nergency Is Declared fter Policemen Strike

izens with emergencies and those with priority business lowed on the streets, and all non-vital business places will ed closed during the hours of the curfew.

. We will not cross the pick- re furnishing the city fire usual."

men are frustrated and "are ere they were before they

e, picketers were notified return to work at midnight, ly three strikers would be al- ch facility under terms of the restraining order.

ement between the city and the ociation clearly states the union ave the right to strike. Chancel- ruled yesterday that the strike is

Those names will be hard to forget for the men who walked the picket lines for two weeks.

And there are other memories, for example, of inmates saying they didn't want the guards back, that, only with the guards out of the state's 33 prisons, could they be treated as men. And of striking guards yelling to Muslim prisoners in Elmira: "Hey, come down and have a pork sandwich."

In fact, the bitterness seemed so great at times that state and union officials were holding their breaths while the corrections officers filed back into the institutions and 5,900 National Guardsmen began to pull out.

At one point in the negotiations that final-

Limit Calls To Police, City Asks

City officials today issued for citizens to limit calls t lice Department to emerg make only essential home.

Police Director E said police are askin might be involved accidents to exch and report the "We're goin for assignm

police picketing on promotions

At a noon press conference yesterday, Chandler said the troops would be used "as needed. They will be stationed at the fairgrounds to be deployed if needed. The National Guard will be moved on the premises and not utilized until needed."

At police headquarters only one door to the building was open and citizens were seen angrily pulling at locked doors to the Traffic Violations Bureau (TVB) and other police division offices.

About 75 City Court and TVB clerks honored the picket lines and City Court Judge Robert Willi closed the courts after hearing 22 cases. Love said it was the first time in history the courts had closed due to a

The curfew lawfully on the during the time exists," nor to performance of Shelby County under a plan began patroling cars, and police o cities aided in pat

Barksdale said the on patrol in 12

Guardsmen Called as Police Pic

The strike began afte members rejected the city's in heavy voting yesterday. C reports of scattered vandali patrol cars, with tires being sl being let out of tires at the eas precincts, the walkout was wit dent.

The vote by members of the po ciation was 528-266 by secret ballo ject the city's two-year contract pr David Baker, association presiden nounced after the voting polls closed p.m. yesterday.

After officers on the 4 p.m.-to-midnig shift returned their patrol cars to the pr cincts, police assigned to the next shif

The no-strike clause states, "It is a knowledged by the full membership of the union that the protection of the public health, safety, and welfare demands that the members of the police division not be corded the right to strike or engage in work stoppage, slow-down, or any and similar activities."

ONTRACT DISPUTE

ty police walk off the job

d off the job late last night contract negotiations with a unanimous strike vote by of the International Brotherofficers.

nt personnel — 25 lieuten- are operating the

The union turned down the city's final offer Friday and the City Council rejected the union's final offer yesterday. Last night 110 union members voted to walk off the job immediately and the entire mem around

Salaries and educational pay have been the major areas of dispute during several weeks of negotiations.

salaries range from $15,782 to ually, but Thomas said the actual ing benefits to the city is some per employee.

fered an 18-months contract with guaranteed salary hike, plus up to e based on performance.

anted a three-year contract with lary hike effective July 1, and 11 and 1982.

the city has suggested some plans that could be de-

veloped through negotiation. He emphatically denied the union's charge that performance evaluation would consider numbers of tickets issued and arrests made.

But Pars quoted acting Police Chief James Gruno as saying — at the bargaining table — that a good supervisor would look at an officer's arrests, tickets and miles driven and know whether he had a officer.

Pras said overtime pe tion, with the city offer half to sworn officers emergency — but not ees. That is unacceptable, said.

City Administrato that the strike was put a contingency officers getti

e strike, incident follows

shots at a police oday, less than 12 licemen unpinned and hoisted picket ike for more pay. licemen at the sta- y left their picket the shooting began arrest three young

earlier incident, an otorist ran over two policemen. fficials have pledged strike will not lead to a lawlessness. than 90 per cent of the ember force struck Mon- after the San

Officers inside the station shut off all lights, and police picketing outside discarded their signs and joined in a chase of three teen-agers who fled on foot to an auto, officer Jim Cannon said.

One of the fleeing men was wounded in the foot before the three were arrested and booked for investigation of attempted murder and assault on a police officer, Cannon said.

The three were identified by police as Terrence Ng, 19, Calvin Woo, 18, and Mike Ming Loo, 19, who was treated at hospital) for a foot wound. He said striking police

night that there was no indication of a noticeable upswing in cr in this city of 677,000.

The po manding salaries visors per c Ci 13 da v

is de-

is operatit

police vote on contra

Bruno said he would not endorse a contract in which amnesty was not granted for strikers involved in acts of vandalism, threats or criminal acts during the walkout.

"I didn't know that the city was

Meanwhile, city firefi reported at work as usual their contract ran out at Friday. Police pickets had in front of fire stations yesie About 1,100 of the city's

Strike over, but not soon forgo

"They are restrained from striking it's a little less harsh than an order back to work."

Lewis declined further comment, citing judicial ethics. "It would be better if I make no further comment on the ruling made in court," Lewis said.

Besides ordering the reduction eting activity, Lewis ord lice union official a.m. toda

tion, thus draining car batteries, officials said.

"Some of these vehicles are blocking ingress and egress to police precincts, thus making it difficult for personnel to response calls," one affidavit

ffidavit, John Molnar, depu said that only 250 men are icing duties, and that most n on duty for more than h will be effective until ng by Chandler, stipu shall be on the streets

phis from Washington yesterday, said the guardsmen would remain on standby until called. "We want to make sure that the people are protected," the state adjutant general said.

"At this point everything has been orderly and we do not anticipate any problems at this time . . . Whatever happens we will be here to protect and to preserve the safety of people in Memphis."

He said the guardsmen would probably help in directing crowds at Graceland and forcement authority into

Lewis also ordered no hi trances or exits from any e Yesterday's court hearing ed in Lewis' ruling, was not any union officials. Instead, th represented solely by Thompso the chancellor he had not had troops will not be committed in upon their arrival. We are waiti what happens in the (Chance hearing. The injunction will

dge orders police back to work

y picket lines at the entrances. rts were closed yesterday as kers in the court clerk's office police picket lines set up

the hearing, Lewis expres police to return to work, but indi- ere was no order for them to do so. til late this afternoon. "It is 312 coming by convoy," he said. om Camp Shelby and many of them an, said if the two battalions are police, it would be the first time

"The court feels that something must be done to preserve order in the city," Lewis said. "We're confronted with a strenuous situation."

Clifford Edwar submitted two Police Direc- charging that les used for po- keys locked inside and lights emergency equipment in the "on" posi-

After the court hearing Thompson would not say why Baker and other union officials were not in attendance, and he declined to say where they were.

However, he said he would meet with immediately upon leaving the court-

be prepared (by setting a hearing at 10 a today)," said Thompson. "We hope quickly as possible to end this contro sy."

During the hearing, Thompson sai clients "do not agree (with the city' tention) that they did anything to the strike. In fact, we plan to show the contrary was true."

National Guardsmen arr p.m. yesterda troops were and equipped to assume the duties ing the city.

pumped into any container exce oline tank of a motor vehicle; t son may transport gasoline or products through the city, a loaded firearms will be allo with legal authorization.

At 2 p.m., Molnar said, t vehicles operated by the loaded from 28 to

Police Defying Court Order

to go back to work, and all refused.

At the South Precinct about 30 or 40 officers wandered around the building with about 6 men carrying picket signs. They said they had not heard from Baker.

At the North Precinct, officers said, "We're on strike, that's all we're going to say." Officers there stayed off the job also.

Late last night guardsmen, activated by Gov. Ray Blanton, were still stationed at the Mid-South Fairgrounds preparing to assist nonstriking police supervisors in attempting to maintain order in the city from their

tion at Millington

nel to ba

Yesterday, the first day of the police strike, went without serious incident as Shelby County sheriff's deputies joined nonunion police captains and lieutenants in patroling the streets. Police reserves did not work.

Chandler said the Tennessee National Guardsmen, including many ordered into the city from their

Memphis police work last night, d order to end their National Guardsm control, stood rea of patroling the s The temporary re by Chancellor Geo technically ordered to work

FBI LAW ENFORCEMENT BULLETIN JANUARY 1981

FBI LAW ENFORCEMENT BULLETIN

JANUARY 1981, VOLUME 50, NUMBER 1

Contents

THE COVER: Police job actions nationwide receive media attention.

Federal Bureau of Investigation
United States Department of Justice
Washington, D.C. 20535

William H. Webster, Director

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Editor's Note

This issue of the Law Enforcement Bulletin concerns police labor relations. It includes an article by the Assistant Secretary of Labor for Labor-Management Relations who has addressed the FBI's National Executive Institute on this subject, an article by a sheriff whose department experienced a strike, an article from the viewpoint of a police union leader, and presentations by members of the faculty of the FBI Academy that specialize in the labor relations field.

Our purpose is, in the words of the Santa Barbara County Sheriff, to help the police manager, if his department faces a job action, meet the goal of having "an effective organization with good working relationships when the strike is over." Police managers must work within the law in handling a labor dispute, but they have the obligation of providing essential services to their communities while keeping in view the long range objective of preserving the department.

The FBI is not making any value judgments on the larger issues that are implicit in this field—the right to strike versus the public's right to police protection. These are issues of conscience that each police manager and officer must address.

Should Police Be Permitted to Organize and Bargain Collectively?

By WILLIAM P. HOBGOOD
Assistant Secretary of Labor
Labor-Management Relations
U.S. Department of Labor
Washington, D.C.

Should police be permitted to organize and bargain collectively with the cities, counties, and States that employ them?

This question can stir up a lively debate. Some people contend that the nature of police work and the responsibilities it entails are incompatible with union membership and collective bargaining. Others argue that police officers—like other wage earners—have a right to be represented by organizations of their own choosing when decisions are made that vitally affect them and their families.

However, this debate is largely philosophical, because in reality, police officers do join and are represented by unions (or organizations that function as unions although they may call themselves something else). Not only do police officers join unions, but available statistics indicate they are more likely to do so than public employees in general. And public sector employees, in turn, are more likely to belong to a union than are employees in the private sector.

Mr. Hobgood

"Not only do police officers join unions, but . . . they are more likely to do so than public employees in general."

Overall, fewer than one American worker in four is a union member, but almost 50 percent of all State and local public employees are organized. And more than half (53 percent) of all State and local police belong to employee organizations, with the figure being even higher (58 percent) for municipal police. Given these facts, the interests of the public and the police are best served by seeking ways to make collective bargaining function fairly and effectively for law enforcement personnel.

It would be unrealistic to assume that all the principles and practices that have evolved over the years in private sector collective bargaining can be grafted to the public sector. The threat to public safety that results from a police strike, the paramilitary nature of police organizations, the laws that govern labor-management relations, and the source and control of the money that pays employee salaries and benefits are just some of the obvious and significant differences between negotiations involving police and bargaining in the private sector. But these differences should not be permitted to obscure the fact that public and private sector bargaining have a great deal in common and that lessons learned in one can often be applied to the other.

Police officers, factory workers, or office clerks organize for the same basic reason—they want, and believe they have a right to, a voice in determining their pay and working conditions. They want a union to represent them aggressively and effectively on economic issues. They expect their union to give high priority to obtaining more pay, better fringe benefits, greater job security, and improved working conditions.

Dissatisfaction with wages and other economic benefits remains the primary driving force in most union representation campaigns. However, that is not the only reason workers join a union, nor is it a union's only appropriate function.

Employees also look to their union to assure them fair treatment on the job in such matters as opportunity for advancement, amenities provided in the workplace, breaks, and similar issues. Even the appearance of favoritism or unequal treatment can be demoralizing and disruptive. A negotiated grievance procedure gives employees an opportunity to air their complaints and get a fair hearing on them.

In addition to their traditional interest in bread-and-butter issues, employees want to play a bigger role in on-the-job decisionmaking. Education levels are rising and employees have more than time to contribute to the workplace. They have ideas and enthusiasm; they want to express their views on how their jobs function and how they are structured.

Some managers, in government and industry, are alarmed by this trend. They see it as a threat to their authority, as an attempt to usurp management prerogatives, as interference with their right and responsibility to manage their operations as they see fit. These concerns are especially evident in law enforcement organizations where there is a quasimilitary command structure and the nature of the work demands strict discipline and adherence to orders.

Although these concerns are understandable, participation of employees in decisionmaking on the job does not have to challenge or conflict with management's right to manage. Neither the factory worker in the middle of a production line nor the police officer on riot patrol is in a suitable place to launch a debate on the best way to get the job done. But through the collective bargaining process, both can get their views heard in an orderly and constructive manner.

Morale and productivity are better in organizations where employees believe they have an opportunity to communicate their opinions and ideas to management. This is true regardless of the function of the organization, and good managers recognize, respect, and seek to accommodate this desire. To date, collective bargaining has become the most effective means of accomplishing this.

Some organizations use a variety of alternative methods to obtain the views of their employees and to give them a voice in decisionmaking. But these methods share a common and often fatal weakness—they can be withdrawn unilaterally. Without a collective bargaining relationship, they smack of paternalism and employees tend to distrust them.

The adverse aspects of collective bargaining have been overemphasized. It has the flexibility and capacity to serve as the framework for a cooperative approach to problem solving, as well as a means for resolving conflict.

One of the most significant and encouraging developments in private sector labor-management relations in recent years is the growing interest in what (for want of a better term) is called third-party participation. These third parties are not mediators or arbitrators. They are representatives of groups that don't normally participate in contract negotiations but that have an interest in the problems and issues that concern labor and management. The third party may be the public, the government, or some special interest group, and there may be more than one third party involved in the process.

"... the interests of the public and the police are best served by seeking ways to make collective bargaining function fairly and effectively for law enforcement personnel."

The third-party approach recognizes the fact that many issues which impact heavily on labor-management relations can't be solved at the bargaining table. It is an effort to expand the concept of collective bargaining, however, not circumvent it.

In the private sector, tripartite committees composed of representatives of labor, management, and government have been set up in the steel and auto industries, among others. These groups are looking into such issues as competition from foreign imports, the impact of environmental regulations, and the need for tax writeoffs to spur investment in new plants and equipment.

The public sector also has its share of problems that affect and complicate collective bargaining but can't be solved by unions and management at the negotiating table. One of the most familiar involves taxes and operating budgets. Tax policy and tax rates can't be set at the bargaining table, and government managers who do the negotiating rarely have the authority to increase taxes or otherwise raise revenues to cover the cost of a new contract.

As a result, contracts that have been agreed to by management negotiators may subsequently be rejected by a legislative body or an executive officer, either by refusal of the appropriate official to sign the agreement or failure to provide the funds required to implement it. Nothing could be more destructive to the collective bargaining process or stable labor relations.

A case can be made for the argument that legislators or executives who have the authority and responsibility to set taxes should play a role in the collective bargaining process. Playing a role in the process does not necessarily mean getting directly involved at the bargaining table. It does mean, however, that the involvement must come at some point before a contract has been negotiated and agreed to by labor and management.

There is something to be said as well for finding ways to involve representatives of the public in the labor relations process. Determining where and how these groups—and perhaps others—should fit into the process is not an easy matter. Different approaches may be required at different levels of government and for different agencies. The process of collective bargaining is not an exact science; it inevitably involves considerable trial and error.

