earlier reform movements and concern from time to time with the issue of keeping the police out of politics, there exists a variety of models for the control of police agencies. As a result, police unions find they often have wide latitude with respect to avenues of appeal from the bargaining process. Among these are personnel commissions, city councils, mayor manager's offices, and, in some cases, the state legislature.

The problem then is to limit undesirable egress from the bargaining process so that management may deal with authority in personnel matters—a principle central to the success of a bargaining system. While recognizing that for political reasons little can be done with respect to instituting a rational administrative structure, still with respect to *personnel* policies it should be possible to allow the agency to establish its own bargaining posture and to hold the executive responsible for the

ramifications of that posture. Where the council by law must retain these powers, it can still limit changes to the bargaining process, rather than lobbying, and be sure to include the chief or his representative as a consultant to, or member of, the bargaining committee.

Many of the threatening implications referred to above can be viewed in this perspective. For example, in the city of Boston the police union objected to name tags on uniforms, the assignment of traffic personnel to patrol duty, changes in the color of squad cars and uniform shirts, and the consolidation of precincts and streamlining of operations in general. In each case, the union went outside the bargaining process to accomplish its goals. The city council outlawed name tags. Appeal to the council delayed, but did not prevent, the redeployment of traffic personnel. The council approved a change in the color of squad cars, but backed the union on the question of shirt color. On the question of precinct consolidation, the union was able to block the city in the state legislature. Had there been some agreement among these agencies to limit the discussion of these issues to the bargaining process, management would have been in a better overall position to cope with the potential impact of police unions on the operation of this agency.

THE POTENTIAL IMPACT OF POLICE UNIONS ON LAW ENFORCEMENT POLICY FORMULATION

The impact of the discretionary power of individual police officers on the formulation of law enforcement policy at the street level is already well documented (Davis, 1969; Skolnik, 1966; Wilson, 1968). In this paper, however, we will be concerned with the more overt efforts on the part of police employee organizations to influence the law enforcement policy of the community through participation in elective and legislative politics, and through attempts at generating a set of signals distinct from those issued by city and agency officials to guide the exercise of discretion by individual members.

Public policy with respect to these issues is unclear. For years, the celebrated dictum of Mr. Justice Holmes had been predominant: "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman (*McAuliffe v. City of New Bedford*, 1892:220). This has been interpreted as limiting the rights of police officers to make critical public statements on policy issues, and as limiting their participation in elective politics—the latter because of

possible misuse of their unique power and station in the society. However, as we shall see, this position has recently been substantially modified with respect to public policy statements.

The ambivalence of public policy with respect to political participation is best seen in the sometimes tacit, sometimes overt encouragement by police executives of participation by employee organizations in legislative political activity directed at larger appropriations for police agencies—especially as these appropriations relate to salary items, retirement systems, and welfare benefits. Given this official sanction and a functioning political organization, and given the leverage inherent in the public concern with law and order, it is not surprising that police employee organizations took advantage of their new constituencies to move into elective political action and public statements on issues of law enforcement policy, even though local regulations may have prohibited both.

This expanded activity with respect to public statements was reinforced by the changing Constitutional climate during the 1960s. In a line of cases from *New York Times Co. v. Sullivan* (1964) through *Pickering v. Board of Education* (1968) the Court moved from a virtual prohibition of public employee rights to the exercise of critical speech to a standard which has been interpreted as allowing critical statements so long as they do not include knowing falsity, disclosure of confidential information, or falsehoods which would impair the operation of the agency, destruction of an effective superior-subordinate relationship, or adversely affect work relationships in the agency.⁷

An example of the extent to which we have moved from Holmes's statement can be seen in a Maryland case, *Eugene C. Brukiewa v. Police Commissioner of Baltimore City* (1970). Brukiewa, the president of the Baltimore police union, had made comments critical of the department and the commissioner on a local television program. He was suspended by the department's disciplinary board which ruled that he had violated two departmental regulations relating to discussion of departmental business in public and criticism of superiors. A Baltimore city court upheld the suspension on the grounds that the regulations cited were clear and unambiguous. The Appeals Court overruled the city court on the grounds that the city did not show that the appellant's statements hurt or imperiled the discipline or operation of the police department, and were, therefore, within his right to make under the First Amendment and the decisions of the Supreme Court.

