



Police Unions in the Civil Service Setting



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by
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TABLE OF CONTENTS

	<u>Page</u>
FOREWORD	v
A. Introduction	1
B. Objectives of This Paper	2
C. Definitions of Terms	3
D. Essential Characteristics of Public Sector Labor-Management Relations	4
E. The Validity of Civil Service Systems in a Contemporary Labor-Management Environment	12
F. An Alternative to Civil Service Systems--Productivity Bargaining Over Hiring, Promotion, and Discipline Practices	16
G. Negotiating Over Civil Service Issues--The Corpus Christi, Texas, Police Collective Bargaining Experience	21
H. Application of the Corpus Christi Experience--Some Caveats	36
I. Advantages of Productivity Bargaining to the Union	37
J. Conclusion	38

FOREWORD

Public Administration Service (PAS), under a grant from the National Institute of Law Enforcement and Criminal Justice, completed a two-year research project entitled Civil Service Systems: Their Impact on Police Administration. The project involved an analysis of the civil service and personnel decision-making systems in 42 large American cities (as indicated on the cover) in order to determine what impact--both positive and negative--these processes have on the ability of local officials to manage their police resources.

This monograph about civil service systems and police unions is one product of the research project. During the course of the project it became evident that the subject of collective bargaining and its impact upon civil service systems is a major concern of local officials. Consequently, Public Administration Service asked Mr. John H. Burpo, a recognized authority on police collective bargaining, to prepare a monograph setting forth his experiences and views on this important and interesting subject.

Mr. Burpo is currently Labor Relations Consultant for the Combined Law Enforcement Associations of Texas (CLEAT). In this capacity he negotiates collective bargaining agreements for police associations and represents officers in disciplinary and contract grievance arbitration cases. Recognized in law enforcement in the field of labor relations, he has lectured extensively and authored a text book, many monographs, and articles on police unionism and collective bargaining. Mr. Burpo has previously worked for the International Association of Chiefs of Police and for the Tucson, Arizona, Police Department.

The points of view expressed by Mr. Burpo are, of course, his own and do not necessarily represent those of PAS. Nor do they necessarily represent the empirical findings of the civil service research project. Nevertheless, it is hoped that this monograph serves to provide a clearer understanding of the issues and dynamic relationships between the civil service and police collective bargaining processes.

A. Introduction

Although police unionization has been a recent development, the actual process of police officers joining labor organizations and participating in union-related activities has been more extended and evolutionary. Early attempts were made by the American Federation of Labor at the beginning of this century to organize police officers.¹ The most celebrated of those efforts was in Boston, Massachusetts, where the Federation attempted in 1919 to organize police officers in order to correct inadequate economic benefits and working conditions.² Boston city officials combatted this unionization campaign by reprisals and threats causing police officers to go on strike. The results were catastrophic--mass looting took place; mob violence led to four lives being lost; and ultimately, over 1,100 police officers were fired for their participation in the strike.³

The Boston Police Strike led to a prolonged period of anti-union attitudes among police administrators, elected officials, state legislators, and courts. This opposition was manifested by rules prohibiting police officers from joining unions; draconian state legislation penalizing officer participation in strikes; and court decisions supporting disciplinary action against police officers who joined unions.⁴ This hostile environment made the option of unionization unappealing to the average police officer, resulting in little or no union activity in American law enforcement for approximately forty years following the Boston Police Strike.

It was not until the sixties that interest in unionization was reviewed among law enforcement officers.⁵ Several factors have been cited as contributing to this renewal including: the substantial economic benefits attained by private sector employees, primarily through the collective bargaining process; the success of other public employees in achieving improved benefits through unionization; the extension of collective bargaining rights to federal government employees and to public employees in some states; and a perception among police officers that the value to the community of the job they were performing should be recognized in the form of increased benefits.⁶

The process of police unionization in the sixties was characterized by conflict and confrontation between police officers and their employers. The most notable of these confrontations were the first police strike since 1919 in Pontiac, Michigan, in the mid-sixties, work stoppages in other major cities; and the New York civilian review board referendum fight between Mayor John Lindsay and the Patrolmen's Benevolent Association.⁷

¹ Burpo, John, The Police Labor Movement: Problems and Perspectives (Springfield, Illinois: Charles C. Thomas, 1971), p. 3.

² Ibid., p. 4.

³ Ibid.

⁴ See, for example, City of Jackson v. McCloud, 24 So. 2d 319 (1946).

⁵ Juris, Hervey and Feuille, Peter, Police Unionism (Lexington, Massachusetts, Lexington Books, 1973), pp. 18-19.

⁶ Burpo, The Police Labor Movement, pp. 11-13.

⁷ Ibid., p. 31.

Today, a relatively clear picture of the police labor movement has emerged, allowing some general conclusions to be drawn. First, police unionization in the United States is extremely fragmented.⁸ There are many labor unions competing for members in police departments including local, state, and national labor organizations. There is no single organization that can be identified as the spokesman for the majority of law enforcement officers in the United States.

