

1982-97 State and Local Government Work Stoppages and Their Legal Background

Legal or not, State and local government workers' strikes have occurred over the years—some fairly early in the Nation's history.

MICHAEL H. CIMINI

Unions or employee associations represented about 6.4 million State and local government workers (43 percent) in 1997. They received collective bargaining rights through a patchwork of laws, administrative decisions, and court cases. The decisions to allow public sector employees to organize and bargain collectively came through a conscious weighing of benefits and costs associated with bilateral negotiations. Even in those cases where public sector employees have been given the legal right to join unions and bargain collectively, there are important differences in governments' willingness to tolerate strikes and disruptions of public services.

The following article details various aspects of work stoppage activity in State and local government from 1982-97. The data come from the Bureau of Labor Statistics' work stoppage series, which covers all strikes and lockouts idling 1,000 or more workers. In the following discussion, the terms "work stoppages" and "strikes" are used interchangeably.

Legislative background

In 1926, railroad workers were given the right to organize, join labor organizations, and bargain collectively under the Railway Labor Act. Airline employees were covered under the act in 1936. All other private sector nonagricultural workers were given similar rights in 1935 under the National Labor Relations Act. Subsequent labor laws, such as

the Labor Management Relations Act of 1947, reinforced those rights. But Federal law did not guarantee collective bargaining rights to State and local government employees.

This does not mean that State and local government employees did not organize. Teacher associations were first formed in the 1850s, and police and firefighter unions in the 1880s, but they were unsuccessful in gaining collective bargaining rights.

Although some local government workers—such as municipal employees in Philadelphia, Pennsylvania—were covered under collective bargaining agreements as early as the late 1930s, unionization in State and local government did not blossom until the 1960s and 1970s after President Kennedy issued Executive Order 10988.¹

Even though the Executive Order only directly affected the Federal sector by guaranteeing to unions of Federal government workers certain rights of organization, consultation, and processing of grievances, it stimulated the drive for unionization among State and local government workers. Following its issuance, States adopted a variety of legal authorizations for dealing with organizations of public employees. The most notable development was the enactment of laws in a majority of States that relate to collective bargaining. Some laws were comprehensive, broadly covering all classes of employees, defining the scope of bargaining and establishing administrative machinery to support labor-management arrangements. Others dealt only with specific groups of employees such as police, firefighters, or teachers. There were variations in the status accorded collective bargaining—mandatory in some instances, permissive in others, and with "meet and confer" provisions in still others.²

Michael H. Cimini is an economist in the Division of Compensation Data Analysis and Planning, Bureau of Labor Statistics.
Telephone (202) 606-6275
E-mail: Cimini_M@bls.gov

Collective bargaining laws³

About two-thirds (10.3 million) of the Nation's State and local government workers were employed by States with public sector collective bargaining laws during 1994-96. About three-fifths of these workers were covered under collective bargaining contracts. In contrast, in States where collective bargaining laws were not in place, only one-fifth of State and local government workers were represented by a union or employee association.

State government employees. Of the 50 States, 26 have granted State employees unqualified collective bargaining rights. Two other States have enacted laws granting their employees the right to bargain over working conditions. Together these 28 States employed 3 million State workers, 49 percent of whom were covered by collective bargaining agreements during 1994-96. (See table 1.) During 1994-96, in the remaining 22 States which do not guarantee collective bargaining rights, unions or employee associations represented only 15 percent of the 2.1 million State workers.

Local government employees. Of the 50 States and the District of Columbia, 28 permit all local government employees to have collective bargaining rights. (See table 2.) Nine additional States have enacted collective bargaining laws that cover only certain types of local government employees—usually teachers and to a lesser extent public safety workers. Of these 37 States, 2 have “opt in” laws, which allow local governments the option of having their employees covered by prevailing public sector collective bargaining laws; and 1 has an “opt out” law, whereby local governments are covered under the law unless they specifically declare that they do not want to be.

Fifty-eight percent (6.1 million) of the local government employees in these 37 States where employees have bargaining rights were covered under a collective bargaining contract. In contrast, only 25 percent of the 2.5 million employees belonged to unions or employee associations in the remaining States where there are no State guaranteed bargaining rights or where employees enjoy bargaining rights only because of local ordinances.