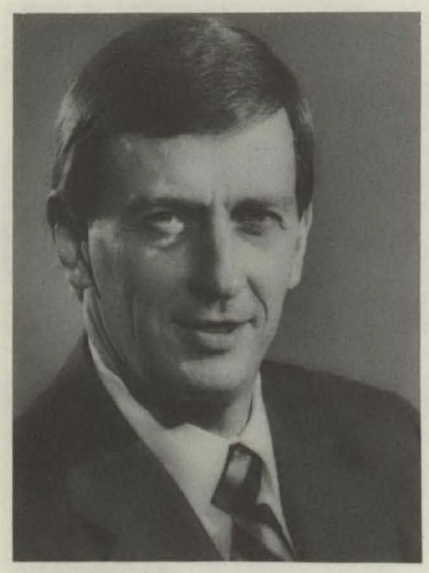
In the private sector, some of the Nation's biggest unions and most important industries are experimenting with new ideas in cooperative problem solving. They are demonstrating that tripartite or third-party approaches to labor-management issues and problems are compatible with and can strengthen traditional collective bargaining relationships.

A similar willingness to seek innovative solutions to problems of mutual concern is needed in police and other public sector labor relations. Collective bargaining has the ability to adjust to and deal with the economic and political realities of the public sector. That ability, coupled with the generally favorable climate for building third-party processes into the system, offers public managers an opportunity to improve labor-management relations that they should welcome. **FBI**

MANAGEMENT

By WALT H. SIRENE

Special Agent
Management Science Unit
FBI Academy
Quantico, Va.



Special Agent Sirene

Employee organizations are made, not born. Rarely does the seed of organized labor sprout in a well-managed organization which has as one of its major objectives the welfare of its employees. Whether intentional or not, the best organizers of labor are managers who, through poor management, lack of concern for legitimate grievances, or plain ignorance, antagonize the workers to the point where their only alternative is to form collectively so as to bargain. It's fair to say that throughout the history of the police labor movement, few police officers promoted unionism as the ultimate solution. Most likely, they were forced to reluctantly change their fraternal organization into a collective bargaining unit.

Police today have even taken a further step. As they become more and more frustrated at the bargaining table, they are turning toward affiliation with the Teamsters and the AFL–CIO to gain power through intimidation, experience in bargaining, and broader financial resources by which to gain their demands. The Teamsters and the AFL–CIO are both making a concerted effort to organize a national police union. This is evidenced by the fact that the AFL–CIO has recently granted a charter to its first police union affiliate—the International Union of Police Associations (IUPA)—to compete with the Teamsters' bid to organize law enforcement. The IUPA already claims a membership of more than 40,000 police officers throughout the country. As for the Teamsters, at least 10,000 police officers are presently members of their locals. Teamsters' officials estimate that they bargain on behalf of 15,000 police officers in approximately 225 municipalities.[1]

In the 1980's, the question is posed, "How can this occur?" Can we learn from the history of law enforcement labor relations or must we repeat the mistakes which have been made from city to city, from jurisdiction to jurisdiction, since the Boston police walkout in 1919. How many times must city officials and police managers be reminded that bad faith bargaining with local, independent police associations will lead to the introduction of organized labor unions in the labor/management equation? On the other hand, how many times must inexperienced members of employee organizations representing their membership in collective bargaining allow emotion to overrule judgment, promoting irresponsible job actions? The prime responsibility for good management of an organization lies with managers, not employees. Therefore, when local employee organizations are formed and subsequently affiliate with organized labor, one usually finds the prime cause to be the outgrowth of a management problem. This article identifies for managers the warning signals which lead police employees to unionize and seek organized labor's influence to force city officials to improve police pay and benefits. The following case study is typical of many cities and depicts why more and more police are joining the Nation's largest labor unions.

Labor's Most Effective Organizer

Case Study

Dellwood, a community with a population of 55,000, has 50 police officers. It is located in the heartland of the United States and has had collective bargaining legislation in force since early 1973. Its law provides a system whereby a State agency certifies a democratically selected "union" or "association" as the employee's sole representative in collective bargaining. In 1973, very few of Dellwood's police officers foresaw the day when they would begin bargaining collectively for wages, hours, and working conditions, let alone be represented by organized labor. After all, they were one of the highest paid departments in the area. Their chief of 12 years was considered to be somewhat autocratic and tough, but he was fair and consistent. Furthermore, he was a pillar of integrity and had established respect and support throughout the community for both the department and himself. This apparently was the lull before the storm.

The chief died unexpectedly, and his successor was a lieutenant with 20 years' experience on the Dellwood police force. The new chief was respected by the department's employees and was dedicated to law enforcement. The employees hoped that an already good situation would improve. This was not realized, however, as communications and morale began to deteriorate shortly after he took office. It became popular in the early tenure of the new chief to refer to the barriers of communication as the "brass walls." Officers began complaining openly that the brass was unwilling to listen to their concerns or grievances.

Another source of dissatisfaction voiced by the officers pertained to the lack of planning and training. They cited the example of the purchase of a new radio system through Law Enforcement Assistance Administration (LEAA) funds. By the time the system was installed and activated, no one had received any instruction on its use, adding to the frustration level.

As unrest increased in the department, neighboring police agencies were unionizing and engaging in collective bargaining. Dellwood's officers repeated, with envy, the rumors about the contract provisions that provided formalized grievance procedures and new financial benefits being obtained by other agencies through negotiations. Needless to say, the stage was set, and Dellwood's officers began talking about forming a union to bargain with the city.

PBA vs. Teamsters

As the concept of unionizing gained momentum, factions developed within the department over who would represent them. Should the Teamsters or the Police Benevolent Association (PBA), which had existed as a social organization in the department for 20 years, be elected as the exclusive bargaining agent? A group of young officers sought Teamster representation, while PBA support came from "the old guard."

A heated campaign preceded the election, resulting in further polarization of the department. Each side developed their arguments:

In Favor of the PBA

1) Better results with local people dealing with local problems;

2) Lower dues;

3) More control over expenditures;

4) More personal relationship between union and management;

5) No conflict of interest when enforcing laws involving organized labor; and

6) More positive image for professionalism.

In Favor of the Teamsters

1) More experience in bargaining;

2) More influence;

3) Management respect for union power;

4) More money, experts, and legal support;

5) Political impact through lobbying and candidate support; and

6) More benefits, such as union insurance programs.

Issues concerning the effect of the Teamsters image on public opinion and the officers' own self-images continued to be mentioned in locker room debates. Officers frequently questioned the Teamster's negative image and asked, "What about *our* image?" The responses heard included, "More police officers are indicted every year than Teamster officials," and "If you want results, choose a union with power. The only union more powerful than the Teamsters is the Soviet Union."

Management's Mistake

The election was held in January 1974, and the PBA won with a 2–1 margin. Out of 40 persons eligible to vote, only 3 voted "no union." In city hall, the chief of police, the city manager, and mayor were quietly rejoicing because the Teamsters lost. They anticipated a local PBA, unskilled in the bargaining process, would be easier to negotiate with and would lack the financial resources to employ a labor consultant, whom they refer to as a "hired gun." The city administration viewed collective bargaining as undesirable, but they were confident they could "win" by outwitting the PBA.

By summer 1974, the first labor contract was negotiated. Personalities aside, the bargaining was primarily a battle rather than a negotiation. Both parties came to the bargaining table ready to reject the others demands and proposals as being unreasonable. By expecting these things and preparing for them, each set a tone which brought about the expected conduct. Neither party wanted to lose, and as a result, a bitter fight or a stalemate usually occurred. Numerous grievances were filed in the next 3 years concerning overtime, court-time pay, and past practice issues which were the product of poorly written contracts. The officers during this period were frequently talking about the city's bad faith in both bargaining and contract administration. The city, according to Dellwood's officers, continually had indicated "there was no more money in the budget," when in fact there was. As a result, Dellwood's police officers were now one of the lowest paid in the area.

By 1977, after three contracts, "teamsters" were saying, "I told you so," and officers who had previously promoted the PBA were now silent.

"The prime responsibility for good management of an organization lies with managers, not employees."

The Weight of Self-Image

When the contract was about to expire, officers supporting the Teamsters obtained over 30 percent of their fellow officers' signatures on a petition to compel an election to determine who would be the bargaining agent for the next contract. Both the PBA and the Teamsters once again qualified for the ballot.

On this occasion, the Teamsters won the election hands down. During this period, there was little discussion regarding the Teamsters' impact on the police public image. As one officer put it, "We just balanced the sensitivity of our image and appearance of professionalism against the desire to make management sit up and listen." In 4 short years, Dellwood's police department had unionized and become affiliated with the Nation's largest labor union. City administrators were at a loss to understand why its police officers had unionized or sought affiliation in organized labor. One thing was certain, they all agreed it wasn't going to be easy to outwit the Teamsters.

Analysis

An analysis of the case study reveals the most common reasons why police unionize and why they eventually become affiliated with organized labor. If management is to be successful in deterring unionization or keeping labor/management conflict at a minimum, they will have to address these issues.

Low Salary

Salary is not generally recognized as a major cause for forming employee organizations. However, salary becomes an employee dissatisfier, if wages and benefits received are not comparable to those of other organizations in the surrounding areas and significantly less than neighboring police agencies. From this dissatisfaction, other employee grievances form, much as electrons around a nucleus. Managers must realize that the true cost of dealing with the union is not higher wages but having to share management practices with the union. Once an employee association is formed, management loses its right to act unilaterally; valuable time must now be spent in negotiations. The real cost then lies in negotiations concerning disciplinary actions, personality clashes, or patrol assignments. When added up, one could argue it would be less expensive to pay the prevailing wage than to bear the expense of shared management. The other benefits of competitive wages are the attraction of better qualified personnel to the organization, a more content work force, the removal of wages as a rallying point, and the belief that management is concerned with the welfare of the worker's families. Adequate compensation for employees should not, however, be construed by management to be merely a cynical process used to buy off employees. It must be accompanied by a genuine concern for the employees' welfare. The concern can be illustrated by periodic wage reviews in order to keep wages in line with the cost of living. Management should also insure that each employee understands what they may be able to anticipate in terms of wage increases so that sound economic planning by the employee can occur. In general, salary can be identified as one triggering cause of employee dissatisfaction; rarely though, does money promote job satisfaction. Adequate compensation is a reflection of management concern for employee welfare. The more management understands the role of money as a motivator, the less salary will be a causative factor in the formation of employee associations. Consider this statement by Gus Tyler in the March/April 1972, issue of *Public Administration Review:*

"Among the first to unionize are the better paid, better situated employees, while the very last to organize are the most deprived and aggrieved. The cycles of unionism seem to come not when a new outrage is perpetrated against employees, but when the class or subclass is ready and times are propitious." [2]

Personnel Problems

Personnel problems are often cited as the "trigger mechanism" in police job actions. Pent-up employee frustrations concerning policies which they consider unfair, poorly administrated by a rotating cadre of managers or administered solely to still dissent, often combine around a single instance. The emotions generated inevitably lead to more serious dissatisfaction, or in the extreme case, a strike. "Each organization should have one person who has direct, personal responsibility for employee relations." [3] If the organization is widespread geographically or relatively large in size, it should have one representative for each precinct or department, as Joseph Latham in *Employee Law Relations Journal* correctly points out:

"The appointment of one person will facilitate development of a rapport with all the employees. He or she should take the time to get to know the employees and to listen to their questions and problems, providing relief for complaints when possible and, when relief is not possible, explaining why.

"In addition, the person responsible for employee relations should:
Train and evaluate supervisory personnel to handle employee relations;

"Once an employee association is formed, management loses its right to act unilaterally. . . ."

Keep informed about local wage and benefit surveys; and
Ascertain that the employer is getting a good compensation package for its money." [4]

A labor relations individual can assist not only the aggrieved employee in reaching a just solution to his problem but also the organization in learning firsthand the type and scope of employee problems. It would seem far better to trade this management prerogative to the employee rather than surrender it later to the labor organizer.

Lack of a Grievance Procedure

Separate from the appointment of one or more individuals to handle employee relations, each organization should have a separate path for employees to air grievances. This more formal path allows employees to present their grievance in the manner of their choice. History is replete with examples of organizations which deemed grievance procedures a sign of weakness. Adoption of such procedures was considered an insult to enlightened management and a right to be denied a mere employee. Such arrogance has lead to the formation of employee associations or unions in a number of organizations in both private and public sectors. Rather than indulge in the belief that grievance procedures are a sign of inherent weakness, management should recognize the necessity of establishing a procedure by which complaints can be heard by managers sympathetic to employee concerns. If organizations do not have such procedures in place, it is logical to anticipate some degree of employee dissatisfaction.

Poor Working Conditions

Poor working conditions are not a concern of a satisfied employee. However, once employees become dissatisfied with other circumstances, poor working conditions intensify discontent. Working hours, poor equipment, fringe benefits, discipline procedures, and the condition of the work environment all influence morale. While it is probably true that poor working conditions will not cause employees to organize, they do become a sustaining factor for employee complaints until a more substantive issue comes along. Of all the expenses incurred by a police organization, the maintenance of good working conditions is minimal. There is little doubt that a poor working environment is a direct reflection of poor management.

Lack of Identity and Recognition

"The desire for self-expression is a fundamental human drive for most people. They wish to communicate their aims, feelings, complaints, and ideas to others. Most employees wish to be more than cogs in a large machine. They want management to listen to them. The union provides a mechanism through which these feelings and thoughts can be transmitted to management." [5]

The police believe they are playing an important role in society, and in return, they are not receiving the compensation or recognition they believe they deserve and the responsibility they want. This belief of nonappreciation can have a far-reaching impact on police work itself. As the police begin to feel less and less important they begin to accept the idea that their's is just another profession, and at that point, the romance, glory, and commitment go out of the job.

Lack of Administrative Leadership

At the 1967 Conference of Mayors, Jerry Wurf, President of American Federation of State, County and Municipal Employees (AFSCME) stated:

> "You (the mayors) represent our best organizers, our most persuasive reason for existence, our defense against membership, apathy and indifference, our perpetual prod of militancy, and our assurance of continued growth . . . . Unions would be unable to sign up a single employee if he were satisfied, if his dignity were not offended, if he were treated with justice . . . ." [6]

Mr. Wurf could also have leveled his charge against some police managers. If organizations lack individuals who exhibit the quality of leadership, again the potential for employee dissatisfaction is increased. Of all organizational problems, this is probably the most vexing. Simply put, the foundation of all leadership is knowledge. Some leadership qualities can be imparted through the process of training, while other more subtle qualities are seemingly genetic in origin and can only be obtained by a careful selection procedure for individuals as managers.

Lack of Internal Communications

No better statement on this problem exists than one made by Commissioner Don Pomerleau of Baltimore:

> "Employee organizations develop many times because we have not established all inclusive and progressive communications. We and our subordinates have not listened, nor have we provided our personnel with a means to seek redress for their real or imagined problems. The old autocratic and dictatorial approach to problem solving has come under severe criticism, and rightly so.
>
> "Opening lines of communication is an effective means of creating a stable labor environment. Communication between the police administrator and his officers give each an understanding of the other's problems. Two-way communication is best facilitated by periodic, informal discussions. An informal discussion offers three decided advantages: officers are able to express their needs and dissatisfactions; more time-consuming and costly methods of achieving changes in employment conditions, such as lobbying and collective bargaining, are avoided; police officers develop a better understanding of management problems." [7]

Suffice it to say, if managers are dedicated to improving channels of communications, the labor relations battle is more than half over.

Organized Labor

Public officials, having ignored the causes of unionization, now maintain that if the police must join a union, they would prefer it to be a local, independent association. The majority of city and police administrators are, therefore, opposed to organized labor's efforts to step-up their drive to unionize the police. Yet, by adopting a win/lose bargaining philosophy that eventually evolves into a losing situation of frustration and job dissatisfaction, management once again falls prey to helping the union in its organizing efforts.