Second, police officers and their labor organizations pursue the same economic benefits and working condition improvements as their counterparts in the private sector.⁹ Police unions seek higher salaries, improved insurance and pension plans, overtime compensation, and other related fringe benefits. Working conditions, including the condition of police vehicles, the quality and style of uniforms, and safety issues, are also of major interest to police unions. In addition, police officers and unions express concern over job assignments and transfers, promotional procedures, and disciplinary practices.

Finally, police officers and unions are utilizing the same tactics as their private sector counterparts.¹⁰ Negotiation with the public employer, whether mandated legislatively or carried out on an ad hoc basis, is the most widely accepted method for accomplishment of the union's organizational goals. When agreement cannot be reached with the public employer, a variety of legal and illegal options for resolution of the deadlock are available. Lawful labor activities include public appeals, informational picketing and, in some states, impasse resolution procedures such as factfinding and arbitration. In states with no bargaining statute, or with a statute lacking an effective impasse resolution mechanism, resort is sometimes had to illegal activities such as work slowdowns or speedups, or the complete withholding of services.

B. Objectives of This Paper

Police unions have become one more concern of public management. The quality of management decisions affecting economic benefits and working conditions will have a direct impact on the relationship between the public employer and the police union. One critical area of management decision-making--hiring, promotion, and disciplinary practices governed by a civil service system, and how these decisions affect police labor-management relations--will be the concern of this paper.

Although they are quite diverse entities, civil service systems play integral roles in public personnel management at all levels of government in the United States. The majority of systems have as their primary purpose some measure of supervision and control over hiring, promotion and disciplinary practices of the public employer. The underlying purpose for the adoption of civil service has been to protect these particular personnel practices from adverse political influences and to insure that some measure of fairness and rationality is brought to the personnel process.

⁸ Lowenberg, J. Joseph, "Emerging Sectors of Collective Bargaining," Seminar #3, Labor Relations for Policemen and Firefighters, Temple University, 1968, p. 21.

⁹ Juris and Feuille, Police Unionism, p. 6.

¹⁰ Ibid.

Police unions have traditionally taken an active interest in hiring, promotional, and disciplinary practices because these issues have a direct impact on the well-being of their membership. For example, a civil service commission plan to reduce the impact of seniority in computing a total score on a promotional examination would draw considerable concern from a police union, especially one which was composed predominantly of officers with substantial lengths of service. Disciplinary practices established by a civil service system are also scrutinized closely by police unions because civil service administrative hearings are normally used to suspend or discharge police officers, thereby taking money or jobs away from union members. Thus, it is axiomatic to say that police unions have considerable interest in civil service and its impact on police officers.

This paper will examine the relationship between police unions and civil service systems. Specifically, the following issues will be explored:

1. The extent to which police unions have had an impact on civil service systems;
2. The validity of civil service systems in a contemporary labor-management environment; and
3. The alternatives to civil service necessary for positive labor-management relations and acceptable to police officers, police unions, and public management officials.

The main theses advanced are that police unions have had a minimal impact on civil service systems; that civil service is an obstacle to more efficient and productive hiring, promotion, and disciplinary practices; and that the efficiency and productivity of police departments can be improved by collectively bargaining over issues that have traditionally fallen within the jurisdiction of civil service systems. The main focus of this paper will be to determine the roles that each of these entities--police officers and their unions, public managers, and civil service commissioners--should play in contemporary police labor-management relations.

C. Definitions of Terms

In analyzing the impact of police unions on civil service systems, definitions of key terms will be necessary because many of them are given varied interpretations. The following are the definitions of terms that will be used frequently in this paper:

1. Civil Service System. A system, the basic purpose of which is to establish a non-political, rational method for hiring, promoting, and disciplining police officers and other public employees. This definition is necessarily broad in order to encompass the many civil service systems with varying powers and jurisdiction over hiring, promotion, and discipline issues.
2. Civil Service Commission. The regulatory agency charged with the responsibility of administering a civil service system.

3. Police Union. A group of police officers who have banded together for the purpose of entering into a relationship with a public employer over wages, hours, and terms and conditions of employment.¹¹ This definition includes any form of local, statewide, or national police association which police officers have joined, from social groups such as the Fraternal Order of Police to organizations more readily identified as labor unions, such as the Teamsters. It also includes labor-management relationships in both a bargaining and non-bargaining context.
4. Collective Bargaining. The process by which police employees, through their labor unions, negotiate a formal, written agreement with their employer over wages, hours, and terms and conditions of employment.
5. Police Executive. The official who is the chief administrator of the law enforcement agency.
6. Chief Executive Officer. The official who is the chief administrator of the public employer.
7. Adjudicative Role (of a civil service commission). The task of adjudicating employees' appeals of personnel decisions.
8. Administrative Role (of a civil service commission). The task of administering routine personnel functions.

