Exclusive Representation in Public Employment: A Public Choice Perspective

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Public sector unionization has grown rapidly in recent years, and research has suggested that among the reasons for such growth is legislation granting special privileges to public employee unions. This paper examines one form of legislative privilege, exclusive representation, from a public choice perspective. It is shown that exclusivity reduces employees' freedom of choice, increases the welfare of union leaders at the expense of union members, limits employment opportunities to "outsiders," entrenches the monopoly provision of public services, and generates conflict and instability in labor relations.

I. Introduction

In terms of membership, private sector unions have experienced a sectoral decline in recent decades, while public sector unionism has rapidly expanded. Only about 11 percent of all government employees were unionized in 1960, compared to more than 50 percent today (Lewin and Goldenberg, 1980). Research has suggested that among the reasons for such growth is legislation that has granted special privileges to public employee unions (Reid, 1983; Reynolds, 1983). Both public and private unions are essentially labor cartels that transfer wealth — primarily from other workers — to their own members and leaders; and like all other cartels, labor cartels are difficult, if not impossible, to sustain without the aid of governmental sanctions.

This paper examines one particular form of legislative privilege, exclusive representation, from a public choice perspective and explores the probable allocative and distributive effects of this government intervention in the labor market.

Section II discusses the public goods arguments in favor of exclusivity in public employment. Section III shows how monopoly power is exercised through exclusive representation, and section IV explores the notion that exclusivity is desirable as a form of "countervailing power" in public sector labor relations. Section V contains a summary and conclusions.
II. **Exclusivity and the Theory of Public Goods**

A public goods argument is often used to support exclusive representation in both the public and the private sectors. Union bargaining services are said to be a public good and, therefore, will be under-produced without government interventions, such as exclusivity or agency shop requirements. As one student (Pulsipher, 1966, p. 532) said of the National Labor Relations Act:

> By its provision that one, and only one, union shall act as the exclusive bargaining agent for all the employees in a bargaining unit, the act seems to have recognized inherent collective properties in union bargaining services, and the act definitely did make union bargaining services collective goods, i.e., the act requires joint consumption within the bargaining unit.

The National Labor Relations Act was directed at private sector unions, but the logic of the act has also been applied to public employee unions by scholars, public officials, and even the U.S. Supreme Court. But there are serious flaws in this logic. In essence, by permitting collective bargaining in the public sector, legislatures have created what might be called a *government-induced* market failure: The public goods aspects of collective bargaining are *artificially* created by government fiat, not by economic phenomena, as with traditional public goods theory. In addition, the very idea that negotiation is a public good is a myth. Private bargaining agents can readily provide such services by excluding those workers who are not a party to the labor contract. Thus, the main characteristic of public goods, nonexcludability, is absent. Public employee unions do (illegally) exclude nonunion workers from their services. For example, the Federal Labor Relations Authority recently found that the National Treasury Employees Union committed an unfair labor practice by refusing to provide attorneys for the 55,000 non-union Department of Treasury workers who file grievances (Geiselman, 1983). Also, to the extent that unions raise wages above competitive levels by controlling or restricting others' employment opportunities, they exclude some workers from the benefits of their collective bargaining services, further negating the exclusion principle.

With respect to exclusive representation, to have a majority of *voting* employees choose one union to represent *all* workers has been criticized by some as being unduly coercive. But the practice is often defended on the grounds that "most political decisions are also run on the same basis." While it is true, this statement does not explain why exclusivity is necessary or desirable, but rather why the public goods or "efficiency" rationale for exclusivity and other forms of "union security" legislation breaks down. Namely, collective decisions aimed at addressing supposed market "failures" do not necessarily improve the allocation of resources because of the simultaneous existence of political or government failures. In particular, with a majority rule vote the members of the winning majority

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1 See *Abood v. Detroit Board of Education* (1977).