When management fails to negotiate in good faith with a local, independent police association, they invite and are, in fact, the catalyst for its subsequent affiliation with organized labor. The scenario presented in the previous case study is typical of many cities in the country today. Many city officials have been approaching collective bargaining in a negative manner, and a self-fulfilling prophecy results. Good faith bargaining doesn't mean giving in to the union's demands—it does mean attempting to develop an atmosphere of trust and cooperation, opening lines of communication, and working toward common goals where the needs of both parties can be realized. Cities that fail to recognize this basic principle of good faith bargaining push the local, independent police association to their tolerance point. Frustrated with their inability to have the city fathers listen to what they perceive to be legitimate demands, the police look for other alternatives to gain the city's attention. One alternative in such an emotionally tense situation is for the police to participate in some type of job action—a slowdown, speedup, or blue flu. Another alternative, less radical than a job action, is to affiliate with organized labor. The police realize that the power of organized labor is its ability to intimidate the city administration. It is no wonder, therefore, that more and more police are joining the Teamsters and the AFL–CIO in order to "force" cities to listen to their demands and bargain openly. If cities prefer not to deal with organized labor, then they must recognize that the answer to this dilemma is to learn to deal with the local, independent police association in an atmosphere of trust and cooperation, promoting the true tenants of good faith bargaining. It is unfortunate that it often takes an act of intimidation to cause a shift from a competitive or combative approach to collective bargaining to one of collaboration. Needless to say, if management were truly wise, it would direct its efforts toward identifying the cause of unionization and eliminating the need for a union in the first place. **FBI**

Footnotes

[1] Alan Dodds Frank, "When All Else Fails, Call the Teamsters," *Police Magazine,* September 1978, vol. 1, No. 4, pp. 21–34.

[2] Gus Tyler, "Why They Organize," *Public Administration Review,* March/April 1972, p. 98.

[3] Joseph Al Latham, Jr., "Susceptibility to a Successful Union Organizing Campaign—The Seven Warning Signals," *Employee Relations Law Journal,* Autumn 1980, vol. 6, No. 2, p. 231.

[4] *Ibid.*

[5] Dale S. Beach, *Personnel—The Management of People at Work,* 2d ed., (New York: The MacMillan Co., 1970), p. 83.

[6] John H. Burpo, *The Police Labor Movement* (Springfield, Ill.: Charles C. Thomas, 1971), p. 11.

[7] *Ibid.*

The Police Labor Movement

PROSPECTS FOR THE 1980's

By JOHN H. BURPO

Labor Relations Consultant
Combined Law Enforcement
Associations of Texas (CLEAT)
San Antonio, Tex.

The contemporary police labor movement has been traced to the early 1960's. A variety of factors, including greater labor consciousness among police officers, liberalized public sector collective bargaining legislation, and public recognition of the importance of police service in the community, contributed to unionization of police officers. This trend resulted in the emergence of many local, State, and national police labor organizations that represent officers on labor management issues.

As a new decade unfolds, police unionism has attained a measure of acceptance and credibility in law enforcement. This relative success can be gaged by such factors as the large number of collective bargaining agreements between police unions and public employers throughout the country, the development of more enlightened attitudes among public administrators toward police unionization, and the many books, articles, seminars, and symposia devoted to the subject of police unions.

While this success is encouraging, there are also a number of serious problems within the police union movement which, if uncorrected, present a serious threat to the continued acceptance and credibility of police unionization. This article will examine five major problem areas within the police union movement, including ineffective union leadership, public conservatism, fragmented national unionism, police fundraising practices, and use of strikes as a confrontation tactic.

If these problems are not resolved in the 1980's, police unions will face disillusioned members, negative attitudes among management officials, and public condemnation.

Ineffective Union Leadership

Trying to define "effective" or "ineffective" union leadership is an exercise in subjectivity. As one commentator noted, one's viewpoint on this issue is shaded by personal philosophies and vested interests.[1] However, in order to define effective union leadership, one must accept the premise that a union leader's paramount responsibility is to the membership.[2] The police union, like any other interest group, exists for the primary purpose of serving the needs and well-being of its members.

Mr. Burpo

David Callison, former president of the Portland, Oreg., Police Association, best identified the key characteristic of effective police union leadership when he stated that "the essence of . . . leadership (is) to reconcile what is achievable against what may be folly."[3] Implicit in this definition are several criteria of effective union leadership, including:

1) An understanding of labor relations principles—collective bargaining, contract administration, and concepts of trade unionism;

2) Sensitivity to public, political, and membership moods, and the ability to sway those moods toward the best interests of the union;

3) An understanding that the union, whether at the local, State, or national level, is a business enterprise and should be conducted in such a manner; and

4) The ability to analyze labor management situations and determine whether compromise or confrontation is the best course of action.

Illustrations of ineffective union leadership abound. Consider the following examples:

In a well-documented study of police strikes in five U.S. cities, authors William Gentel and Martha Handman identify the lack of expertise and experience among union leaders as one of the primary causes of the strikes.[4]

In the 1979 New Orleans police strike, union officials attempted unsuccessfully to achieve recognition and economic gains through striking during Mardi Gras. The city's hard-line stance, coupled with lack of public support, doomed this confrontation.

Some police unions have engaged in business practices that are, at best, questionable. For example, the Florida Police Benevolent Association and the now-defunct International Conference of Police Associations (ICPA) were cited for improper fundraising tactics during the 1970's.[5] Additionally, the past ICPA leadership has been criticized for incurring a substantial debt prior to that organization's demise.[6]

There are solutions to the leadership problem in the police union movement. Gentel and Handman suggest that union constitutions and bylaws be modified to provide for a minimum 2-year term for union presidents.[7] This proposal has merit since the practice of many unions of 1-year presidencies results in a lack of continuity, and thus, loss of valuable experience when leadership changes.

Another positive suggestion made by Gentel and Handman is for increased labor relations training of police union leaders.[8] It is contended, however, that the standard 1 day to 1 week collective bargaining and contract administration seminars currently available are simply inadequate to provide union leaders with a comprehensive grasp of the complex issues facing them. A more effective training approach might be the creation of a national police labor center where police union officials could be trained in all facets of their job, including collective bargaining, contract administration, business management and budgeting, conducting membership meetings, political activity, and fundraising. This police labor center would be comparable to long term management training programs conducted by the FBI Academy, the Northwestern Traffic Institute, and the Southern Police Institute. It is essential that police unions endeavor to upgrade the quality of their leadership. The failure of union presidents to lead effectively results in chaotic labor management relationships, dissatisfied union members, and public perception of a weak organization.

Public Conservatism

There exists a growing conservatism among citizens in this country. This conservative attitude, as it affects the police union movement, is antilabor, against police strikes, suspicious of police employee productivity, and in favor of reduced taxes and public spending.

While acknowledging the need for substantial economic benefits to reward police officers for performing an important public service, the author is appalled at the continued righteous demands made by police union leaders for "more, more, more" when public sentiment does not support such excessive demands. There is no question that in the 1960's, police economic benefits and working conditions paled in comparison to private sector compensation. During the past 20 years, however, this condition has been remarkably altered, with police benefits and job conditions equaling, if not surpassing, the private sector. It is not uncommon to find police collective bargaining agreements that contain salaries in excess of the local labor market median for blue-and-white-collar workers, liberal overtime benefits, including time and a half compensation and off-duty call-back/court-time minimums of 3 or 4 hours, all forms of incidental direct economic benefits, such as longevity pay, night shift differential, education pay, employer contributions on health insurance premiums, hazardous duty pay, liberal vacation, holiday and sick leave benefits, pension systems that include early vesting, 20-year retirement provisions, and substantial payouts.

The current public outcry for tax relief, combined with the near-universal reluctance of elected officials to increase taxes, requires police union leaders to reappraise their position on benefits. While recognizing that unions must continually strive for fair and equitable compensation for their members, leaders must temper this objective with the understanding that public funds are basically static and must be apportioned to satisfy diverse public needs, that many police officers have, through their compensation package, achieved a standard of living that meets, and in some cases, exceeds their qualifications, and that the public is intolerant of excessive employee demands.

If the police union movement is to remain a strong force at the local, State, and national level, a greater sensitivity toward the conservative forces at work in the country will be required. Ultimately, police union leaders must remember that the strongest support on labor management issues will always be the public. This support will not be forthcoming if unjustified economic demands are made by police unions.

Fragmented National Unionism

Unlike firefighters, who have historically unionized under the AFL–CIO banner, police national affiliations have been fragmented. This fragmentation creates confusion and divisiveness at the national level, reducing the capacity of the police union movement to make any impact on issues and laws affecting law enforcement on a broad scale.

At any gathering of police labor leaders, conversations invariably turn to a common vision—police officers united into one national police union. As a new decade begins, however, this vision appears unattainable. The reality of the police labor movement today is that no one national labor organization, either today or within the foreseeable future, is likely to emerge as the one spokesman for all police officers. This assertion is based upon the divergent, incompatible philosophies of each national organization and the commitment of each group's leadership to sustain those philosophies. Consider the following national organizations:

1) *The International Brotherhood of Police Officers (IBPO).* The IBPO, formed in the early 1960's, is oriented toward complete organizational control at the national headquarters in Boston.

All dues are sent by locals to the International. The International then either provides labor relations services directly or authorizes regional staff representatives to perform the service. This arrangement is in contrast to the many independent local and State labor organizations (i.e., unions not affiliated with IBPO) that maintain major control over dues for union services. The IBPO has an office in Washington, D.C., out of which lobbying activities in Congress are conducted.

2) *The Fraternal Order of Police (FOP).* The FOP was for many years considered a police social organization, but in recent years, has become more labor-oriented in an effort to remain competitive with rival organizations. At the national level, the FOP is structured for lobbying and supportive data assistance to lodges. National dues are minimal. The FOP State and local lodges are the focal point for control of dues and providing union services.

3) *The International Union of Police Associations (IUPA).* The IUPA is a splinter group from the old International Conference of Police Associations (ICPA). Granted a charter by the AFL-CIO, the IUPA is attempting to bring police officers into the mainstream of the trade union movement. The IUPA's dues—$1, per man per month—are used for congressional representation in Washington and for the right to be a part of and call upon the assistance of fellow AFL - CIO members / locals throughout the country. IUPA locals provide the bulk of labor services to union members.

4) *The National Association of Police Organizations (NAPO).* NAPO is another splinter organization from the ICPA, led by officers opposed to the IUPA affiliation with the AFL-CIO. This organization also promises national congressional representation but at a lower dues structure of 12 cents per man per month.

These organizations engage in bitter struggles with each other in an effort to win the allegiance and financial support of local police unions throughout the country. Each group inflates its membership size, rival organizations trade charges and countercharges, and leaders engage in overblown rhetoric concerning each group's assets and liabilities. National leaders have demonstrated a complete unwillingness to compromise for the good of establishing one national union. The police labor movement suffers deeply from rival unionism at the national level. The ability of all police officers to make an impact on law enforcement issues of national scope is severely diminished. Until unification of police under one national union is accomplished, the national scene will continue to founder in an endless array of rhetoric, promises, charges, and countercharges by the leaders of national organizations. The prospect for one united national police union in the 1980's is virtually nonexistent.

Police Fundraising Practices

Police labor organizations are required to expend great amounts of money for union services. These expenditures are normally for professional negotiators, attorneys for disciplinary cases and affirmative lawsuits, arbitration costs, staff salaries, office expenses, travel expenses, and lobbying costs. The dues structure of most local, State, and national police labor organizations are insufficient to absorb all of these costs. It is therefore necessary for these groups to supplement their operating expenses through additional fundraising programs.

The most common form of police organization fundraising is through telephone solicitation when citizens and/or businessmen are asked to make contributions for benefit shows, dances, or magazine advertising. The labor organization contracts with a promoter, who controls the entire solicitation campaign and normally receives a substantial percentage of the proceeds from the campaigns.

In an excellent treatment of police solicitations, *Police Magazine* addresses many of the questionable practices used by promoters to increase profits, with such practices being, at the very least, acquiesced to by the sponsoring police organization.[9] Among these practices are:

1) A sales pitch used by solicitors expressly stating or implying that they are police officers;

2) Using a sales pitch that implies that the proceeds from a solicitation campaign will be used for charitable purposes, such as a police widows' fund or little league sponsorship, when, in fact, the proceeds are used for the general operating expenses of the labor union;

3) Overselling tickets to benefit shows;

4) Using the implied coercive power of the police to obtain contributions from businessmen; and

5) Excessive profits going into the hands of promoters.

There is no question that police unions need the money gathered from such campaigns for operating expenses. Unscrupulous practices to raise this money have, however, caused public scrutiny and regulation of police solicitations. State legislatures and local governments have adopted laws that prohibit solicitation or place severe restrictions on the amount of proceeds that can be given to an outside promoter (i.e. 25 percent).

Police labor unions are not entirely at fault for the abuses that take place. There are many private entrepreneurs throughout the country who solicit for police benefits and magazines without representing any legitimate law enforcement organization, using misrepresentation and strong-arm tactics to make sales.

It is essential that police labor unions take strong steps toward self-regulation of their solicitation programs. The failure to do so will inevitably result in the destruction of an essential fundraising device for the union. It is suggested that police labor unions consider the following reforms in their solicitation programs:

1) Elimination of solicitation campaigns that request funds for charitable purposes when revenues from the program will be used for general operating

expenses of the union. Persons solicited for donations or magazine advertising should be told the specific purposes for which the money is going to be used. If the union does, in fact, spend a certain portion of revenues for charitable purposes, the amount actually to be spent should be revealed to the person solicited.

2) Elimination of outside promoters, and instead, use of a person hired and controlled by the union to conduct the entire solicitation operation. This alternative gives the union complete control over solicitations, including all money derived from campaigns, greater regulation over sales pitches used by telephone solicitors, and greater control over the product sold.

3) Unions should work closely with city councilmen, State legislators, prosecutors, better business bureaus, and chambers of commerce to inform the public of and maintain control over unscrupulous, fraudulent police solicitation operations.

An enlightened approach to solicitation practices will more likely insure the continued privilege of unions to produce revenues through fundraising.

Use of the Strike as a Confrontation Tactic

In many States, the adoption by legislatures of compulsory binding arbitration as the final step for resolution of collective bargaining impasses has led to virtual elimination of strikes in the police and fire services. It is unnecessary for public safety unions to withhold services when confrontation can be avoided by third-party neutral determination of issues in dispute.

There are, however, 40 States that either have no final binding impasse procedures in a public employment collective bargaining statute or do not even have a statutory scheme for public employees to bargain collectively. It is irrefutable that police strikes are occurring only in cities where impasse procedures are nonbinding or where there is no collective bargaining legislation at all.[10]

The police strike was, in the 1960's and early 1970's, an effective tactic used by unions to press for economic gains. The public perception of an unguarded community fomented a climate of fear conducive to settlement of issues with the employer. Public employers have, however, become more sophisticated and recognize that they do not have to be pressured to settle on the basis of a threat or actual use of a strike by a police union. Several factors contribute to this new employer attitude toward police strikes. First, employers recognize that during a strike the use of supervisors on longer shifts, supplemented by sheriff deputies and State police, can more than adequately protect the community. In fact, it can be argued that there are more police on the street during a strike than under normal circumstances. Second, the public is now aware that lives and property will remain protected during a strike, thereby removing a primary condition favorable to settlement in the past. Third, the public does not have the same tolerance for police strikes that might have existed previously. Finally, police officers, unlike their counterparts in the private sector, have not exhibited the willingness to engage in strike violence, such as sabotage and picket line fights, that sometimes serve as an impetus for settlement.