D. Essential Characteristics of Public Sector Labor-Management Relations

Before examining the relationship between civil service systems and police unions, it is necessary to come to a fundamental understanding of the nature of public sector labor relations as compared to the private sector. There are two major differences between the two sectors: in the concept of the "employer" and in the differing roles played by politics and economics in labor-management issues.¹²

The "employer" is different in the private and public sectors. A private sector union deals with one person or group of persons that is authorized to speak for and represent all interests of the corporate employer.¹³ This centralization of authority gives private sector employers the ability to make difficult decisions that are consistent with short- and long-range objectives of the organization without fear of overrule by another intervening decision-maker.

The public sector "employer" does not have such a monolithic structure. Authority and responsibility are diffused among various individuals and governmental bodies, a situation often leading to inconsistent and conflicting policy-making.¹⁴ Furthermore, the situation provides an obvious

¹¹ Ibid., p. 219.
¹² Ibid., pp. 44-52.
¹³ Ibid.
¹⁴ Ibid.

advantage to the police union not enjoyed by its private sector counterpart: if union objectives cannot be achieved through one source of power, another one will be pursued until some government representative or entity is discovered that is responsive to the union objective.¹⁵

A second characteristic of public sector labor relations as compared to the private sector is that the former is essentially a political process, whereas the latter is an economic one.¹⁶ Conflict between the union and the employer in the private sector is measured in dollars and cents; both parties calculate whether it will be more costly to agree (e.g., settle collective bargaining negotiations) or disagree (e.g., not settle, resulting in a strike and lock-out), and both usually behave in accordance with the results of that calculation.¹⁷

The costs of agreement or disagreement in the public sector, however, are measured in terms of political consequences: what will be the impact of settlement or conflict at the ballot box?¹⁸ This political calculus gives the police union the option to support or oppose particular political officials or issues on the basis of how much the support or opposition will assist in attaining union objectives.

1. Characteristics of the Police Union. One other feature deserves preliminary exploration: the structure of police unions. Once an understanding of the characteristics of a police union are known, a better appreciation for the reasons unions take certain positions on civil service issues will result.

Police unions are normally composed of sworn officers from the particular local, state, or federal jurisdiction. In states with collective bargaining statutes for public employees, the union, or recognized bargaining agent, will represent those officers in a specific bargaining unit.¹⁹ The bargaining unit typically consists of officers with a "community of interests." In larger police departments, the bargaining unit might be composed of only patrolmen (e.g., New York City); patrolmen and sergeants (e.g., Washington, D.C.); whereas, medium or small departments might have broader inclusive units encompassing patrolmen up to higher ranking officers, such as lieutenant or captain.

The police union may be a local independent, or it may affiliate with some larger organization at either the state or national level. Local police organizations, with union-like objectives and activities, also are normally involved in social and benevolent affairs such as membership parties, sponsorship of charities, and other good-will programs. Affiliation with a state or national level can be either for the limited purpose of legislative lobbying or for the more general goals of receiving those benefits normally provided by unions--negotiators, attorneys for job-related legal problems, insurance benefits, and a union newsletter.

¹⁵ Ibid.

¹⁶ Wellington, Harry and Winters, Ralph, The Unions and the Cities (Washington, D.C., Brooking Institution, 1971), pp. 8-11.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ See Wisconsin Statutes, Chapter 111.70, (4)(a); 111.02(6) and 111.05(4) for resolution of unit determination issues in Wisconsin.

Whether the union is a local independent or affiliated with a state or national organization, there will ordinarily be an executive board at the local level that is responsible for managing the organization. The executive board is normally composed of a president, vice president, a secretary and a treasurer. Most unions also have a board of directors in addition to the executive board that is representative of a cross-section of the membership (e.g., by shift, sub-station, rank, or division). A position of director on a union board is usually an elective office. In addition, most national and state police organizations and many of the larger local city police unions employ full-time staff personnel who are either elected officials and/or professional labor relations specialists.

The union can be characterized as a democratic institution in that the leadership must be responsive to the expressed needs of the majority of the membership or internal conflict will otherwise result.²⁰ The composition of the union therefore becomes an important aspect of police labor-management relations. The leadership of a union composed of predominantly young, well-educated officers will take a far different position on an issue such as promotional criteria than would the leaders of older, less educated membership. The democratic nature of the police union thus suggests that the union's view toward civil service and specific issues that arise out of the civil service system will be predicated in large part on the composition and sentiments of the membership.

The democratic nature of police unions has exposed them to the probably undeserved label of being opposed to progressive change and only concerned with the narrower, more limited interests of the membership.²¹ This charge has been leveled by law enforcement commentators who fail to understand that a police union is an interest group whose primary purpose is to satisfy the needs and to ensure the security of its members. The police union is not unlike any other organization the purpose of which is to represent the self-interest of its constituency--professional associations such as the American Bar Association or American Medical Association; civil rights groups such as the National Association for Advancement of Colored People; and even management organizations, such as the International Association of Chiefs of Police. Any of these organizations will obstruct what might be perceived as "progressive" change where the change threatens the well-being of its membership.

