

# PERSONALLY SPEAKING

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## **PUBLIC-SECTOR COLLECTIVE BARGAINING: A RIGHT OR A CONSPIRACY?**

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*Permission to quote is hereby granted provided the source is acknowledged.*

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The right to form a union derives from the more fundamental human right to form an association of like-minded persons that in turn is based on the social nature of all human beings. The right of association is not an absolute right, otherwise society would be powerless to restrain groups such as street gangs, cartels, pirates, and conspiracies. The right to associate therefore is a limited right.

The right to bargain collectively is embedded in the Wagner Act of 1935 that requires the employer to bargain in good faith with the union as the representative of the employer's workforce. The union becomes the lawful representative of the workforce through a certification election that is supervised by the National Labor Relations Board. A decertification election allows the workers to remove a union that previously was certified as their lawful representative.

In the end the real power of the union derives from its willingness to strike. This power is balanced by the employer's real power to lock out the workers. Collective bargaining is intended to avert those extreme measures.

Since it originates in the right to associate, collective bargaining is not an absolute right. It may not be used to destroy the employer. A union clearly cannot justify imposing wages, hours, and working conditions on the employer that have the effect of forcing that employer out of business. Common sense alone would dissuade a union from destroying the employer who provides the jobs its members depend on, though in the heat of the moment common sense might not prevail.

Similarly an employer cannot justify initiating action to bust the union even when it is able to find and hire replacement workers. Otherwise no union could survive unless it were willing to subordinate itself to the employer, to become a company union, a union in name only.

The right of unionized public employees to bargain collectively is today's hot-button issue. This right plainly is not an absolute right. It depends on the restraints the union is willing to impose on its own activities. Principally this means that it must not bargain in a way that

contributes to a fiscal crisis. It may not persuade a public executive – perhaps by offering support in the next election -- to sign off on an agreement that imposes unreasonable burdens on the taxpayer to pay the costs of whatever benefits are specified in that agreement. Though such an agreement may not meet the legal requirements of a conspiracy, it borders on conspiracy in that it uses *questionable* means to achieve a lawful end.

The union has no right to subordinate the interests of the taxpayer to its own interests. The interests of the two are bound together and neither one has the right to destroy or subordinate the other. If the taxpayer acting through the legislative process breaks that bond by threatening to limit the scope of collective bargaining or removing it entirely the union can respond with a work stoppage. If the union breaks that bond by imposing unreasonable burdens on the taxpayer the taxpayer can appeal through legislative action. This is what is happening today in Wisconsin and appears to be unfolding in other states.

Amid all of the heated words and rhetoric on the street and in the media, cooler heads must prevail. It is the duty of the legislative body working with the public executive to sort through the difficult issue as to when a collective bargaining agreement involving public employees imposes an unreasonable burden on taxpayers and how best to resolve the thorny issues involved. This work cannot be done when legislators deliberately absent themselves from the legislative process.

A remedy must be reached that falls in the golden mean between the extremes of protecting full collective bargaining rights on the one hand and tearing up those rights on the other. Here's a suggestion that could work as a temporary remedy. *Suspend collective bargaining rights* until cooler heads in the legislature, executive, and unions are able to fully address the budget crisis including any unfunded liabilities in public pensions and health insurance. *Restore those rights* when the crisis has passed and economic conditions allow the executive to be more accommodative to the needs of public employees without imposing unreasonable burdens on current and future taxpayers.

Wisconsin historically has been at the forefront of worker rights. The state can reassert its leadership in this domain if it can amicably find the elusive golden mean. Cooler heads must prevail.

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