The Police Benevolent Association in New York City, from time to time in recent years, has, among other things, charged political interference with the operation of the department, warned of gaps in police protection, called for 100% enforcement of the law by officers regardless of signals from the commissioner and the mayor, and warned the public about changes in hiring standards for officers. At one point, police pickets paraded in front of city hall chanting, "We want Daley; Lindsay must go." Of course the most famous New York City case is the role of the PBA in the defeat of the civilian review board referendum. More recently they have been debating the implementation of the mayor's campaign to eliminate graft and corruption.

The police unions in Chicago, Newark, Syracuse, Cleveland, and elsewhere have spoken out on similar issues. The national Fraternal Order of Police from time to time issues statements on civil unrest and at one time called for the removal from the Kerner Commission of Herbert Jenkins, chief of police in Atlanta.

A case more directly related to collective bargaining occurred in the fall of 1970 in Waukegan, Illinois, where a group of officers, fired by the city for participating in a recognition strike, accused the mayor and chief of various indiscretions, from ticket-fixing to the coddling of vice activities. Perhaps even more significant than the process of accusation is the fact that several of the discharged officers ran for city council.

These examples might be termed the center of police political commentary. From the right come the voices of associations such as the Law Enforcement Group in New York City and from the left come the voices of groups such as the Afro patrolmen's associations. This spectrum of political activity serves to point up a basic issue: Is society better served by more or less participation by police employee organizations in the public debate on law enforcement policy?

Police management views political activism as a challenge to its authority when issues of policy are raised but endorses it when legislative political activity results in large appropriations. Of the employee organizations of the left, center, and right, each feels it has a legitimate analysis and solution, an obligation to publicize it, and a protected right to do so. On the other hand, each is intolerant of political activity by the other two. Within the society the constituency of each group is tolerant of political activity by those with whom it agrees and intolerant

of similiar activity by its opponents. I would suggest that the policy most consistent with our pluralistic society and representative democracy would be to increase rather than decrease the number of voices contributing to the debate. While there are costs inherent in such a position, there are many who feel that the long-run benefits have historically outweighed the short-run costs.

A natural extension of free speech and participation in legislative politics is participation in elective politics. Regardless of local prohibitions, many police employee organizations have backed candidates for public office. Notable successes (from the point of view of the employee organization) have included Yorty in Los Angeles, Stenvig in Minneapolis, and Gribbs in Detroit. Notable failures (again from the point of view of the employee organizations) have been the election of Lindsay in New York and Stokes in Cleveland.

No one questions the policeman's right to vote. Can he as an individual, however, make a contribution to an individual campaign? Can he distribute leaflets, canvass, or collect money for a candidate if he does so off duty and out of uniform? Can an officer ever be considered "out of uniform" if he is known by the merchants and citizens on his beat? If he is prohibited these activities as an individual, can he be prohibited these activities as a member of an organization? These are some issues which must be considered in adopting a policy with respect to elective politics.

Another aspect of participation in elective politics is participation in the election campaigns of those most intimately concerned with the administration of criminal justice in the community—the prosecutors and judges.⁸ In the theoretical construct of the criminal justice system, each level is expected to function independently: the police effect arrests, the prosecutor decides if a formal charge is warranted and prosecutes the case, the judge presides over the trial and passes sentence. While in practice these are not independent events, still the question arises as to whether we want to make the interdependence overt through police union endorsements and campaigns for candidates. The same issue arises in campaigns for mayor and governor where the candidate states a position on the types of individuals he will appoint to civilian review boards, civil service commissions, parole boards, and other agencies which might have jurisdiction in the criminal justice area. These are raised as issues for discussion which must be

considered within the context of free speech, political activity, and law enforcement policy formulation. There are no easy answers.

SUMMARY AND CONCLUSIONS

Police unionism in the functional sense is already upon us. To form an intelligent response to the challenge of police unionism, we must recognize it for what it is—first and foremost an organization of salaried employees in a large bureaucracy; concerned with the economic well-being, safety, and security of its members; and responding to management's necessary insistence on efficiency and authority. Secondly, police unionism assumes the prerogatives of a professional organization in the sense that its members will speak through it to express opinions on the nature of law enforcement in the society. Furthermore, where an economic organization exists, there may also arise political organizations on the right and left which are concerned solely with policy.