It is contended that most police strikes in the 1980's will be a fruitless and damaging experience for unions and their members. This situation places unions in an untenable position, since the strike is normally used in States with inadequate impasse procedures or no collective bargaining legislation. If police officers are denied the strike as a weapon, they must look to other alternatives to achieve organizational objectives. Nonconfrontation tactics that have successfully worked in other States without strong impasse procedures or no bargaining legislation include:

1) Greater use of the initiative and referendum. Many States and/or local jurisdictions provide for initiative and referendum. These procedures can be used in lieu of a strike to seek public support on issues, such as police wage increases. The public will be more supportive of a referendum to resolve a labor movement issue than of strike tactics.

2) Use of creative impasse procedures. In some States with weak impasse procedures, there is great resistance among State legislators and public management representatives to compulsory binding arbitration. The opponents to arbitration argue that such a process imposes settlements by outsiders and does not consider the financial needs of local communities. Colorado and Texas have experimented with another form of binding impasse procedure—an initial step of traditional factfinding and recommendations, and if that process fails to achieve a settlement, submission of bargaining issues in dispute to the voters of the city. This approach allows greater local citizen decisionmaking in the bargaining process and still avoids the need for confrontation by inclusion of a binding impasse resolution procedure.

Conclusion

The police union movement has made tremendous strides in the past 20 years. The future holds the promise for further success, with police unions playing an active role in the criminal justice system.

Both union leaders and rank-and-file members must be cognizant of their responsibility to preserve the integrity and vitality of the police labor movement. Only through an awareness that problems do exist and a desire to solve those problems can this responsibility be fulfilled. **FBI**

Footnotes

[1] "Guidelines and Papers from the National Symposium on Police Labor Relations," (International Association of Chiefs of Police, Police Foundation, Labor Management Relations Service, 1974), p. 35.

[2] *Ibid.*

[3] *Ibid.*

[4] William Gentel and Martha Handman, *Police Strikes: Causes and Prevention,* (Gaithersburg, Md: International Association of Chiefs of Police, 1979).

[5] E. S. Ely, "Raising Money in the Name of the Law," *Police Magazine,* January 1980, pp. 5–15.

[6] Glen Castillo, "Reason for the Fall of Eastern's ICPA," *PORAC News,* October 1979.

[7] Gentel and Handman, p. 236.

[8] *Ibid,* p. 235.

[9] See note 5, *supra.*

[10] "Public Employment Collective Bargaining in Texas—Get the True Facts," Combined Law Enforcement Associations of Texas Legislative Pamphlet, 1979.

By MARILYN B. AYRES
Writer/Editor

and

RICHARD M. AYRES
Special Agent
Management Science Unit
FBI Academy
Quantico, Va.

POLICE ON STRIKE

What Triggers Their Walkouts?

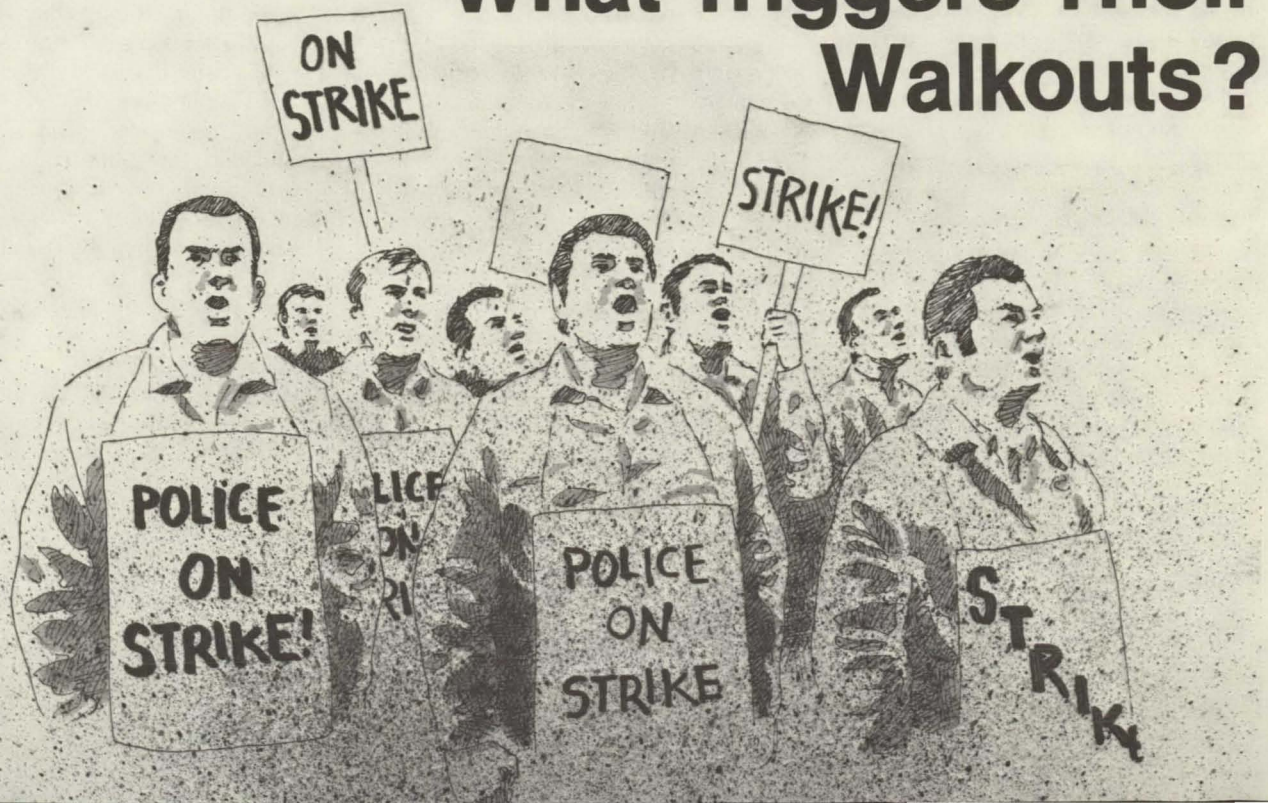
"There is no right to strike against public safety by anybody, anywhere, at any time." (Calvin Coolidge, Governor of Massachusetts, during the 1919 Boston police strike)

A police sergeant in San Francisco, president of the Police Officers' Association (POA), stands at the speakers' rostrum before the city's board of supervisors, asking to address the board. Hundreds of off-duty police officers have packed the chambers to hear their leader voice their grievances. The board president asks if any member will make a motion to let the sergeant speak. No one does, and he is told, "Sorry." Muttering under his breath, he strides from the room, followed by a mass of shouting police officers.

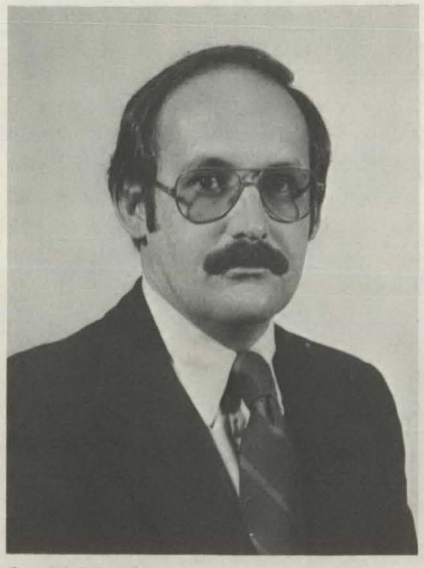
Mayor Lewis Murphy of Tucson, Ariz., refuses to meet over a wage dispute with the executive board of the Police Firefighters' Association (PFA), calling closed negotiations illegal and immoral. In response, the PFA initiates a partial "blue flu," and Mayor Murphy promptly proclaims, "I am the Blue Tiger who will cure the blue flu if there is another job action." [1]

The city council in Oklahoma City rejects the 10-percent pay raise for police recommended by an arbitration panel. Police officers respond by instituting a work slowdown (not writing traffic tickets or acknowledging radio calls), threatening to walk off the job en masse if any officer is suspended for participating. Suddenly, a rumor sweeps through the department that a lieutenant is being fired for refusing to order his men to end the slowdown. Meanwhile, the city offers a pay raise of 7.5 percent, a move which many officers equate with "pouring gasoline on a flame." The president of the Fraternal Order of Police (FOP) cries, "You can whip a dog just so long, and then he's going to bite you!" [2]

In Las Cruces, N.M., 200 police officers, plus their families and supporters, jam a city commission meeting to hear their representatives discuss salaries, fringe benefits, and the city's recognition of the Las Cruces Police Officers' Association (LCPOA) as the bargaining agent for its members. During the meeting, the commissioners appear uninterested and contemptuous, and at one point, the city manager turns his chair around and sits facing the wall. [3]



Mrs. Ayres



Special Agent Ayres

The Youngstown, Ohio, Safety Forces (combined members of the Fraternal Order of Police and the firefighters' association), dissatisfied with the city's failure to meet their wage demands, ask to attend a meeting scheduled between the city council and the city administration. The day of the meeting, the council goes behind closed doors with the mayor and his cabinet to discuss the pay issue. The groups emerge several hours later, read the wage offer to waiting union representatives, and refuse to discuss the subject further. One union leader bitterly exclaims, "The pay offer was an insult. We were supposed to come to the meeting for a dialogue, and then they locked us out. They're still playing games." [4]

Triggering Device

At first glance, the incidents described may seem to have little in common. As it turns out, however, they each proved to be the episode that had the final impact on the police during an already tense atmosphere . . . the catalyst that provoked angry, frustrated officers to take that ultimate, unthinkable step . . . a full-fledged police strike.

During labor disputes when feelings are running high, any emotional statement, action, or rumor, even those unfounded, which would draw little or no attention under normal circumstances, may trigger a strike that can cripple a community for days or even weeks.

In any city that has experienced police strikes, it was just such an emotional episode that directly preceded and triggered the most drastic action possible on the part of the police—an action that under ordinary conditions might not have taken place.

In each example discussed, the police were frustrated in their attempts to rectify what they considered to be unsatisfactory working conditions, poor employee benefits, and low pay. These same conditions, however, are found in police departments of many other communities; yet, only a relatively few of them have experienced strikes. As employee dissatisfaction and frustration increase, it is inevitably an emotional issue, a triggering device, that will determine whether a strike does or does not actually occur.

In San Francisco, for example, the triggering device was the board of supervisors' refusal to let the POA president speak. When this happened, crowds of off-duty police followed him out of the chambers, shouting, "Hit the bricks!" "Strike!" "Shut it down!" [5] The enraged officers headed straight for the already established strike headquarters to receive instructions and picket signs. Within minutes, most of them were at their assigned picket locations.

Prior to the incident at the supervisors' meeting, during discussions regarding the possibility of a strike, Mayor Joseph Alioto had issued various ultimatums, such as "Any policeman who strikes here will be fired. There isn't going to be a strike without stiff and fast action against the POA and any striking members. . . ." He also exclaimed, "I want everyone around here to know that we're not quaking in our boots because of a possible strike. We can 'win' against a strike!" [6]

Clearly, the atmosphere was right for a strike in San Francisco. It is possible, however, that the trauma of a real walkout could have been averted through discussions and negotiations, thereby perhaps avoiding a real emotional incident. In defending the strike once it began, the POA president exclaimed, "The supreme arrogance and arbitrary behavior of the supervisors have placed the people of San Francisco in jeopardy. The crowning insult was that the supervisors refused to negotiate and the police were not allowed to speak. Not meeting with us has caused the most tragic day in San Francisco. The people are not safe in their homes, and that is the responsibility of the supervisors." [7]

In Las Cruces, during an already tense situation, the indifferent attitude of city officials, particularly the city manager, outraged police officers and triggered the emotional explosion that resulted in a 3-week strike—the longest police strike in the history of the United States.

In Oklahoma City, the rumor that a lieutenant was being fired was the catalyst that caused a spontaneous turn-in of badges by bitter police officers, who blamed their pent-up anger and distrust on years of neglect by city hall.

The emotional issue that sparked Tucson's strike was the mayor's alleged comment that he was the "Blue Tiger" and would "cure the blue flu." The strike began with a broadcast of the prearranged code words "Blue Tiger" over the police radio and ended with the emergency channel's announcement, "The Tiger is dead."[8]

Considered to be one of the most shocking, critical events that can occur in any community, a police strike is an increasingly common phenomenon. Fortunately, the violence that was associated with the earliest strikes in this country has not characterized today's walkouts. A police strike in Boston in 1919 caused three deaths during 4 days of chaos and looting. The National Guard was called out, and President Woodrow Wilson exclaimed,

> "A strike of policemen of a great city, leaving that city at the mercy of an army of thugs, is a crime against civilization. In my judgment the obligation of a policeman is as sacred and direct as the obligation of a soldier. He is a public servant, not a private employee, and the whole honor of the community is in his hands. He has no right to prefer any private advantage to the public safety."[9]

Although strikes are forbidden in almost all States, police unions are participating in them with increasing frequency. In addition to the cities already mentioned, many more have had to contend with striking police in recent years, including Birmingham, Cincinnati, Salt Lake City, Santa Barbara, Santa Monica, Burbank, Denver, Los Angeles County, and the State of Hawaii.

In some of the cities, the police had not yet engaged in any type of job action at the time the emotional issue, or triggering device, occurred. In others, officers were already involved in a blue flu or other type of job action that, according to plan, was to last for only a 24-hour period to express dissatisfaction during an already existing labor dispute.

During 1919 Boston police strike, soldiers round up strikers in Boston Commons. (Photo credit United Press International)

Recalling the October 1979, "sick-out" in Denver, Chief of Police Art Dill now says that his men initially planned a 1-day-only blue flu epidemic in order to get the attention of the city administration and to apply pressure for higher wages. During the dispute, a police officer called in to say he was too ill to report for duty. Suspecting an epidemic of the blue flu, the captain answering the call reported, "Yeah . . . well, take two cyanide tablets and call me back in the morning."

According to Chief Dill, "It was the captain's statement over the telephone, that spread like wildfire throughout the ranks of the striking officers, that prolonged the epidemic for two more full days."[10]

This incident illustrates how, where a job action is already in progress, emotional statements or actions by any of the participants in the dispute will further antagonize all sides and prolong the strike. These results were also seen in Cleveland, where the mayor's angry statements to the striking officers caused additional alienation and embitterment. The day after a breakdown in wage negotiations between the police department and the city administration, more than 75 percent of the 90 patrolmen scheduled to report for the third shift at midnight called in sick. The mayor quickly denounced the blue flu outbreak, calling it a "wildcat strike staged by crybabies."[11]

One year later in Cleveland, 13 officers refused to walk foot patrols in a public housing project, terming the assignment "too dangerous." The mayor promptly fired the whole group, and the city's 2,000 police officers walked off the job in protest. The mayor then deepened the dispute when he termed striking police "hoodlums who have shown a contempt for the law."[12]

The damaging emotional outburst doesn't always come from the administrative side, as was seen in New Orleans in February 1979, when the Teamsters-affiliated Police Association of Louisiana went on strike for the second time in 8 days. During negotiating sessions, the frustrated police union president, Vincent Bruno, exclaimed, "If the talks break down, we're going to cave them in . . . wreck the city! We're not giving in. We're adamant."[13]

Up until that point, according to a member of the New Orleans Police Department, the police had the support of the public. The citizens of New Orleans wanted to see the union's demands met, so that Mardi Gras festivities could go on as scheduled. When Bruno's words were published in the newspapers, however, public sympathy began turning against the police, and one black citizens' group stated

that the officers should be arrested as outlaws and fired. "There is no law . . . which allows any union or its members to speak of destroying any city in the United States," the groups' statement said.[14]

In cities where strikes have already ended, anger and resentment have often built up between all sides in the disputes to the point where individuals continue after settlement to assault each other verbally. Their actions only serve to antagonize and polarize each side at a time when a cooperative attitude is most needed by all participants.