2. How Police Unions Perceive Civil Service Systems. Although there are union leaders in some jurisdictions that object to specific features of the civil service system, police unions are generally supportive of such systems. There is a certain degree of self-serving interest in that, in many instances, police and other public sector unions initiated civil service reform and enabling legislation. Unions have lobbied considerably in past years at the state and local level to achieve laws that would remove hiring, promotion, and disciplinary practices from political influence and to place these personnel issues under a more rational system.

Police union leaders and members perceive certain advantages to civil service systems. Although these perceptions might not be accurate in all jurisdictions, there is a high degree of general validity to them. Among these perceived advantages are:

²⁰ Juris and Feuille, Police Unionism, p. 38.

²¹ Murphy, Patrick and Plate, Thomas, Commissioner (New York: Simon & Schuster, 1977), p. 197.

- a. Hiring, Promotion, and Discipline Become Less Political. In virtually every civil service law one of the specific objectives is to remove personnel practices from political influence.²² With some exceptions, civil service has removed favoritism and nepotism from the criteria for hiring and promotion. It has precluded disciplinary action on the sole basis that an officer has not conformed his conduct to the whimsical requirements of an elected officials. Political tampering with the presence of a civil service system is still possible, but is subject to challenge.
- b. Brings a Measure of Rationality to the Hiring and Promotional Process. The majority of civil service systems set forth criteria for the hiring and promotion of police officers. Although some of these criteria have come under attack, they do at least have some rational relationship to the job duties of police officers. Many civil service systems will specifically establish criteria for promotional examinations, including: the number of years served in the preceding rank before a promotional exam can be taken; provision for written and/or oral examinations and a specified number of points to be assessed for those parts of the exam; and the number of points to be assessed for other criteria such as seniority, performance evaluations, and veteran's preference. Whether one agrees or disagrees with the use of these criteria, they are known, relatively objective standards by which promotions can be made.
- c. Provides More Job Security in the Disciplinary Process. The presence of a civil service system generally is accompanied by certain due process rights that will be afforded to a police officer when he is disciplined.²³ These rights normally include advance written notice of charges against the employee; the right to a hearing; the right to cross-examine and confront witnesses; the right to counsel; a requirement that the employer show "cause" that the officer is guilty of the misconduct charged; and the right to appeal. These rights give police officers the opportunity to present their version of the disciplinary charges, with some hope that the civil service commission will find the officer not guilty or will modify the punishment to a less excessive one.

²² See, for example, the Texas Fire and Police Civil Service Law, Texas Revised Civil Statutes, Article 1269m, Section 16a, which reads: "It is hereby declared that the purpose of the Firemen and Policemen's Civil Service Law is to secure to the cities affected thereby efficient police and fire departments, composed of capable personnel, free from political influence. . . ." (emphasis added).

²³ See Arnett V. Kennedy, 416 US 134 delineating due process rights for federal employees.

- d. More Job Security Makes Advocacy of Union Philosophies Easier. The right to a hearing with the protection of due process makes the unionization effort in a police department a more secure proposition. Although there exist today several remedies for management coercion and discrimination against police officers engaged in unionization activities,²⁴ the civil service system is still one other protection against anti-union tactics.
- e. Provides One More Avenue for Resolution of Labor-Management Conflict. The point has been made that police unions utilize all available sources of authority within the government structure to achieve organizational goals. The PAS study tends to support this proposition as well: the less militant the union, and the greater authority roles played by professional personnel officers in police personnel affairs, the more the union and its members will use the civil service commission as a resource for contesting management decision-making. For example, where a stronger union/weaker management relationship might result in conflict over promotional criteria being resolved through informal or formal negotiations, the opposite relationship will encourage the union to appeal to the civil service commission, requesting the commission to support the union's position on the proposed criteria.
- f. Makes Public Officials Accountable for Their Actions. The presence of a civil service system will in many instances make public officials justify personnel actions they have taken. In doing so, it will force those officials to come to and apply a rational, non-arbitrary set of operating policies and procedures--and thus will further limit the possibility for abuse of authority.
- g. In Some Instances, Civil Service Provides Additional Fringe Benefits. Some civil service systems provide economic fringe benefits in the enabling legislation that the employer would not otherwise provide. For example, in one state statute providing for police and fire civil service by local referendum at the municipal level, the law requires cities adopting the act to provide their police and fire employees with a minimum of 15 vacation and sick leave days annually.²⁵

Although these perceived advantages of civil service systems constitute the prevailing viewpoint of both the leadership and the rank and file of police unions, there are some objections cited against civil service. The disadvantages commonly stated by labor officials against civil service systems are:

²⁴ See 42 United States Code 1983 for a federal civil rights statute that can be used against public officials who interfere with union activity; and see Washington Revised Code, Sections 41.56.140 and 41.56.160, which permits employees covered by collective bargaining to file an unfair labor practice when management interferes with union activity.

²⁵ Texas Revised Civil Statutes, Article 1269m, Section 26 and 26a.