Right to strike

Legal or not, State or local government workers' strikes have occurred over the years—some fairly early in the Nation's history. In 1835, municipal workers in Philadelphia conducted one of the earliest recorded work stoppages (over demands for a shorter work week). The first recorded teachers' strike occurred in Pennsylvania in 1880, when eight teachers went on strike for an advance in wages. Furnace attendants in New York City engaged in strike activity in 1886, 1887, and 1893. Garbage- and ash-cart drivers in New York City walked off their jobs in 1888 because they had not been paid. Clerks in the Relief Bureau of Johnstown, Pennsylvania, struck over a wage cut in 1889.

Policemen in Ithaca, New York, also went on strike over wages in 1889. And firefighters in Tampa, Florida, walked off their jobs in January 1903 because of “personal abuse.”⁴

Until the 1960s, State legislatures generally prohibited strikes by State and local government workers. By the mid-1990s, however, 10 States had statutorily granted the right to strike to public employees.⁵ Even in these States though, the right is limited to prevent threats to public safety, health, or welfare, and must be preceded by certain pre-strike actions. Limitations on the right to strike in the 10 States are as follows:

- Alaska—strikes are prohibited for law enforcement and firefighting personnel, correctional employees, and hospital workers. Employees working in public utilities, snow removal or sanitation jobs, and public schools and other educational institutions are permitted to strike unless that action threatens public health, safety, or welfare.
- Hawaii—strikes are prohibited if certain pre-strike procedures are not followed (impasse procedures have not been followed, dispute has been submitted to arbitration, 60-day cooling-off period after fact-finding report is issued has not elapsed, or 10-day notice of intent to strike has not been given).
- Illinois—strikes are prohibited by security employees, State law enforcement officers, and State firefighters. Strike action conducted by other public employees is lawful if: Employees are represented by an exclusive bargaining agent; the collective bargaining agreement has expired or it does not prohibit striking; the parties have not agreed to submit the dispute to final and binding arbitration; neither party has requested mediation; and the 5-day notice of intent to strike has elapsed.
- Minnesota—strikes conducted by essential employees are prohibited. Strikes conducted by non-essential employees are lawful if their contract has expired; a mandatory mediation period has been completed; and a strike notice has been issued.
- Montana—strike action by nurses is allowed after the 30-day advance strike notice elapses, unless there is another strike at a health care facility within a 150-mile radius.
- Ohio—strikes by public safety personnel are prohibited. Strike action by other public employees is allowed if impasse has not been resolved and the 10-day strike notice has elapsed.
- Oregon—strikes by police, firefighters, and prison or hospital guards are prohibited. Strike action by

other public employees is permitted if mediation and fact-finding procedures have been completed, 10-day strike notice has elapsed, and a 30-day cooling off period has elapsed since a fact-finding report was issued.

- Pennsylvania—strikes by prison and mental hospital guards and court employees are prohibited. Strikes by other public employees are allowed after mediation and fact-finding are completed.
- Vermont—strikes by State employees are prohibited. Strikes by municipal employees are prohibited if they endanger public safety, health, or welfare; occur within 30 days of a fact-finder’s report, after the parties have agreed to arbitrate the dispute, or an award has been issued.
- Wisconsin—strikes by State employees are prohibited. Municipal employees may strike under mediation-arbitration procedures if both parties withdraw their final offers, or the union gives a 10-day strike notice to the State Employment Relations Commission and the employer.

In general, the courts have held that State and local government employees lack the right to strike in States that do not have right-to-strike laws on the books. No-strike laws are in effect in 38 States.⁶

Work stoppage activity

Collective bargaining activity for major contract expirations or reopenings (those covering 1,000 or more workers) in State and local government agreements from 1984 to 1996—from the earliest year these data were available to the latest year—are shown in table 3. The number of workers covered under major collective bargaining agreements rose steadily over the period. There was considerable variation in bargaining activity from year to year. It was heaviest in 1985, 1987, 1991, and 1995; and was relatively light in the remaining years.