In July 1979, following a "sickout" staged by 68 percent of the Los Angeles County Sheriff's deputies, Sheriff Peter Pitchess had such angry words for his officers who had participated that according to some members of his department, he created additional bitterness and animosity throughout their ranks. "I'd like to fire every deputy who violated his oath," Sheriff Pitchess said. "I have been disgusted with the Board of Supervisors, too, but I didn't quit my job. We will investigate each claim representing a deputy as sick and dock him . . . maybe we'll take away their library cards!"[15]

Sheriff Pitchess' statement may well have had the effect of "rubbing salt in the wounds," resulting in a greater cohesiveness among the participants in the sickout. Sheriff's deputies indicated that his attitude also caused some of the nonstriking members of the department to aline themselves with their cohorts who had engaged in the job action.

In Tucson, police remained bitter long after the end of their strike, and one officer exclaimed, "We went on strike because we had gotten our teeth kicked in and the door shut in our faces, and were told there was no further to go. They didn't give us anything, plus they said 'go away.' We learned the best way to get cops back to work is to get someone killed. Strikes can't be professional . . . you have to hurt someone."[16]

Obviously, these angry, rebellious words only perpetuate the animosity between the participants in the dispute, even long after settlement.

It's apparent that a variety of diverse elements provide the background material for every police strike, including low pay, unsatisfactory working conditions, and poor employee benefits, factors previously mentioned. In addition, several other common variables are found in striking police departments.

The first factor is "bad faith bargaining," as was seen in the Memphis police strike, where the underlying cause of the dispute was the basic distrust of the mayor and the city's politicians. "Last year they came to us and said they were broke," recalled a 15-year veteran of the police force. "They convinced the union and they convinced us to take a 5.5 percent then because they said they were $12 million in debt and had to beg the state for money. Well, after we signed that contract, they started finding mistakes in their figures. The first mistake got the deficit down to $9 million, then $3 million, then finally within 30 days after the contract was signed they found they actually had a $1.5 million surplus."[17]

The second variable common to striking police departments is a breakdown in communications between police management and its employees, the city administration and the police, and the union and its membership. According to the president of one police union, the typical feeling among patrolmen is, "Isn't anyone listening to me? I'm the one doing the work."[18]

Additional allegations heard when examining the causes of strikes include: Lack of experience and expertise of both the union's and management's bargaining teams; lack of union leadership; rivalry between unions; failure of the negotiators to reach agreement before expiration of the existing contract; poor supervisory practices in the police department; lack of administrative leadership; lack of education and understanding on the part of the legislative body; and the inflammatory role often played by the media.[19]

The traumas created by a police strike are long remembered throughout the entire community. To the citizens, the city administration, the police department itself, and the strikers, a police strike is a shocking, frightening event which can have a disastrous effect on the image of law enforcement.

It is essential that all concerned parties realize that the objective of collective bargaining is settlement, not confrontation. Antagonism will happen often enough without a catalyst. The key to avoiding emotional issues that will trigger labor disputes lies in effective, sincere communications before, during, and after strikes. At best we may wish to remember those sage words of that great philosopher from Okefenokee Swamp, Pogo, who once said:

> "I'm careful of words I say,
> to keep them soft and sweet.
> I never know from day to day,
> which ones I'll have to eat."

Hopefully, by learning what has happened to trigger police strikes in the cities discussed here, participants in future labor disputes will be better prepared to deal with similar issues.

FBI

Footnotes

[1] William D. Gentel and Martha L. Handman, *Police Strikes: Causes and Prevention* (Gaithersburg, Md.: International Association of Chiefs of Police, Inc., 1979), p. 54.

[2] Richard M. Ayres, "Case Studies of Police Strikes In Two Cities—Albuquerque and Oklahoma City," *Journal of Police Science and Administration*, vol. 5, No. 1, March 1977, p. 28.

[3] Gentel and Handman, p. 118.

[4] Gentel and Handman, p. 151.

[5] Gentel and Handman, p. 14.

[6] Gentel and Handman, p. 13.

[7] Gentel and Handman, p. 16.

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[9] David Ziskind, Ph. D., *One Thousand Strikes of Government Employees* (New York: Columbia University Press, 1940), p. 47.

[10] Interview with Chief of Police Art Dill, Denver, Col., October 24, 1979.

[11] "90% of Patrolmen call in Sick, Mayor calls them 'crybabies,'" *The Cleveland Press*, December 15, 1977.

[12] Judith Brimberg, "Subs Filling in For 'Sick' Police," *The Denver Post*, October 7, 1979, p. 3.

[13] Ed Anderson, and Paul Atkinson, "Pace Quickening—Mediators," *The Times Picayune*, February 21, 1979, sec. A, p. 1.

[14] "Police Strike Rains on Mardi Gras Parades," *Law Enforcement News*, March 12, 1979, p. 13.

[15] Robert Knowles, "6,000 County Workers Out 'Sick'; Pitchess Angry," *Herald Examiner*, July 14, 1979, p. A10.

[16] Gentel and Handman, p. 80.

[17] Lance Gay, "Memphis: Mayor Takes Hard Line on Strikers," *The Washington Star*, August 15, 1978, p. A6.

[18] Richard M. Ayres, "Police Strikes: Are We Treating the Symptoms Rather Than the Problems?" *The Police Chief*, March 1977, p. 65.

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STRIKE MANAGEMENT

Trust, Involvement, Communication, and Planning

By SHERIFF JOHN W. CARPENTER

and

CAPT. GEORGE J. BREGANTE, (Ret.)

Sheriff's Office
Santa Barbara County, Calif.

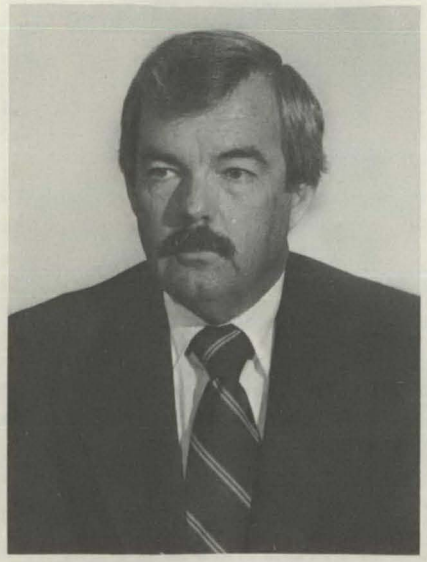
Today's police administrator who believes his agency is immune to a "job action" or labor strike has failed to stay abreast of the changing attitudes of modern-day law enforcement officers.

Strikes by police and sheriff's departments are occurring with increased frequency. As more police unions and associations are successful in achieving their goals through strikes, more will be encouraged to take the same course of action. No matter how abhorrent one feels about police officers withholding their services from the public they are sworn to protect, it is a fact of modern life, and the police administrator must plan for just a contingency in his department. One thing in favor of such planning is time. Unlike a robbery, fire, flood, or other type of police emergency, strikes are not surprises. By being reasonably alert to the conditions within his department, the chief or sheriff will have ample time to plan. Much can be done to avert a strike if everyone recognizes what is at stake and works toward more acceptable alternatives.

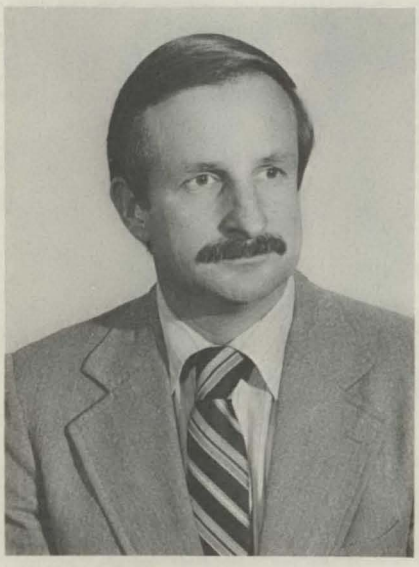
We in the Santa Barbara Sheriff's Department saw just such a potential developing in December 1978. In Santa Barbara County, Calif., the sheriff is not part of the negotiation process, except through informal political interaction with individual members of the board of supervisors. Representatives of the Deputy Sheriff's Association and their attorney meet and confer with the county negotiation team. The sheriff is, in effect, a third party without formal input capability, but ultimately responsible for the consequences if the other two groups fail to reach an agreement.

The main goal of any strike planning should be the orderly and united return to normal duty. Bitter feelings between management and strikers developed during a strike can carry over after settlement, causing ill will and personal hostilities at times lasting for years. With this in mind, the sheriff's executive team's early planning identified the number one goal should a strike occur—to have an effective organization with good working relationships when the strike was over.

Using that objective as our starting place, we began working backwards, identifying situations, conditions, and attitudes which could affect that outcome. Open communications, rumor control, up-front honesty, fairness, and sensitivity to the situation were just a few identified goals.



Sheriff Carpenter



Captain Bregante

It was decided that communications must be omni-directional and free flowing. The association or union leadership must not feel intimidated at any layer of the organization. Accordingly, the association must also be realistic in economic growth demands. The department head can openly and strongly support a reasonable position. Constantly assessing the governing board's position on available dollars projected for salary adjustments will afford alternative solutions to the department head and the employees' association.

It is also important to designate a management liaison officer to the strike group. At least one commonly trusted officer should keep in constant communication with the striking group leadership; both should be aware of what is happening. Strikers should not be depended on to keep each other informed. Rumor control is critical and this person can deny or confirm rumors that run wild during job actions.

An Overview

On April 12, 1979, emergency operations went into effect, as routine services to 130,357 residents of the unincorporated area were severely disrupted by a deputy walkout. The normal complement of over 430 employees was survived by a small management contingent and a handful of remaining workers throughout the 9-day strike.

The Santa Barbara County Sheriff's Department was the first of 32 law enforcement agencies to go on strike or take some type of job action in California in 1979. However, this strike was not the first job action in the history of the county. In 1970, the deputy sheriffs walked out for a 24-hour period over several issues which included salary and fringe benefits. In order to understand the events of March and April 1979, it is necessary to view them in perspective of the recent history of the sheriff's department.

The historical overview of the strike goes back to 1960. Prior to 1960, Santa Barbara was a lightly populated, rural-oriented community. The deputies were untrained and poorly paid, but there were few urban pressures. However, with the growth of the University of California at Santa Barbara, Isla Vista, the student residential area adjacent to the university, became one of the most densely populated areas in the State. Police problems arising from this condition were compounded by resident social activists. At the same time, Goleta was booming as a residential community, helping swell Santa Barbara's population to more than 80,000. But during this period, no increase was made in sheriff's staffing levels, salary levels, or training. In 1968, the grand jury, during an extensive investigation into irregularities within the agency, determined that severe personnel deficiencies existed. Recruiting standards were inadequate, salaries were not attracting enough professional candidates, and virtually no county subsidized training was being provided.

The response by county government was to add more personnel and increase the number of top-level command positions. No significant effort was made to improve the working conditions of the deputies or to make the salary and fringe benefits competitive. The county's policy of virtually no support for inservice training was failing to prepare these men to cope with the complexities of modern-day law enforcement problems that were to engulf them.

Eventually, student unrest spread to the streets of Isla Vista and several riots ensued. The 1970 Isla Vista riots dramatically showed the inadequacies of the county's preparedness. Unprepared, poorly equipped, and untrained for the responsibilities thrust upon them, the deputies responded in a manner which resulted in public allegations of brutality, unprofessionalism, and ineffective leadership.

Following the riots, the deputies formed an association to help combat accusations of misconduct. The association later met during 1970 to negotiate salaries and fringe benefits. The

county's minimal offer of a salary adjustment was immediately deemed unacceptable by the members of the association. They believed that the county had exploited them for many years and that the public humiliation suffered during the riots because of the lack of preparedness and the trauma of being charged with brutality after the fact was the direct result of that exploitation.

Demands of a significant salary increase were made, along with an education incentive program and other fringe benefits that would recognize the service and sacrifice made by the members of the sheriff's office for the citizens of Santa Barbara County. The demands were unacceptable to the county, and members of the board of supervisors didn't take the threat of strike seriously. But association members voted to strike rather than to attempt any further negotiation. The strike, which was settled in 24 hours, took the county by surprise.

In 1970, a new sheriff was elected. Upon taking office, he stated that he found "an organization with a weak management structure and a strong rank and file." Departmental personnel were undertrained for their jobs. Many were poorly motivated, and morale was a major problem. County government, as a result of the recent negotiations, was antagonistic toward the sheriff's office. They apparently feared the militancy of the deputies and seemed determined to take a harder line in future matters concerning personnel. The sheriff set about upgrading personnel through training and recruitment standards. Equipment and communications were improved. Lateral entry recruitment helped fill vacancies with officers already familiar with urban police problems. An effort was also made to improve departmental credibility with other county agencies. Internally, visible steps toward "professionalization" were taken with the development of organization standards and discipline,

"The main goal of any strike planning should be the orderly and united return to normal duty."

and a strong management team was built up. In the ensuing years, the solidarity and militancy of the deputies' association somewhat diminished; by 1975, the potential for any job action within the sheriff's department was nonexistent.

During 1975, county firemen engaged in a bitter 7-day strike over salary and duty hours. Firemen who didn't strike were augmented with deputies, which resulted in hard feelings between members of the firefighters' union and the deputies. The deputies' association subsequently made it a policy never to work out of their job classification to break a job action of another agency.

In 1977, the possibility of a strike by deputies escalated during salary negotiations. The county was preparing an austere budget that included a 3-percent salary increase for all county employees. The deputies' association was reluctant to accept such a settlement, and a vote to strike failed by less than six votes. At that time, the sheriff was prompted to develop and file away contingency plans to be used in the event of a strike. However, the county administrative officer didn't share the concern and relied upon the county's ability to respond without a formalized plan.

Morale had sunk to a new low in 1978 after the passage of Proposition 13.[1] The combination of increased living costs and fixed salary was resulting in an exodus of trained and experienced deputies from the sheriff's department, resulting in vacancies that were difficult to fill. Replacement officers had little or no police experience. Attrition at the rate of 24 percent left positions unfilled and inexperienced employees facing increased workloads. Four months before the strike, the president of the deputies' association met with the sheriff to outline salary demands for the coming negotiations, commenting that a strike was a strong possibility. The sheriff then notified other area law enforcement chiefs of the potential for a strike and learned that either limited response or none at all would be forthcoming from other police agencies or from State resources.

Sheriff's Policy

With the growing potential for a strike by his deputy sheriffs, the sheriff developed his basic policy position with regard to any employee job action. Although he shared their concern over the state of the economy, the sheriff took an affirmative position and formally announced a policy that he would not sanction a strike or other similar job action. It was considered important to have all persons involved or affected to know the consequences of their acts. The strike policy was both uncomplicated and direct. No job action would be condoned, and any employee participating in such action would be disciplined. The policy was based on several principles. First, the sheriff's fundamental obligation to the citizens is to provide them with police protection and services. No responsible administrator could condone something that interfered with that obligation. Second, the incompatibility of police strikes with law enforcement professionalism automatically excluded any possibility of condoning such action. To condone or support such an unprofessional act as a strike, regardless of its justification, was indefensible.

Each deputy was treated with integrity and honesty, and in return, it was expected that each deputy would be honest and candid in his dealings with the department. It was made clear that such actions as work slowdowns, work speedups, "blue flu," or sick-ins were essentially dishonest. If an employee decided to withhold his service, his professional integrity would dictate that he be honest to himself, his employer, and the public.