- a. Management Orientation of Civil Service Commissions. Generally, the appointment of civil service commissioners is within the authority of the elected officials of the jurisdiction. Since the legislative body of a governmental jurisdiction is the ultimate "employer," in some instances civil service commissioners will hold a management philosophy not unlike the attitudes held by the elected officials who appointed them. This situation tends to give rise to the perception among police officers that the civil service commission is simply a rubber stamp for the desires of the public employer.
- b. Civil Service Commissioners are Laymen and do not Understand Complex Personnel Issues. Hiring, promotion, and disciplinary issues are complex, and their resolution often requires the application of sophisticated public personnel administration principles. For example, the development of criteria for hiring and promotion requires knowledge of how certain criteria can discriminate against protected classes of persons; how hiring and promotional examinations can be constructed to test for job-related skills; and how to develop a performance evaluation system and give it the proper weight in a promotional system. In the disciplinary context, civil service commissioners must be qualified to respond to issues of the relevancy of evidence; to give proper weight to all the evidence presented; to make a legal determination as to whether "cause" exists to support a finding that a police officer is guilty of the charges alleged; and to determine the appropriate penalty based upon the offense committed, the officer's past personnel history, and other relevant considerations. These forms of personnel decision-making require a degree of skill and experience that do not ordinarily exist among members of a civil service commission, resulting in a personnel system that is perceived by many police officers as inconsistent and unfair.
- c. Civil Service Commissioners do not Understand the Problems of Police Officers. According to police unions, one correlative effect of civil service commissioners being laymen is that commissioners do not understand the special problems of police officers. This complaint is most often levelled at a commission when disciplinary issues are involved, especially charges of brutality against a citizen by an officer. Civil service commissions are often accused of holding police officers to a higher than reasonable standard in their contacts with citizens, that split-second decisions involving the use of physical force against less than desirable citizens are second-guessed by the commission, resulting in disciplinary action against an officer being unfairly sustained.

Balancing the advantages and disadvantages of civil service systems as perceived by police unions, a conclusion can be drawn: although there are some specific concerns about how the system is administered in some jurisdictions, civil service is preferred over any other method available to hire, promote, and discipline police officers. Ultimately, most police unions conclude that any disadvantages of the system are far outweighed by the advantages, and that in the absence of an alternative, civil service systems should be perpetuated.

3. Public Management's View of Civil Service Systems. The attitudes of public management officials toward civil service systems are not as clear as those of police union leaders. One conclusion of the PAS study is that a majority of the public officials surveyed have adapted to the civil service system, and do not object to its involvement in the police personnel function. Unfortunately what the PAS study does not reveal is whether this acceptance is a positive affirmation of civil service or a resigned acquiescence to the system due to its institutional longevity and presence. Although there is no concrete evidence to support a conclusion on this question, it is submitted that public administrators generally acquiesce to the civil service system. If an opportunity was available to remove hiring, promotion, and discipline from the restrictions of civil service, it would be readily accepted. The contention can be made that public administrators who quietly acquiesce to civil service might be more vocal in their opposition except for fear that this opposition would provoke a confrontation with the police union, and result in politically disastrous consequences.

The PAS study reveals that there is a substantial minority of public administrators who do, in fact, view civil service as an obstacle to effective management. Opponents to civil service systems have specific perceptions as to why civil service interferes with personnel administration. Among these perceptions are:

- a. Civil Service is too Rigid and Inflexible, Thereby Reducing Management Authority and Efficiency. The most common complaint against civil service systems is inflexibility which results in the reduction of management authority, and ultimately, the reduction of overall efficiency of the police operation. For example, in a civil service system with rigid job classifications, interchange between positions will generally be impermissible. This restriction would prohibit the police executive from transferring patrol officers and detectives between their respective divisions in an attempt to develop investigative experience among patrol officers and to use more experienced officers in the patrol operation. Or, for another, a promotional system that requires the police officer at the top of the promotional list to be promoted would not give the police executive the opportunity to select officers lower on the list, thereby hindering the executive's opportunity to develop a supervisory force in conformance with his expectations and philosophies.

b. Civil Service Protects Mediocre and Deadbeat Employees.

The requirement under most civil service systems for a due process administrative hearing to review disciplinary suspensions and terminations causes public administrators to argue that this system perpetuates mediocrity among employees and permits deadbeat employees to remain in the work force. Administrators argue that an excessive amount of work is required of both the internal affairs unit of the police department and the city attorney's office to develop a sufficient number of facts to show "cause" for the disciplinary action, and that the officer's attorney will employ every legal device available to obstruct the proper disciplining of employees.

In the final analysis, there is a view among some public administrators today that civil service interferes with professional public personnel administration. Although the PAS study suggests that this position is held by a minority of administrators, there are probably many public officials interviewed in the study who have simply submitted to the political realities of their jurisdictions and accepted the system as a means of avoiding conflict with their police union and other public employee organizations.