Collective bargaining represents an opportunity to engage employees in participation in changes in the structure of the organization and within the organization. However, for bargaining to function in this sense, management must take a strong position and demand *quid pro quo* for the various benefits which ultimately will be negotiated. While management may argue that its authority is undercut by the union's appeal to the legislature and other branches of the executive, I would contend that the fault lies not with the bargaining construct or with the union which is exploiting an obvious weakness, but rather with the city which has failed to rationalize authority for bargaining within the government.

Police unions will likely become more active in legislative and elective politics. While some may object on the grounds that they consider the message the police preach to be inimical to their own perception of the well-being of society, we must remember that this is not a proper test of the right to free speech. Rather, we must strengthen the channels by which other minorities may communicate with their potential constituencies.

Police unionism, because of the nature of the organization of the employer side of the market, will tend to be most potent at the local rather than the national level, thus lessening the potential differential impact of national as opposed to local organizations. Should federal funding change the structure of the delivery system of law enforcement services, I would

alter this conclusion.

George Stigler, the noted economist, has said that it is a venerable tradition to judge public policy by its intentions rather than its achievements but that, venerable tradition or not, it is a tradition ill-suited to the formulation of intelligent public policy.

This admonition is particularly relevant to the determination of the proper response of public officials and police agency administrators to the challenge of police unions. Many of the 50 states have yet to take a clear-cut stand on the protected right of police employee organizations to be recognized and to bargain collectively with the city. A generation of police executives and supervisors must be educated in the practice of personnel management when dealing with an employee organization and organized employees.

There has been sufficient experience with police unionism and collective bargaining to allow the systematic collection of facts so that we may attempt answers to several of the unanswered questions:

- a) what has been the actual impact of police unions on the three areas discussed above—empirical research is needed;
- b) does the type of police-only employee organization affect bargaining or the potential for change;
- c) can we distinguish among the various alternative structures of bargaining (from city autonomy to agency autonomy) as they might alter the impact of the union on management's ability to manage;
- d) will splinter groups from the left or right have an impact—will this impact fall within or without the structure of bargaining;
- e) should there be any limits on the scope of collective bargaining;
- f) should supervisory employees be allowed to organize and bargain;
- g) is compulsory arbitration of new contract conditions necessary in the protective services or will fact finding and advisory arbitration with optional prior agreement to accept the terms as binding suffice;
- h) to what extent should police employee organizations be allowed to participate in elective and legislative politics?

FOOTNOTES

- ¹ For example, doctors in New York City employed by the city and attorneys in Milwaukee, Wisconsin, employed by the city have organized for the purpose of collective bargaining.
- ² This model has been articulated in seminars, lectures, and several mimeographed papers "for circulation only."
- ³ In fact, if we were to raise the education and skill requirements for the job of patrolman and not also expand the responsibility, authority, and discretion, the change might be self-defeating, given what we know about the dysfunctional aspects of upgrading personnel in a constant environment. See, for example, McGregor (1958) and March and Simon (1958). For a general discussion of police personnel problems and police unions, see Juris (1969: 311-320).
- ⁴ Professionalism is a difficult concept to grasp. We are conditioned to respond to the term as it is applied to medicine, law, and the ministry where it connotes intellectual training at a high level, specialized knowledge, practicality, self-organization, altruism, and an ethical code (see Kleingartner, 1967: 1-22). As applied to police, professionalism connotes occupationalism in the sense that a machinist refers to himself as a professional. This concept connotes minimum hiring and training standards and a commitment to excellent performance. One is entitled to be somewhat suspect of the commitment of police executives to professionalization in the former sense when one considers that at the executive level there are no nationwide minimum promotional standards, no specified training, and no lateral entry except at the level of chief or patrolman. Readers interested in this area would be well advised to read all of Kleingartner (1967), not only for content but also for the wealth of references. A more recent empirical study embodying these principles is found in Kleingartner (1969).
- ⁵ For a discussion of this point as it might apply to the private sector, see Stern (1964).
- ⁶ For an excellent discussion of this issue, see Anderson (1970: 259-283).
- ⁷ From a legal point of view: *Georgetown Law Review* (1968); from an operational point of view: Mondello (1970).
- ⁸ I am indebted to Herman Goldstein for his pointing out the need to highlight this issue within the context of elective politics.

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