Major work stoppage data (strikes or lockouts idling 1,000 or more workers) from 1982, the earliest year these data were available, through 1997 are shown in table 4. Over the 1982-97 period, there were 116 stoppages, idling 627,750 workers and accounting for 5.4 million days of idleness. One general observation emerges from a review of the tables: The lack of synchronization between bargaining activity and the occurrence of work stoppages. Some

light bargaining years had heavy work stoppage activity and vice-versa.

Level of government

Except for 1994-95, local government employees engaged in far more work stoppage activity than State government employees. (See table 4.) Approximately four-fifths of all strike action took place at the local level. The predominance of work stoppages by local government workers might be expected because of the larger number of agreements and covered workers.

Government function

Of the major government functions, stoppages in education—primarily involving teachers and other professionals—accounted for roughly three-fourths of all public sector strike activity between 1982-97. (See table 5.) The only other functions that experienced significant strike activity were general administration (12 stoppages, idling 81,500 workers and accounting for 598,000 days of idleness) and transportation (15 stoppages, 53,600 workers and 589,000 days of idleness).

States with substantial work stoppage activity

As the following tabulation shows, California and four Midwest States accounted for the majority of public sector strike activity between 1982-97.

	<i>Number of stoppages</i>	<i>Workers idled</i>	<i>Days of idleness</i>
Total	116	627,750	5,420,600
Five State total	72	432,500	3,983,800
California	25	137,900	659,200
Illinois	12	161,600	1,786,100
Michigan	15	55,300	786,700
Ohio	11	31,600	199,900
Pennsylvania	9	46,100	551,900

These five States have comprehensive public sector labor laws, which taken together grant collective bargaining rights to all public employees with minor exceptions. These laws generally give public employees the right to bargain over wages, hours, and other conditions of employment. Michigan’s laws prohibit public employees from striking. California’s laws do not explicitly grant public employees the right to strike, but court cases have. The other three States allow most public employees to strike, with the general exception of public safety employees. ■

¹ John Patrick Piskulich, *Collective Bargaining in State and Local Government*, New York: Praeger, 1992, p. 31.

² *Brief History of the American Labor Movement*, Bulletin 1000, Bureau of Labor Statistics, 1976, pp. 46-47.

³ Information on collective bargaining laws are taken from "Public Employees Bargain for Excellence: A compendium of State Public Sector Labor Relations Laws," Public Employees Department, AFL-CIO, 1997, pp. 1-2.

⁴ David Ziskind, *One Thousand Strikes of Government Workers*, New York: Columbia Press, 1940, pp. 20, 33-35, 54, 73, and 83; Morris A.

Horowitz, *Collective Bargaining in the Public Sector*, New York: Lexington Books, 1994, p. 15.

⁵ In addition, courts in California, Idaho, and Montana have held that public employees have a right to strike, even though there are not right-to-strike laws on the books in these States.

⁶ B. V. H. Schneider, "Public-Sector Labor Legislation—An Evolutionary Analysis," *Public Sector Bargaining*, second edition, Industrial Relations Research Association, Washington, DC: Bureau of National Affairs, 1988, pp.201-202.

Need Timely data from BLS?

Users of data from the Bureau of Labor Statistics can request a fax of news releases, historical data, and technical information 24 hours a day, 7 days a week from the Bureau's fax-on-demand system.

News releases of major economic indicators are available at 8:45 a.m. on the morning they are released. Other options include tables of historical data (some going back to the 1940s) and technical information about the Bureau's programs and surveys. To obtain data or information from the BLS national office, call (202) 606-6325, or go to a Web site shown on page 25.

To obtain data, use a touch-tone telephone and follow the voice instructions for entering document codes and your fax telephone number. The fax-on-demand catalog, containing a list of available documents and codes, can be obtained by entering code 1000. You may request up to four documents with each call. Faxes are sent immediately following the request. If your fax line is busy, the system attempts to send the requested material four times before disconnecting.