4. The Impact of Police Unions on Civil Service Systems. Many observers of the urban police scene have claimed that unions have had considerable impact on civil service. This proposition is not valid, however, because evidence seems to support the opposite conclusion. The conclusions of the PAS study suggest that the impact of police unions on civil service systems is minor. For example, no direct correlations can be drawn between union activity and a civil service commission that plays a predominantly administrative role. The reason for this absence of impact is clear--administrative commissions are involved in routine as opposed to policy-making personnel matters, and police unions have no major membership interests to protect with respect to these activities. There has been no impact by police unions on civil service commissions playing a predominantly adjudicative role, except insofar as the frequency that the commission is used in its role as outside reviewer of labor-management conflicts. The PAS study concludes that the more militant the union, the less the frequency of resort to the civil service commission as an arbiter of disputes; the less militant, the more frequency of usage.

Other than frequency of use where adjudicative commissions are involved, then, there appears to be no other impact that police unions have on civil service systems. The reason for this minimal impact becomes evident after reviewing the perceived reasons why unions support the civil service concept. The advantages of the system make its perpetuation not only desirable but necessary. A police union and its collective membership will not attempt to markedly alter a system that has significant value in the hiring, promotion, and disciplinary process. Only if some alternative to civil service exists that offers the same advantages will there likely be union support and demand for departure from the traditional civil service system.

E. The Validity of Civil Service Systems in a Contemporary Labor-Management Environment

For many years, the delivery of police and other public services was rendered with little or no analysis of the effectiveness or quality of these services. Today, however, considerable attention has been focused on this issue, with increased demands being made by public administrators and taxpayers for productive public services.²⁶

The concept of productivity has been utilized in the private sector for many years as essentially a quantitative measurement in which the employer compares the ratio of outputs (e.g., goods or services) to inputs (e.g., labor or capital).²⁷ Some forms of public services are also susceptible to quantitative measurements. For example, the effectiveness of garbage collection can easily be determined by measuring the tonnage of garbage collected by sanitation workers this year versus last year.²⁸

Operations in other public agencies, such as the police department, are not as easily measured by quantitative standards.²⁹ For example, gauging the success of the police department by the number of traffic tickets written or number of arrests made from year to year could lead to serious abuses of police powers in an effort to demonstrate productivity of the agency. Police duties such as daily citizen contacts and handling of conflict situations do not lend themselves to precise measurement. Therefore, a less precise standard must be used to measure the effectiveness and quality of operations in the police department. One productivity standard that has been suggested for police agencies is: "How well are we doing what we believe we should be doing?"³⁰ This question, although clearly subjective, does establish a guideline for measuring productivity in a police department. This guideline implies that public policy-making officials will establish productivity objectives that fit the needs of their police agency.

Applying this definition of police productivity to the civil service functions of hiring, promotion, and discipline, it is clear that significant improvements could be made in these personnel areas that would improve the effectiveness and quality of police services delivered to the public. Many

²⁶ See, for example, "Productivity: More Work for a Day's Pay," Labor-Management Relations Service, Washington, D.C., 1972. For an analysis of police productivity, see "Improving Police Productivity," Police Foundation, 1975.

²⁷ Mark, Jerome, "Meanings and Measures of Productivity," Public Administration Review, Volume 32, p. 748.

²⁸ Hamilton, Ed, "Productivity: The New York City Approach," Public Administration Review, Volume 32, pp. 787-788.

²⁹ Burpo, John, "Improving Agency and Employee Performance Through Collective Bargaining (Part II)"; Public Safety Labor Reporter, September, 1973, Features; 2-66.

³⁰ "Guidelines and Papers from the National Symposium on Police Labor Relations," IACP, Police Foundation. LMRS, p. 9.

public administrators and management interest organizations have already recognized that hiring, promotion, and discipline are personnel practices that can and should be the objects of productivity improvements. For example, the 1974 National Symposium on Police Labor Relations sponsored by the Police Foundation, a law enforcement funding organization, and the International Association of Chiefs of Police, a trade organization for police administrators, concluded that police operations could become more productive by making the following changes in hiring and promotion practices:³¹

- Broadening opportunities for lateral entry into the police force by sworn police personnel.
- Implementation, wherever needed, of an effective affirmative action program.
- Continued re-examination and validation of the civil service testing process.
- Development of a corps of paraprofessionals, such as community service officers.
- An educational improvement standard into the promotion structure.

The IACP, in a comprehensive study on police disciplinary practices completed in 1976, made many recommendations for improving disciplinary policies and procedures, which, although not specifically identified as productivity improvements, do in fact constitute suggestions for increasing the effectiveness of this management function.³² Among the specific recommendations made were:³³

- Written disciplinary directives should be clear and current.
- Police officers should be trained in departmental directives.
- Supervisors should be trained to effectively deal with discipline problems.
- Supervisors should be held accountable for employee disciplinary problems.
- Police officers should have peer representation in trial board hearings.
- Police unions should be consulted in the discipline policy-making process.

³¹ Ibid., p. 8.

³² International Association of Chiefs of Police, Managing for Effective Police Discipline, Gaithersburg, Maryland, 1976.

³³ Ibid.

The following are other specific examples of how civil service features could be changed to bring about improvements in the quality of hiring, promotion, and disciplinary practices. These examples assume civil service commission jurisdiction over the personnel practice, authority to make a change of the practice, and a management perception that the change would increase productivity (i.e., that the change will satisfy the guideline of "how well are we doing what we believe we should be doing").