Implementing this policy, however, was more complicated and had to be accomplished with discretion and judgment. Over the years, a relationship of mutual trust and respect had developed with the rank and file. It was the primary management goal to emerge from this strike with an effective organization. If preserving the future effectiveness of the sheriff's office after the strike was to be achieved, great care had to be exercised so as to maintain a hardline policy opposing strikes without jeopardizing the trust and respect of the strikers. This could be accomplished by adopting a policy of open and candid communication with all employees regarding matters affecting them. An atmosphere of trust is essential and must be established. During a strike, communication and credibility are critical; both will fail if any trust is violated. The sheriff took executive action and clearly stated his opposition to any job action, along with his policy of disciplinary action for any employee participating in the strike. The specific punishment was announced so that each employee would know what to expect in the event he chose to walk out. When it became apparent that many probationary deputies were gravely concerned over the tenuous status of their jobs and feared that they would be fired if they participated in the job action, the sheriff announced that probationers would not be singled out for harsher punishment than any other employee. It was imperative that the department's position be firm; yet, it had to be administered in a fair manner.

Contingency Plans

Meanwhile, plans were being made for personnel with the rank of lieutenant and above to take on all duties should a strike occur. All other supervisors were ordered to report their availability for duty. It was learned that management employees could refresh their technical skills through occasional field experience so they would be familiar with logistics, policy and procedure, specialized equipment, and work areas when deployed to the field during a strike. A prestrike management survey to "poll" the position of employees was not taken since this can be construed as management pressure. Besides, a survey of this type is seldom accurate, and an administrator could find himself basing his plan on resources that would not be available.

During the strike, many services and departmental division of labor were modified, realined, or suspended. All report taking was to be suspended, except in emergency calls involving threat of life, limb, or serious property damage or loss. Priority responses were determined before the strike, and the internal organization, neighboring police agencies, the media, and the public were made aware of the plan. Yet, the ongoing operations were assessed daily to accommodate changing priorities and pressures.

All substations were to close, and all telephone and radio traffic was to be handled from the main office. It was important to keep the operation controlling service requests staffed with well-informed personnel. The person screening incoming calls for service would have to make many arbitrary decisions. That person should be completely briefed on the status of the strike at all times and should be of sufficient rank to accommodate policy discretion.

The administrators were assigned to 12-hour shifts, 7 days a week. All staff personnel were put on standby the day before the strike, and once the strike vote was taken, they were to be notified and automatically go to their preassigned strike-duty assignments. A proactive strike operations plan should trigger events rather than the reverse. Any strike plan should be introduced early so it can already be operational if employees walk out.

During the strike, regular staff discussions and briefings were conducted. Everyone on duty is concerned with the status of the strike, and accordingly, all staff personnel should be incorporated in planning. It is also important to monitor closely the physical and mental condition of those working. Many times, people working long and stressful hours do not realize how tired they are getting. Fatigue can temper acts which will erode relationships and provoke problems. One careless act could prolong a job action for days.

From the outset of plan development, the determination was to resist the traditional approach in jail operations of reverting to a general lock down of the entire institution. The decision was made to do everything possible to maintain a normal environment for prisoners. Special arrangements were made with the presiding judges of municipal and superior courts to have arraignments conducted in the jail, courts conducted without the presence of a bailiff, and special prisoner transportation provided to outlying courts in special cases.

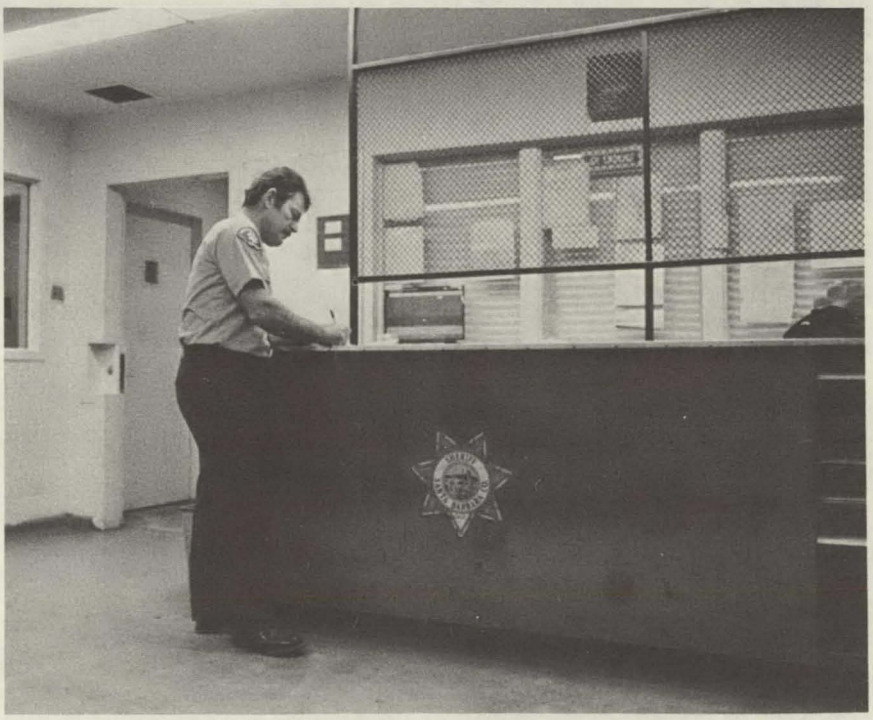
In order to be able to determine what personnel were actually on strike at the time of the job action and to preclude any claim by personnel that they were on days off, department general orders were issued prior to the time of the anticipated strike deadline. One of the general orders cancelled all vacation, holiday, or other time-off requests. The second general order, served on each sergeant who was charged with the responsibility of informing personnel under their command, was also issued prior to any anticipated strike actions and directed each employee to report his availability for duty to a designated staff officer between specified hours on a specific date. The order further specified that anyone who did not report in by the predetermined time would be presumed to be on strike. Both orders had an automatic rescind clause in the event of no strike action or at termination of the strike action.

In December 1978, the county administrative officer issued his 1979–80 budget instructions. No new positions would be approved, and the potential for laying off existing deputies because of Proposition 13 cutbacks became a major concern to the department. In January 1979, the California Supreme Court invalidated the State statute

freezing salary increases for recipients of State bailout money. Jurisdictions with existing contracts realized immediate, and sometimes retroactive, relief pursuant to their contract terms. Locally, deputy frustrations intensified because the prevailing board of supervisors publicly proposed early salary negotiations for 1979; however, the county employee groups were determined to obtain retroactive adjustments for 1978 first. This was a major issue with the Deputy Sheriff's Association.

The Strike and Its Impact

The strike officially began at 10 p.m., Thursday, April 12. The deputies' association had met earlier that night to vote on the county's most recent offer—a 12-percent pay hike and a lump sum of $250. Only five deputies reported for work. In addition to the deputies, all but a handful of the 60 corrections officers (jailers assigned to the county jail) walked out in sympathy at midnight, as did the sheriff's clerical workers in the records bureau and inmate records department.



Many of the normal day-to-day operations of the department were suspended or reassigned to management personnel when the deputies went on strike.

The sheriff then asked for assistance from auxiliary resources as soon as the strike was imminent. Immediate notification went out to the sheriff's reserve bureau, ordering all reserve deputies to report for duty. The reserves refused, out of sympathy for the deputies.

During the 9-day strike, there was no discernible adverse public opinion by the citizens, either by mail, telephone, or letters to the editors of the local news media. The striking deputies characterized this as "silent support" by the public.

Because contract negotiations had reached an impasse, the California State Conciliation Service sent a mediator in an effort to reinstitute bargaining, but his efforts to reopen negotiations were not fruitful. Finally, a meeting was arranged between the sheriff, the deputies, and the board of supervisors. In less than an hour, a compromise salary raise of 14 percent was agreed on, and each of the striking deputies was allowed to use overtime, vacation, and holiday leave for the time absent.

The agreement was considered a victory for the deputies. The 14-percent increase, which was 2 percent more than any other bargaining unit received, was symbolic of the county treating them differently from other employees. The return to normal operations following the strike was a relatively easy task, since much of it had been planned in advance of the acceptance vote.

Disciplinary Action

As indicated earlier, this strike resulted in disciplinary action for 256 employees. A critical part of the department's return to normal operations was the rapid implementation of punishment. Since it was the only residual aspect of the strike, and because of its negative connotation, it was important that this be placed behind us as soon as possible. The reprimands and the Skelly[2] notifications were mass-produced and issued immediately. Those employees who waived their Skelly rights were disciplined without delay, and the action was taken on the others as soon as the 10-day appeal period expired. Suspensions and extra duty were administered by the division commanders, with instructions that all disciplinary action was to be completed within 3 months.

"... departments should adopt a philosophy that negotiations are a year-round process."

Review of Relevant Principles

After the strike, evaluative management work sessions were held. Any major or unusual operation deserves review, and a strike certainly meets that criteria. The lessons learned from this strike have been plentiful and profound. The after-action report might suggest a slightly different approach by both the department and those on strike.

In reviewing the events leading up to and including the strike, those involved realized that there were many basic management principles that had a direct value toward achieving departmental goals. However, many of the principles that were found to be effective when applied are little more than sound commonsense that helped in a crisis. For instance, the principle that "there is nothing wrong with showing concern for employee plight" is merely commonsense, although there could easily be a tendency for management to assume a position of silence in order to maintain impartiality. Department management must be sensitive to the economic situation of employees. An attitude of indifference, or worse, a negative attitude, will provoke employees to "fend for themselves." Also, as another example, it was found that it can be a disastrous mistake for managers to take the strike personally, since it can distort their perceptions and serve to defeat their own purposes. The strike must be recognized professionally. Personal values are compromised by everyone in a strike; professional behavior generates cooperation.

It was decided that all levels of the department could benefit from formal training in labor relations. Particular consideration should be directed at staff personnel who will be directly involved in job action planning and members of the department who are elected to represent the association.

More importantly, however, departments should adopt a philosophy that negotiations are a year-round process. The department and the public entity must recognize that employees cannot be flatly denied some hope of economic progress. Day-to-day development of compensation packages can eliminate the eventuality of a job action. Government structures cannot remain insulated from true employee feelings by a few administrators, since employees might well recognize and accept that there are no dollars for raises—if they believe that government is *trying* to somehow compensate them. **FBI**

Footnotes

[1] Proposition 13 was a property tax limiting initiative that California voters passed in June 1978. The proposition limits tax to 1 percent of the 1975 appraisal value and this drastically limits funding sources for local government. (Applied to property owners before 1975, varied application to those purchasing property after 1975).

[2] The Skelly decision is a 1975 California Supreme Court decision setting minimum procedures for taking punitive action against a permanent civil service employee. As a minimum, Skelly requires that in disciplinary actions the employer must present the employee with a written notice before disciplinary action is taken. The employer must also provide the employee with written reports and documents which the superior used to make his decision for the proposed disciplinary action. Before the disciplinary action, the employee has the right to respond, either orally or in writing, to the department head who can effectively recommend that the proposed discipline be taken or not. If any disciplinary action is taken, the employee must be served with written notice specifically describing the discipling and the facts upon which the discipline was based.

TRAINING
A Prescription for Job Action

By EDWARD J. TULLY

Special Agent
Education/Communication Arts Unit
FBI Academy
Quantico, Va.

Any law enforcement job action ranging from "blue flu" to strike tends to act as a corrosive agent on the fabric of society. This is true regardless of whether the action is just.

Traditional public perception of the police role in our society includes a critical element of trust that police would loyally respond to emergencies that occur within the community. In situations involving job actions by police, the level of police response to community crisis is necessarily lowered by the nature of the job action. The response level could be, in the case of a strike, completely reduced, or in the case of a lesser job action, minor reductions in critical response levels would occur. In any case, a certain measure of public confidence in police is eroded.

On the other hand, the police lose confidence in police management and other negotiating parties when they are forced to take job actions in order to obtain concessions they believe they deserve. Public managers also lose confidence in law enforcement officers when job actions render their pledge to protect society a pledge of meaningless hypocrisy. Thus, we have a situation in which police, government, and the public are all losers.

Special Agent Tully

If the loss of public trust and the mutual respect between labor and management were temporary, the strategy of job actions as a response to insensitive management might well be successful. This, however, may not be the case. The combined losses cannot be viewed as being temporary as it may well be that the loss of public trust is, in a sense, cumulative and permanent.

Once the public loses confidence in the legitimacy of law enforcement organizations in general, and police officers in particular with regard to their commitment to public protection, our social fabric is threatened and our value set diminished. Once police officers believe that governmental organizations are not interested in responding to their legitimate needs, the commitment of police officers to a life of public service wanes. Once government perceives that employees have transferred their prime loyalty to a different master—the employee association—the idealistic commitment to public service is placed in jeopardy only to be replaced by a contractual agreement devoid of abstract ethical values, such as duty, honor, and loyalty. Thus, can government expect that these ethical values remain a critical but unrewarded element of the job?

"The public interest is best served if each party involved in a labor dispute has equal skills to use in the resolution of the dispute or the process of negotiations."

The problem of social fabric corrosion is multifaceted and not necessarily limited to labor/management disputes, but also occurs in cases of corruption, poor management, and inefficiency. There is no question that the problem is complex, and thus, it is difficult to draw a definite conclusion that law enforcement job actions pose a serious threat to our profession, public trust, or good government. However, the lack of scientific evidence in regard to the exact amount of damage inflicted should not deter our commonsense realization that the stakes in law enforcement labor/management relations go beyond dollars and cents.

Accepting the fact that the ramifications of poor labor/management relations are indeed critical, both labor and management have a responsibility to examine every alternative which, if successfully implemented, could lead to a reduction in the number or severity of job actions. One such alternative is found in the process of training. There are few examples in law enforcement that suggest that this alternative has

SA Richard M. Ayres, Management Science Unit, FBI Academy, addresses a class during a labor relations seminar sponsored by the Massachusetts Criminal Justice Trainee Council.

been given serious consideration. To be sure, training programs for management and labor officials will not eliminate job actions. Nonetheless, *Police Strikes: Causes and Prevention,* published by the International Association of Chiefs of Police, leads the reader to the inescapable conclusion that many recent job actions resulted when conflicting parties were deficient in skills ranging from contract negotiations to proper grievance handling. A review of this study leaves one with the impression that much of the difficulty experienced in the five cities described in the book as having serious labor problems could have been effectively reduced by a prior subscription to a strong training program for all parties in each jurisdiction. Just a casual analysis of the fundamental mistakes made by the parties involved in the labor disputes in the five cities cited had their root cause in basic ignorance of proper labor/management relations.

For example, inexperienced management negotiators were cited as a problem in three of the five strike-bound cities, inexperienced labor negotiators were found in four of five affected cities, and poor supervisory practices received blame as a causative factor in each of the five cities analyzed. The study also indicated that one serious problem with all parties involved prior to the job actions was that no close liaison existed with city personnel and labor representatives.[1]

Briefly, a three-point training program can produce significant results in the area of labor/management conflict. First, police and city management should be exposed to basic and advanced management training programs with particular emphasis in the area of contract administration, communication skills, and basic supervisory practices. There are many other areas in which both parties need training, but these topical areas make the point that poor management practices, poor communication, and sloppy contract administration are causative factors in labor disputes, many of which can be avoided by knowledgeable managers.

"Training can increase the professional level of our labor representatives and government officials to the ultimate benefit of labor, management, and above all . . . the public."

Secondly, labor leaders need management training specifically designed to assist them in the proper management of the labor association. Therefore, basic management topics such as decisionmaking, leadership, and planning are critical to successful management of labor organizations. Other specific areas, such as contract negotiations, impasse resolutions, and the proper handling of grievances, would also benefit labor officials.