TABLE 1. Union density of State government employees by State, 1994-96 average

State	State has a collective bargaining law	Number of employees ¹	Union density ²
Alabama	-	94,700	28.5
Alaska	X	23,200	61.1
Arizona	-	80,400	14.1
Arkansas	-	77,900	13.8
California	X	454,300	55.7
Colorado	-	65,500	16.4
Connecticut	X	64,400	75.3
Delaware	X	29,700	38.5
Florida	X	208,000	73.2
Georgia	-	159,600	14.6
Hawaii	X	55,400	71.4
Idaho	-	35,800	17.9
Illinois	X	183,300	43.1
Indiana ³	X	96,200	20.5
Iowa	X	80,800	19.8
Kansas ³	X	75,300	14.4
Kentucky	-	89,300	15.3
Louisiana	-	110,200	18.2
Maine	X	25,000	61.2
Maryland ³	X	108,500	34.0
Massachusetts	X	100,700	58.4
Michigan	X	159,500	52.9
Minnesota	X	92,200	61.1
Mississippi	-	68,000	11.8
Missouri	-	123,400	16.4
Montana	X	25,400	47.3
Nebraska	X	38,400	28.1
Nevada	-	26,500	30.6
New Hampshire	X	17,500	55.6
New Jersey	X	123,300	64.1
New Mexico	X	62,900	17.4
New York	X	313,200	73.8
North Carolina	-	142,000	16.7
North Dakota	-	19,200	23.9
Ohio	X	129,000	47.3
Oklahoma	-	82,000	18.9
Oregon	X	71,500	60.4
Pennsylvania	X	152,000	63.4
Rhode Island	X	17,900	68.1
South Carolina	-	121,600	13.3
South Dakota	X	15,600	13.7
Tennessee	-	108,000	16.0
Texas	-	400,500	11.5
Utah	-	58,400	20.1
Vermont	X	12,100	45.5
Virginia	-	146,900	7.6
Washington	X	153,000	46.4
West Virginia	-	45,100	14.1
Wisconsin	X	108,400	39.9
Wyoming	-	15,900	14.3

¹ The number of employees refers to the total number of State employees, regardless of bargaining rights.

² For States with collective bargaining laws, union density refers to the percent of State employees covered by a collective bargaining agreement. For the remaining States, union density refers to the percent of State employees represented by a union. For both types of States, union density

includes representation by employee associations.

³ State granting employees collective bargaining rights by executive order.

NOTE: Dash indicates that the State does not have a collective bargaining law covering State workers.

SOURCE: *Public Employees Bargain for Excellence: A Compendium of State Labor Relations Laws*, Public Employees Department, AFL-CIO, 1997, pp. 3-4.

TABLE 2. Local government employees with bargaining rights, 1994-96 average

State	Number of employees ¹	Employees with bargaining rights	
		Type	Union density ²
Alabama	131,400	None	34.7
Alaska	35,300	All	46.5
Arizona	150,000	None	27.9
Arkansas	68,400	None	20.9
California	1,202,600	All	64.3
Colorado	140,600	None	36.8
Connecticut	112,800	All	70.6
Delaware	10,900	All	46.9
District of Columbia	22,200	All	48.5
Florida	543,500	All	43.4
Georgia ³	248,900	MARTA employees ⁴	17.7
Hawaii	13,400	All	83.7
Idaho	45,500	Teachers/firefighters	30.5
Illinois	426,600	All	56.3
Indiana	168,800	Teachers	36.2
Iowa	103,800	All	47.5
Kansas ³	102,400	Teachers	29.9
Kentucky ⁵	128,400	None	28.2
Louisiana	155,700	None	23.5
Maine	38,000	All	61.4
Maryland ⁶	207,300	Education/park police	61.2
Massachusetts	194,700	All	66.5
Michigan	336,000	All	65.5
Minnesota	206,900	All	64.4
Mississippi	86,500	None	14.2
Missouri	152,800	None	30.9
Montana	34,400	All	44.5
Nebraska	66,300	All	46.3
Nevada	52,600	All	66.4
New Hampshire	43,300	All	55.3
New Jersey	327,800	All	70.6
New Mexico	59,100	All	34.3
New York	912,800	All	78.2
North Carolina	225,800	None	13.7
North Dakota	24,200	Teachers/administrators	30.7
Ohio	414,000	All	67.4
Oklahoma	113,900	Education/police/firefighters	32.0
Oregon	120,500	All	66.6
Pennsylvania	353,800	All	59.5
Rhode Island	32,300	All	80.8
South Carolina	107,200	None	8.1
South Dakota	29,900	All	31.2
Tennessee	180,200	Teachers	24.5
Texas ⁷	1,185,500	None	24.3
Utah	70,200	None	43.7
Vermont	20,000	All	52.6
Virginia	231,700	None	23.4
Washington	196,200	All	59.5
West Virginia	61,200	None	35.3
Wisconsin	219,600	All	66.2
Wyoming	25,800	Firefighters	31.1