1. Increase the Probationary Period for Recruits/Promoted Officers. A short probationary period, such as six months, is viewed by many police executives as insufficient time to evaluate the performance of a police recruit or officer promoted to a higher rank. An increase in that time would permit a more complete evaluation during which performance deficiencies could more likely be revealed. If, during that time, police management concluded that future performance in that position would not contribute to the effectiveness of the police department, the recruit could be terminated, or the promoted officer demoted to the previous rank without the necessity of an administrative disciplinary hearing requiring a showing of "cause" for management's action.
2. Reduce the Time in Rank Requirements for Taking Promotions to the Next Higher Rank. In some police departments, a requirement exists that a patrol officer cannot take a promotion to the first supervisory rank, usually a sergeant, until the officer has served a minimum of five years on the police department. Some police administrators feel that this requirement restricts younger, yet qualified individuals from competing for supervisory positions. A reduction of the time-in-rank requirement from five to three years could lead to more qualified persons competing for first-line supervisory positions in the police department, resulting in overall improvement in the quality of supervision.
3. Increase the Number of Days for Which the Police Executive Can Suspend an Officer Without Resorting to Discharge. In many police departments the options of a police executive in meting out discipline are restricted. For example, suspension by the chief can be made up to 15 days, and thereafter, the recommendation must be for discharge. This situation does not give the police chief the discretion to recommend a suspension of over 15 days for an officer who might deserve such a penalty, and still not resort to discharge, which, for that particular officer, might not be the appropriate penalty. A change in the disciplinary system, giving the chief the power to suspend up to 30 (or even more) days, and thereafter recommend termination, would be one method for correcting this problem. The ultimate result would be retention of police officers, who although temporarily demonstrating a misconduct problem, in the long-range operation of the police department would make a positive contribution.

In any event, productivity improvements in the areas of hiring promotion, ad discipline are progressive concepts. Improvements in efficiency and quality of the police agency will ultimately lead to a satisfied

consumer of police service--the public. Due to the presence of a civil service system, however, the reality of changing these personnel practices diminishes the possible success of productivity changes. Unless civil service can be responsive to the need and demand for improvements in hiring, promotion, and discipline, then consideration of productivity becomes largely moot.

It is submitted that most civil service systems are not capable of responding to productivity changes in hiring, promotion, and disciplinary practices. Several reasons exist to support this contention:

1. The System is too Institutionalized. The civil service system, and the personnel practices established by that system, have usually become so established and entrenched that change is virtually impossible. The prevailing attitude in many jurisdictions that "we have always done things this way" is often an insurmountable obstacle to change.
2. The Method for Change is too Cumbersome. Most civil service criteria for hiring, promotion, and discipline are set forth in state statute, local charter, or ordinance. A change in a state statute requires majority consensus of an entire legislative body; change in a charter, a vote of citizens; and change in an ordinance requires the support of a majority of a local legislative body. All of these methods presume a concentrated campaign to persuade the appropriate entity (i.e., either the public or elected officials) of the need for change. Unless a maximum effort, supported by sufficient financial resources and political power, is made by the persons and/or organizations advocating the change in civil service structure, the inevitable result will be failure of the effort.
3. Probable Opposition by the Police Union and its Members. Any change in hiring, promotion, and disciplinary practices advocated by management as a productivity improvement will initially be met with skepticism and caution by the police union and its membership. Unless there is a perceived gain for the police officers, union opposition to the proposed change can be anticipated.
4. Where Union Opposition is Likely, Elected Officials Will Avoid A Confrontation by not Seeking the Productivity Change. When public officials are contemplating changes in hiring, promotion, and disciplinary practices, and opposition to those changes seems likely by the police union, the gain in efficiency to be achieved by fighting for the change will be balanced with the political loss that could result from conflict with the union. It can be argued that when this precise situation develops, any need for a more productive operation will be sacrificed for the more politically expedient alternative of avoiding a confrontation. The PAS study reinforces this argument by the suggestion that loss

of management authority was viewed as a politically advantageous method to reduce conflict with the union. Whether one agrees or disagrees with this decision of elected officials to avoid a fight with the police union, it is certainly practical in light of the harsh reality of re-election.

F. An Alternative to Civil Service Systems--Productivity Bargaining Over Hiring, Promotion, and Discipline Practices

If one accepts the proposition that civil service systems are incapable of responding to the need for more productive police departments, then some other alternative must be offered that will achieve this goal and, at the same time, retain the feature of civil service that police unions view as essential--its nature as a non-political, rational personnel process. One alternative is utilization of the collective bargaining process for the development of more productive methods of hiring, promoting, and disciplining police officers. All changes of personnel policies relating to these functions would be proposed by the public employer and negotiated between the police union and the employer. Any change in these practices would then be incorporated into the collective bargaining contract. In effect, the civil service system would be bypassed, playing a secondary role in the personnel process of the employer.