Third, joint training sessions attended by management and labor officials from the same jurisdiction can reduce labor/management skill differentials, and by associating together in the same classroom, dispell the atmosphere of mutual distrust which builds when parties have insufficient knowledge of one another.

Joint training of labor/management officials is an idea which is long overdue. Great dividends can be achieved by governmental jurisdictions if they realize that money spent for labor/management training should be equally divided between labor and management representatives, and at the appropriate time, resources should be expended for joint training. In the long run, it makes little sense for one side to gain "knowledge superiority" over the other. The public interest is best served if each party involved in a labor dispute has equal skills to use in the resolution of the dispute or the process of negotiation.

One must realize that the process of training is not a magical solution to all problems. There is a time to train and there is also a time when training is a waste of time and resources. In the area of labor/management relations, particularly in those specific areas where tactical or management ignorance leads to a situation which produces an inevitable emotional overresponse, the time to train is certainly at hand. The training should be delivered by government to both sides in equal measures and in some areas to a joint audience. In this way, the levels of communication can be enhanced. The stakes in this "game" of labor/management relations in the public sector in general, and the law enforcement profession in particular, are too high to be left to amateurs. Training can increase the professional level of our labor representatives and government officials to the ultimate benefit of labor, management, and above all . . . the public. **FBI**

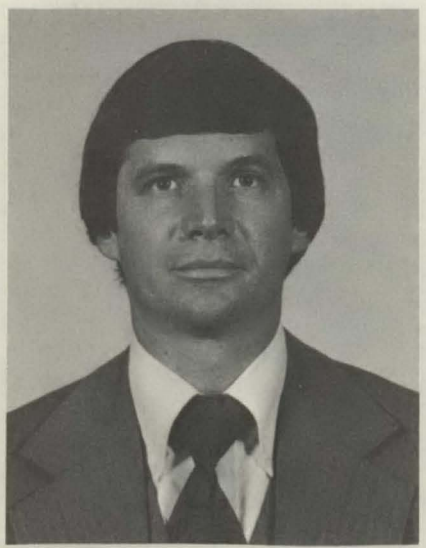
Footnote

[1] William D. Gentel and Martha L. Handman, *Police Strikes: Causes and Prevention,* (Gaithersburg, Md.: International Association of Chiefs of Police, Inc., 1979), p. 162.

Law Enforcement and Government Liability

An Analysis of Recent Section 1983 Litigation

By DANIEL L. SCHOFIELD
Special Agent
Legal Counsel Division
Federal Bureau
of Investigation
Washington, D.C.



Special Agent Schofield

Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

Potential liability of local governments for the unconstitutional conduct of their law enforcement employees has been significantly increased by recent court decisions. It is therefore essential that cities, counties, and other local agencies, with the help of competent legal advice, regularly evaluate policies and practices to make certain they conform to the evolving body of constitutional law.

In the 1961 decision of *Monroe* v. *Pape*,[1] the U.S. Supreme Court ruled that municipal corporations could not be sued under the Civil Rights Act of 1871, codified in 42 U.S.C. § 1983 (hereinafter § 1983).[2] While acknowledging that municipal liability might provide a more-effective mode of compensation than private remedies and tend to eradicate abuses at the police level,[3] the Court in *Monroe* concluded that legislative history revealed a decision by Congress not to include municipalities within the ambit of § 1983.[4]

In 1978, the Supreme Court decided the case of *Monell* v. *Department of Social Services*,[5] which reversed *Monroe*, and held that municipalities could be sued under § 1983. Two years after *Monell*, the Supreme Court ruled in the case of *Owen* v. *City of Independence*[6] that governmental entities sued under § 1983 could not assert a good faith defense.

Collectively, these two decisions significantly increase the potential liability of governmental entities sued under § 1983.[7] Moreover, while future litigation will develop the precise contours of that liability, it seems clear that the operation of a law enforcement agency may frequently generate claims against the government under § 1983.[8]

This article will examine the opinions of the Supreme Court in *Monell* and *Owen* and then focus on some lower Federal court opinions where complaints attempted to predicate governmental liability under § 1983 on allegations of law enforcement misconduct.

The Supreme Court and Section 1983

In *Monell* v. *Department of Social Services,* the Supreme Court engaged in a fresh analysis of the legislative history of § 1983 and concluded that Congress did intend for municipalities and other entities of local government to be liable under § 1983.[9] In overruling the precedent established in *Monroe* precluding such suits, the Court answered some important questions concerning the scope of governmental liability under § 1983. Accordingly, the opinion merits careful analysis.

In *Monell*, a class of female employees brought a § 1983 suit against the city and some city officials in their official capacities, alleging the unconstitutionality of a city policy that required pregnant employees to take unpaid leaves of absence before such leaves were required for medical reasons. The relief sought was an injunction against the policy and back pay from the city. Lower Federal courts had found the policy unconstitutional, but determined that the Supreme Court's decision in *Monroe* barred recovery of back pay from the city.

The Supreme Court reversed and held that local governing bodies are liable under § 1983 for monetary, declaratory, or injunctive relief where the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.[10] Moreover, in addition to being liable for official policy which is deemed unconstitutional, as in *Monell*, the Court also said that local government is liable for constitutional deprivations visited pursuant to governmental "custom," even though such a custom has not received formal approval through the body's official decision-making channels.[11]

However, the opinion in *Monell* clearly states that governmental policy or custom must cause the constitutional deprivation and plainly rejects the notion that local government can be sued under a respondeat superior theory.[12] In that context the Court said:

> ". . . a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." [13]

Monell left unresolved the question of whether government may assert some form of good faith immunity when sued under § 1983. That issue was squarely addressed by the Court 2 years later in the *Owen* case.

Owen v. *City of Independence*

A review of the facts in *Owen* reveals that the city council of Independence, Mo., released to the news media reports of an investigation of the city police department[14] and ordered the city manager to take appropriate action against those the report indicated had engaged in wrongful conduct. George Owen was then discharged from his position as chief of police. No reason was given for the dismissal except for a written notice stating that the dismissal was made pursuant to a specified provision of the city charter. Owens subsequently brought suit under § 1983 against the city, city manager, and members of the city council in their official capacities, alleging that he was discharged without notice of reasons and without an opportunity for a name-clearing hearing, and that the circumstances surrounding the dismissal had blackened his name and reputation in violation of his constitutional rights to procedural and substantive due process.

Justice Brennan, writing for a five-member majority, concluded that even if the decision of the city officials to discharge Owen was made in good faith, the city is not entitled to assert the good faith of its officials as a defense to a constitutional violation.[15] Justice Brennan concluded that an analysis of the law of immunity and the legislative history of § 1983 required rejection of a qualified immunity for local government. Justice Brennan said the central aim of § 1983 is to provide protection to those persons wronged by the misuse of governmental power, and that by creating an express Federal remedy, Congress sought to enforce provisions of the Constitution against those who act under the authority of State government.[16] Justice Brennan reasoned that many victims of municipal malfeasance would be left remediless if the city were permitted to assert a good faith defense, and that a damages remedy is a vital component of any scheme for vindicating cherished constitutional guarantees.[17]

Justice Brennan also wrote that in addition to providing compensation to the victims of governmental abuse, strict liability for local government would serve as a deterrent against future constitutional deprivations and provide an incentive for officials in policymaking positions to institute internal rules and programs designed to minimize the likelihood of unintentional infringements of constitutional rights.[18]

". . . if action is taken by an official whose edicts or acts may fairly be said to represent official policy or custom and that action causes a constitutional injury, the city will be liable. . . ."

Justice Brennan argued that the ruling in *Owen* properly allocates the costs of governmental activity, consistent with an evolving principle of equitable loss-spreading, and assures compensation for innocent individuals who are harmed by an abuse of governmental authority. Furthermore, the offending official, so long as he conducts himself in good faith, will be protected from personal liability by a qualified immunity, and the local governmental entity will be forced to bear only the costs of injury inflicted by the execution of a policy or custom made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy.[19]

In dissent, Justice Powell noted that in just 2 years, the decisions in *Monell* and *Owen* changed the position of local government in a § 1983 case from that of absolute immunity to strict liability.[20] In Justice Powell's view, strict liability unreasonably subjects local governments to damage judgments for actions that were reasonable when performed and could spawn onerous judgments against local government and distort the decisionmaking process.[21]

Federal Court Cases Involving Law Enforcement

The Supreme Court's decisions in *Monell* and *Owen* make a local governmental body strictly liable under § 1983 for a constitutional injury that is caused by a specific governmental policy or custom. Since government acts through its high-level officials, the actions of those officials may constitute manifestations of an ongoing policy or custom which can provide a basis for a § 1983 claim against the city.[22] In *Monell,* the Court said that if unconstitutional actions are taken by a person whose edicts or acts may fairly be said to represent official policy, then the city is liable. While it is unlikely a court would conclude that a law enforcement officer is such a person, it seems clear that the actions of the chief of police or sheriff or other high-ranking law enforcement officials may generate liability for the government.[23]

Moreover, a § 1983 suit against the chief of police in his official capacity will be treated as a suit against the governmental entity for which he is an agent. Thus, in light of *Owen,* the good faith intentions of an official sued in his official capacity may not be asserted by the government as a defense to a § 1983 claim.[24]

Those recent lower Federal court decisions where alleged governmental liability under § 1983 is in some fashion connected with law enforcement should also be examined. Because this area of law is relatively new and complex, the results reached are not always consistent, as the courts confront the difficult task of shaping the exact scope of governmental liability. Therefore, the cases have been organized according to the nature of the allegations of misconduct as follows:

1) Action by law enforcement officers,
2) Action by officials, and
3) Inaction by officials.

Action by Law Enforcement Officers

Several courts have addressed the specific question of whether misconduct by law enforcement officers is sufficient to trigger governmental liability under § 1983.

In *Marrero* v. *City of Hialeah,*[25] the U.S. Court of Appeals for the Fifth Circuit was asked to decide whether the city of Hialeah, Fla., could be sued under § 1983 for a search conducted by the police which was alleged to be unconstitutional. Expressing the prevailing view on that question, the court said that under *Monell,* a city is not liable for injuries inflicted by its employees or agents on a theory of respondeat superior.[26] The court ruled the city is liable as an entity *only* where the unlawful actions of the police are undertaken pursuant to official or unofficial policy or custom of the city, and that such cannot be inferred from a single alleged incident of unlawful police conduct.[27]

However, in *Owens* v. *Hass,*[28] the second circuit suggested that a single, unusually brutal or egregious illegality, such as a beating administered by a group of municipal employees, may be sufficiently out of the ordinary to warrant governmental liability.[29] In addition, in *Ellis* v. *City of Chicago,*[30] a Federal district court ruled that a viable § 1983 claim was stated against the city where it was alleged that the police conducted illegal searches of the plaintiff's home on three instances within a 2-year period.[31]

Thus, while *Marrero* represents the result reached by most courts, the decisions in *Owens* and *Ellis* suggest that proof of persistent practices of illegality by the police or an unusually egregious instance of police misconduct may be interpreted as unofficial policy or custom rendering the government liable under § 1983.

Action by Officials

The decision of the Supreme Court in *Owen* provides a good example of a case where the actions of city officials (unconstitutional dismissal of chief) resulted in § 1983 liability for the city. Another case involving action by city officials resulting in the unconstitutional dismissal of a law enforcement officer is *Shuman* v. *City of Philadelphia.*[32]

In *Shuman,* a Federal district court concluded that a dismissed police officer had stated a claim that fit within the scope of municipal liability as set forth in *Monell.* The officer claimed his discharge resulted from his failure to answer all questions propounded to him during an official investigation of his off-duty conduct. The department as a matter of policy required officers to answer all such questions or face dismissal.

The *Shuman* court concluded that the constitutional right of privacy protects personal information from disclosure,[33] and that departmental officials would have to demonstrate compelling reasons for the information before compelled disclosure would be constitutionally justified. Moreover, the court stated that a person's private sexual activities are within the zone of privacy that is protected from unwarranted government intrusion.[34] In finding that city officials had failed to meet the burden of showing that the officer's off-duty personal activities had a substantial impact on job performance, the court ordered that the officer be reinstated and that the city be liable under § 1983 for the full amount of back pay.[35]

In *Williams* v. *Alioto,*[36] a city was held liable under § 1983 because of specific action ordered by city officials which was subsequently determined to be unconstitutional. *Williams* involved a § 1983 claim against officials of the city of San Francisco and officials of the police department seeking declaratory and injunctive relief on behalf of black male persons who were subject to being stopped and "pat searched" as a result of a directive issued by departmental officials. The *Williams* court issued a preliminary injunction ordering the officials to stop the practice and also concluded that the plaintiffs were entitled to reasonable attorney's fees under the Civil Rights Attorney's Fees Act of 1976.[37] The court said that a § 1983 action against city officials in their official capacities is really a suit against the city and that the good faith of those officials is not a bar to awarding attorney's fees against the city.[38]

In *Truck Drivers and Helpers Local Union* v. *City of Atlanta,*[39] a Federal district court sustained a § 1983 claim against the city of Atlanta where it was determined that city officials had acted in a way which denied the police union equal protection. The court found the city had a system of dues checkoff for other city empolyees who were union members, but refused to extend the same benefit to the employees of the police department.[40]

In summary, the above cases suggest that if action is taken by an official whose edicts or acts may fairly be said to represent official policy or custom and that action causes a constitutional injury, the city will be liable under § 1983.

Inaction by Officials

Several courts have also been asked to decide whether the inaction of officials in the form of failing to properly train, supervise, discipline, or fund can create § 1983 liability for the government. In that regard, the Supreme Court said in *Monell* that local governing bodies "may be sued for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels."[41] While *Monell* did not set forth a clear explanation of what constitutes governmental custom,[42] lower Federal courts have indicated that *official inaction* involving a refusal to enforce rules or a systematic maladministration of a police agency can become so entrenched that it solidifies into a custom which is actionable under § 1983.

For example, in *Mayes* v. *Elrod,*[43] a Federal district court was confronted with the question of whether the alleged continuing pattern of underfunding county programs can qualify as a custom in light of *Monell.* The *Mayes* case involved an action to recover damages for injuries received while the plaintiff was a pretrial detainee in the county jail. The court concluded that the county has a legal duty to maintain the jail in a suitable condition and that a persistent practice of underfunding and maladministration can rise to the level of an official custom.[44] However,

". . . a governmental entity will be strictly liable under § 1983 where a specific policy or custom of its law enforcement agency causes a constitutional injury."