¹ Number of employees refers to the total number of local government employees, regardless of bargaining rights.

² For purposes of this table, union density is defined as the percent of local government workers with bargaining rights that are covered by a collective bargaining agreement, or in cases where workers are not guaranteed bargaining rights, the percent of local government workers that are represented by a union or employee association.

³ The State law is optional for local government.

⁴ About 3,000 covered workers are employed by the Metropolitan Rapid Transit Authority (MARTA) pursuant to a State law.

⁵ The State law allows for bargaining rights for employees in

cities with a population of 300,000 or more, or cities opting for coverage for firefighters, or adopting the merit system for police.

⁶ Some counties are excluded from the State law granting collective bargaining rights to non-certified school employees.

⁷ The law virtually forbids collective bargaining for all employees except police, firefighters, and teachers. Collective bargaining for police and firefighters must be approved by a majority of voters in a jurisdiction. Teachers have only consultation rights.

SOURCE: *Public Employees Bargain for Excellence: A Compendium of State Labor Relations Laws*, Public Employees Department, AFL-CIO, 1997, pp. 5-6.

TABLE 3. State and local government workers covered by major contracts¹ expiring or reopening during the year, 1984-96

Year	Major collective bargaining agreements		
	Workers covered (millions)	Expiring or reopening	
		Number	Workers covered (millions)
1984	2.1	-	-
1985	2.2	257	1.0
1986	2.3	205	.6
1987	2.4	287	1.0
1988	2.5	225	.9
1989	2.5	254	.8
1990	2.6	213	.8
1991	2.6	291	1.1
1992	2.7	232	.8
1993	2.7	222	.7
1994	2.8	200	.6
1995	2.8	280	1.4
1996	2.8	216	.7

¹ Major contacts are those covering 1,000 or more workers.
NOTE: Dash indicates that data are not available.

TABLE 4. State and local government work stoppages involving 1,000 or more workers, 1982-97

Year	Total			Local government			State government		
	Number	Workers idled	Days of idleness	Number	Workers idled	Days of idleness	Number	Workers idled	Days of idleness
1982	7	24,300	256,700	5	19,700	224,100	2	4,600	32,600
1983	13	76,600	990,600	10	70,100	843,200	3	6,500	147,400
1984	6	56,700	516,000	6	56,700	516,000	-	-	-
1985	7	55,800	217,200	6	54,800	201,200	1	1,000	16,000
1986	6	32,600	382,800	4	24,200	339,600	2	8,400	43,200
1987	10	86,550	964,500	7	73,950	879,100	3	12,600	85,400
1988	5	15,300	162,800	2	7,400	47,200	3	7,900	115,600
1989	8	43,000	344,300	8	43,000	344,300	-	-	-
1990	8	63,900	371,000	8	63,900	371,000	-	-	-
1991	7	33,300	239,600	6	28,800	226,100	1	4,500	13,500
1992	6	17,700	288,300	6	17,700	288,300	-	-	-
1993	6	20,500	112,100	6	20,500	112,100	-	-	-
1994	10	39,700	235,300	8	18,500	93,400	2	21,200	141,900
1995	8	34,100	181,800	3	7,100	57,800	5	27,000	124,000
1996	6	18,400	133,500	6	18,400	133,500	-	-	-
1997	3	9,300	24,100	2	4,800	19,600	1	4,500	4,500
Totals	116	627,750	5,420,600	93	529,550	4,696,500	23	98,200	724,100

NOTE: Dash denotes no stoppage during the year.