Mayes requires that the plaintiff establish a casual link between the underfunding and his ultimate injuries before the county will be liable under § 1983.[45]

In *Turpin* v. *Mailet,*[46] the U.S. Court of Appeals for the Second Circuit was asked to decide whether the inaction of officials on the board of police in failing to discipline a particular police officer could constitute official policy or custom under *Monell.* While agreeing that official policy can sometimes be inferred from the omissions of supervisory officials,[47] the *Turpin* court emphasized that the plaintiff must show an affirmative link between the inaction and the ultimate injury. The court said a strong case for imposing § 1983 liability on the city for the inaction of officials occurs where there is a failure to remedy a specific situation, the continuation of which causes the injury, such as failing to discipline an officer who repeatedly engages in misconduct.[48] However, absent some clear evidence of inaction or acquiescence in a prior pattern of illegal conduct, the court said a policy of supervisory indifference could not ordinarily be inferred from a single incident of police misconduct.[49] In that regard, the *Turpin* court said:

> ". . . where senior personnel have knowledge of a pattern of constitutionally offensive acts by their subordinates but fail to take remedial steps, the municipality may be held liable for a subsequent violation if the superior's inaction amounts to deliberate indifference or to tacit authorization of the offensive acts." [50]

In the case of *Edmonds* v. *Dillin,*[51] a Federal district court rejected the idea that official inaction must reach the point of deliberate indifference[52] and instead formulated the following test to be used in instances where municipal liability under § 1983 is predicated on an allegation of improper police training:

> "If a municipality completely fails to train its police force, or trains its officers in a manner that is in reckless disregard of the need to inform and instruct police officers to perform their duties in conformity with the Constitution, and if the municipality might reasonably foresee that unconstitutional actions of its police officers might be committed by reason of the municipalities failure or reckless disregard, then the municipality would have implicitly authorized or acquiesced in such future unconstitutional acts." [53]

In contrast to the standard adopted in *Edmonds,* a Federal district court in the case of *Jones* v. *City of Philadelphia*[54] dismissed a § 1983 claim against the city and narrowly defined, as follows, the scope of municipal liability where it is claimed that negligent or reckless training or supervision caused the injury:

> "Negligence, whether conclusorily described as gross or otherwise, is clearly insufficient under the standards set forth in *Monell.* Indeed, even the deliberate act of a city official, absent the trappings of official policy or custom, will not serve as a basis for municipal liability under § 1983." [55]

The differing standards adopted in *Edmonds* and *Jones* underscore the difficulty lower Federal courts may experience interpreting *Monell* and *Owen* and suggest that subsequent litigation may result in inconsistent rulings as the Federal courts attempt to delineate the scope of § 1983 liability. However, an analysis of the cases indicates that there is a consensus on three points. First, official inaction in the context of improper training, discipline, supervision, or funding can generate governmental liability under § 1983.[56] Second, the likelihood of liability increases where the complaint contains specific allegations that demonstrate that officials knew or should have known that particular deficiencies existed and their inaction in failing to remedy those deficiencies caused the constitutional injury. Third, mere negligence in the form of official inaction is probably insufficient to state a § 1983 claim.[57]

Conclusion

Predictably, the pressures associated with effective law enforcement will generate some § 1983 claims against local government. While not entirely consistent, the cases discussed in this article reveal several points of agreement that deserve mention. First, a governmental entity will be strictly liable under § 1983 where a specific policy or custom of its law enforcement agency causes a constitutional injury. Second, if a complaint fails to allege a direct link between a policy or custom and the injury, or fashions the claim in conclusory terms, the government could consider a motion to have the § 1983 claim summarily dismissed.[58] Third, law enforcement agencies should carefully and periodically evaluate their policies and practices to be certain they conform to the evolving body of constitutional doctrine. Fourth, law enforcement administrators should insist on the continuing availability of competent legal advice to reduce the risk of governmental liability under § 1983. For example, in the case of

Garner v. *Memphis Police Department,*[59] the U.S. Court of Appeals for the Sixth Circuit indicated that a city might be liable where police departmental policy authorized, in accordance with local law, the use of deadly force to apprehend nondangerous fleeing felons, if that policy is later determined to be in violation of Federal constitutional standards.

One final comment is merited. It remains to be seen whether the prospect of governmental liability under § 1983 will create a substantial burden on local government or be an effective deterrent to unlawful conduct.[60] If strict § 1983 liability assists in the creation of a healthy tension between the desire for effective law enforcement and the constitutional rights of citizens, then the recent developments in § 1983 liability discussed in this article seem quite appropriate. Moreover, if the additional pressure that is placed on local government by the threat of liability results in a substantial reduction in the frequency of law enforcement misconduct, arguments against the exclusionary rule may become more persuasive.

FBI

Footnotes

[1] 365 U.S. 167 (1961). The *Monroe* holding was further expanded by the Court to preclude equitable relief, *City of Kenosha* v. *Bruno,* 412 U.S. 507 (1973), and even to uphold municipal immunity where waived by State law. *Moor* v. *County of Alameda,* 411 U.S. 693 (1973).

[2] 42 U.S.C. § 1983 provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress."

[3] 365 U.S. at 191.

[4] *Id.*

[5] 436 U.S. 658 (1978). Before *Monell,* the only Federal cause of action available for the deprivation of constitutional rights by local governmental entities was based on the rationale set forth in the case of *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics,* 403 U.S. 388 (1971). Recent cases since *Monell* suggest that a *Bivens* action against a governmental body is inappropriate, and that even if a *Bivens* claim is possible, liability under *Bivens* is no greater than under § 1983. See, *Dean* v. *Gladney,* 621 F.2d 1331 (5th Cir. 1980); *Jones* v. *City of Memphis,* 586 F.2d 622 (6th Cir. 1978); *Feldman* v. *City of New York,* 493 F.Supp. 537 (S.D.N.Y. 1980); *Jones* v. *City of Philadephia,* 491 F.Supp. 284 (E.D.Pa. 1980). For a discussion of the development of the *Bivens* cause of action against municipalities, see Kramer, "Section 1983 and Municipal Liability: Selected Issues Two Years After *Monell* v. *Department of Social Services,*" 12 Urban Lawyer 232 (1980).

[6] 63 L.Ed.2d 673 (1980).

[7] While cities, counties, and other political subdivisions are created by the State, the Supreme Court has held that under the 11th amendment, the States and their political subdivisions are separate entities. See, e.g., *Lake Country Estates* v. *Tahoe Regional Planning Agency,* 440 U.S. 391 (1979); *Edelman* v. *Jordan,* 415 U.S. 651 (1974). Therefore, while suits against a State may not be brought in Federal court under § 1983 without the State's consent, no consent is necessary for such suits against counties, municipalities, and other independent political subdivisions. For an analysis of the law in this area and its impact on the principles of federalism, see Barrett, "The Denial of Eleventh Amendment Immunity to Political Subdivisions of the States: An Unjustified Strain on Federalism," 1979 Duke L. J. 1042 (1979).

[8] Some courts have suggested that in addition to § 1983 liability, municipalities may also be liable under 42 U.S.C. § 1981, where racial animus is sufficiently alleged. Moreover, these courts noted that if claims against individual police officers could be established, the city might be held vicariously liable which, of course, is not permissible under § 1983. See e.g. *Mahone* v. *Waddle,* 564 F.2d 1018 (3d Cir. 1977), cert. denied, 438 U.S. 904 (1978); *Jones* v. *City of Philadelphia,* 491 F.Supp. 284 (E.D.Pa. 1980). However, in *Edmonds* v. *Dillin,* 485 F.Supp. 722 (N.D. Ohio 1980), the court ruled that municipalities are not liable under 42 U.S.C. § 1985 on the basis of respondeat superior if sued for an alleged conspiracy between city officials and police officers to violate constitutional rights.

[9] 436 U.S. at 690.

[10] *Id.*

[11] *Id.*

[12] The Court stated that a municipality could not be held liable solely because it employs a tortfeasor. *Id.* at 691.

[13] *Id.* at 694.

[14] The investigation concerned allegations of irregularities in the administration of the police department's property room.

[15] 63 L.Ed.2d at 685–86.

[16] *Id.* at 693.

[17] *Id.*

[18] In this regard, Justice Brennan said that the threat of liability against the city ought to increase the attentiveness with which officials at the higher levels of government supervise the conduct of their subordinates. "The need to institute systemwide measures in order to increase the vigilance with which otherwise indifferent municipal officials protect citizens' constitutional rights is, of course, particularly acute where the front-line officers are judgment-proof in their individual capactities." *Id.* at 694, n. 36.

[19] *Id.* at 697.

[20] *Id.* at 702 (Powell, dissenting).

[21] *Id.* at 708–09.

[22] See, e.g., *Williams* v. *Codd,* 459 F.Supp. 804 (S.D.N.Y. 1978).

[23] *Familias* v. *Briscoe,* 619 F.2d 391 (5th Cir. 1980).

[24] *Id.*

[25] 625 F.2d 499 (5th Cir. 1980).

[26] *Id.* at 511.

[27] *Id.* at 511–12. See also, *Local No. 1903* v. *Bear Archery,* 617 F.2d 157 (6th Cir. 1980); *Morrison* v. *Fox,* 483 F.Supp. 390 (W.D.Pa. 1979); *LaRocco* v. *City of New York,* 468 F.Supp. 218 (E.D.N.Y. 1979).

[28] 601 F.2d 1242 (2d Cir. 1979), cert denied, 444 U.S. 980 (1980).

[29] *Id.* at 1246. See, *Knight* v. *Carlson,* 478 F.Supp. 55 (E.D.Cal. 1979); *Leite* v. *City of Providence,* 463 F.Supp. 585 (D.R.I. 1978); But cf. *Popow* v. *Margate,* 476, F.Supp. 1237 (D.N.J. 1979) (rejecting *Owens*).

[30] 478 F.Supp. 333 (N.D.Ill. 1979).

[31] *Id.* at 336.

[32] 470 F.Supp. 449 (E.D.Pa. 1979).

[33] *Id.* at 457.

[34] *Id.* at 459.

[35] *Id.* at 464. In *Cale* v. *City of Covington,* 586 F.2d 311 (4th Cir. 1978), the court indicated that § 1983 could be used by a dismissed employee if dismissal from the police department is unconstitutional and caused by the execution of some city policy or custom. Two courts, which previously refused to award back pay to employees who alleged in a § 1983 suit that certain employment practices were unconstitutional, relied on an asserted good faith defense. However, in light of the Supreme Court decision in *Owen,* the results in those cases might be different if decided today. See, e.g., *Bertot* v. *School District,* 613 F.2d (10th Cir. 1978); *Paxman* v. *Campbell,* 612 F.2d 848 (4th Cir. 1980).

[36] 625 F.2d 845 (9th Cir. 1980).

[37] 42 U.S.C. § 1988 (1976). In *Williams,* the court ruled that plaintiffs who prevail on the merits of at least some of their claims are entitled to reasonable attorney's fees and that fee awards are authorized in § 1983 litigation against a city where a party prevails through a settlement rather than litigation. *Id.* at 847–48.

[38] *Id.* at 848. However, where officers are sued in their individual capacities, attorney's fees will not be assessed against the city. See, *Dean* v. *Gladney,* 621 F.2d 1331 (5th Cir. 1980).

[39] 468 F.Supp. 620 (N.D.Ga. 1979).

[40] *Id.* at 621.

[41] 436 U.S. at 690–91.

[42] In *Monell,* the Supreme Court appeared to rely on the case of *Adickes* v. *S.H. Kress & Co.,* 398 U.S. 144 (1970), in which custom is defined as a persistent practice of State officials which is so well-settled that it has the same force of law as does a legislative pronouncement. *Id.* at 671, n. 39.

[43] 470 F.Supp. 1188 (N.D.Ill. 1979).

[44] *Id.* at 1198.

[45] *Id.*

[46] 619 F.2d 196 (2d Cir. 1980).

[47] *Id.* at 200.

[48] *Id.* at n. 5.

[49] *Id.* at 202.

[50] *Id.* at 201.

[51] 485 F.Supp. 722 (N.D.Ohio 1980).

[52] For an explanation of the deliberate indifference standard, see, *Leite* v. *City of Providence,* 463 F.Supp. 585 (D.R.I. 1978).

[53] 485 F.Supp. at 727.

[54] 491 F.Supp. 284 (E.D.Pa. 1980).

[55] *Id.* at 287.

[56] See, e.g., *Reeves* v. *City of Jackson,* 608 F.2d 644 (5th Cir. 1979).

[57] See, e.g. *Feldman* v. *City of New York,* 493 F.Supp. 537 (S.D.N.Y. 1980).

[58] It is also important to note that any claims that may exist against a governmental entity on the basis of State law cannot be asserted in Federal court on the basis of pendent jurisdiction, unless there exists independent § 1983 jurisdiction over that defendant. See, *Aldinger* v. *Howard,* 427 U.S. 1 (1976); *LaRocco* v. *City of New York,* 468 F.Supp. 218 (E.D.N.Y. 1979).

[59] 600 F.2d 52 (6th Cir. 1979).

[60] In *Maine* v. *Thiboutot,* 65 L.Ed.2d. 555 (1980), the Supreme Court ruled that § 1983 can also be used where the claim is based on a deprivation of Federal statutory rights.

WANTED BY THE FBI

Photographs taken 1967.

Richard N. Nickl

Also known as Richard Gleason, Jack Johnson, Richard M. Nickel, Brandon A. Hanck, Richard M. Nickl, Richard Michael Nickl, and Richard Nicholas Nickl.

Wanted for:

Interstate Flight—Murder

The Crime

While serving a life sentence for the murder of one police officer and the wounding of another, Nickl escaped on July 25, 1974, from the Wisconsin Correctional Institute, Fox Lake, Wis.

A Federal warrant for Nickl's arrest was issued on August 8, 1974, at Milwaukee, Wis.

Description

Age	46, born August 6, 1934, Chicago, Ill.
Height	5'9".
Weight	160 pounds.
Build	Medium.
Hair	Dark brown, balding.
Eyes	Brown.
Complexion	Medium.
Race	White.
Nationality	American.
Occupations	Bartender, construction worker, dog kennel operator, dog trainer, laborer, and salesman.
Scars and Marks	Scar left forehead to scalp; scar over left eyebrow; brown mole right side of face; vaccination scar upper left arm; scar left hand.
Remarks	May have mustache, beard, or long hair; may wear wig or have hair transplant; reportedly suffers from arthritis; may walk with a slight limp.
FBI No.	849 635 A.

Caution

Nickl has been convicted of robbery and murder in the past. He should be considered armed, dangerous, and an escape risk.

Notify the FBI

Any person having information which might assist in locating this fugitive is requested to notify immediately the Director of the Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535, or the Special Agent in Charge of the nearest FBI field office, the telephone number of which appears on the first page of most local directories.

Classification Data:

NCIC Classification:
PO67161816DIPO171717

Fingerprint Classification:
17 0 5 R 000 16
1 19 W 000

Right index fingerprint.

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Labor Handbook Available

Currently available to elected municipal officials, city and county managers, and police officials is a handbook outlining developments in police labor contracts and suggesting ways to resolve key issues.

The survey, conducted by the National League of Cities and the Police Executive Research Forum and funded in part by a grant from the Law Enforcement Assistance Administration, analyzed 98 contracts in jurisdictions of 100,000 or more, concentrating on 15 issues. The topics included grievance clauses, arbitration procedures, discipline provisions, cost-of-living adjustments, transfers, reductions in force, sick leave, antistrike provisions, and internal rules and regulations.

According to the survey, approximately 75 percent of the contracts contained "management rights" language indicating management's unilateral power to act lawfully in administering the police agency, i.e., freedom to determine and change department structures, assign work and overtime, and transfer employees.

Grievance machinery was in 85 percent of the agreements, and in more than 75 percent, there was binding arbitration by neutral third parties. About 58 percent referred to employee discipline, but there were substantial differences in phrasing. Police rights' provisions, such as union or legal representation during internal investigations and polygraph use, were in 26 percent of the contracts. Some 15 percent had cost-of-living wage provisions, but only a few contracts had provisions for laying off or recalling personnel.

There were substantial variations in sick leave language. One day of sick leave for each month of service was the most frequent provision. One jurisdiction discovered that 90 percent of the sick leave requests involved a single day that preceded or followed a scheduled day off or holiday.

Less than 25 percent of agreements required that employees and the union be given a copy of the department's rules. About 75 percent of the contracts prohibited strikes.

Copies of the executive summary, "Police Collective Bargaining Agreements—A National Management Survey," can be obtained from the National League of Cities, 1620 I Street N.W., Washington, D.C. 20006.

U.S. Department of Justice
Federal Bureau of Investigation

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Unusual Pattern

The pattern shown here is unusual due to the figure number eight located in the middle of the innermost recurving ridge. The pattern is classified as a whorl with an inner tracing referenced to meet tracing.