Collective bargaining rights for private and public sector employees varies markedly. The private sector is governed by one comprehensive law enacted by Congress;³⁴ whereas the public sector is beset with a crazy-quilt pattern of bargaining rights in at least 35 different states.³⁵

Just as collective bargaining legislation has differed in the private and public sectors, so have bargaining strategies. Management in private industry has long recognized that not only the union, but also the employers has something to gain at the bargaining table, and has used collective bargaining as a method for increasing productivity of the operation.³⁶ Private sector contracts are replete with clauses that emphasize employee competency, production, and incentives.

Collective bargaining in the public sector has not followed the private sector approach toward management achieving gains at the table. Generally, the attitude at the negotiating table displayed by representatives of the public employer, and most certainly encouraged by the union, has been "The union takes whatever it can get, and management holds on to whatever it can." This simplistic view of the public sector collective bargaining process overlooks the fact that public employers have as much to gain from the bargaining experience as the union. Often overlooked in the rush to achieve a conflict-free settlement is the notion that the vital

³⁴ See 29 United States Code, Section 151 et seq., for the National Labor Relations Act, and its revisions, including the Labor-Management Relations Act, 1947, 20 U.S.C. Section 151 et seq., and the Labor-Management Reporting and Disclosure Act of 1959, 20 U.S.C., Section 401 et seq.

³⁵ See "Summary of Public Sector Labor Relations Policies," United States Department of Labor, Labor-Management Services Administration, Washington, D.C., 1976, for a review of state public employment collective bargaining statutes.

³⁶ See, for example, Stark, Harry, "Productivity and Bargaining," Institute of Management and Labor Relations, Rutgers University, 1974.

management objective of achieving a more productive operation can be accomplished through collective bargaining. This approach to bargaining necessitates an attitudinal approach by management that both parties have something to gain by being at the table and, that in order for both to gain, both sides must be prepared to make concessions. This negotiation strategy has³⁷ been described by some commentators as productivity bargaining.

New York City has been cited frequently for its efforts to generate increased productivity through police union negotiations during the early seventies. Actually, the City of New York did not engage in productivity bargaining, but rather negotiated the following clause in its contract with the Patrolmen's Benevolent Association: "The Union recognizes the City's right under the New York City Collective Bargaining Law to establish and/or revise performance standards or norms notwithstanding the existence of prior performance levels, norms, or standards. Such standards, developed by usual work measurement procedures, may be used to determine acceptable performance levels, prepare work schedules and to measure the performance of each employe or group of employees."

This provision is no more than a management rights clause which gives the City the right to exercise the same powers that it already has under the existing agreement. Some of the changes made in the New York City Police Department pursuant to this productivity clause were creation of anti-crime patrol teams; specialization of detective functions; civilianization; reduction of response time through computerized dispatching; reduction in span of control between sergeants and patrol officers; and reduction in arrest processing time.³⁸ Although these programs did in fact contribute to a more efficient police department, they were not accomplished by productivity bargaining. The changes were made unilaterally by police management pursuant to the authority granted it by the productivity clause, but independent of the collective bargaining table.

Productivity bargaining implies more of a bilateral approach to the achievement of management gains at the negotiating table. When the employer ties a union monetary objective to a management efficiency objective, mutual agreement tends to make the efficiency objective more palatable than if it had been imposed unilaterally. For example, assume that a police department has been experiencing a severe problem of overweight officers. Several officers have become ill due to their overweight condition, costing the city in excessive use of sick leave time and disability pay. If the employer unilaterally issues a policy that a height-weight proportion will be maintained by officers, and failure to adhere to the policy will result in disciplinary action, severe morale problems could result among the officers. Officers with actual or potential weight problems will feel imminently threatened by the policy. If, however, management places the height-weight policy on the table as a bargaining proposal to improve the quality of the work force, several advantages accrue to the employer:

³⁷ Oswald, Rudy, "Public Productivity Tied to Bargaining," AFL-CIO American Federationist, Washington, D.C., 1976.

³⁸ "City of New York Productivity Program," published by City of New York, 1972.

1. The management proposal can be tied to union economic proposals, possibly with some extra monetary benefits being added as direct incentive for acceptance of the policy. The end result will be greater inclination for the union leadership to accept the policy and actively sell it to the membership prior to ratification of the contract.
2. The union will be offered the opportunity to present counterproposals, thereby preserving the important bargaining principle of mutuality of agreement. In fact, the union might offer some counterproposals that would merit serious attention by management, such as a physical fitness program, consultation with physicians for proper diets and eating habits, and counseling for officers with psychological problems that are manifested by overeating.

Productivity bargaining on a bilateral basis can be easily applied to civil service systems and negotiation over hiring, promotion, and discipline issues. If the employer perceives that a deficiency exists in the civil service system that can result in a less efficient police department, bargaining proposals can be developed that cure the defect. The proposals can then be offered to the police union with emphasis being made that the civil service proposals represent important productivity objectives of the employer that must be resolved during negotiations before agreement on a total contract can be reached. For example, proposals by the employer to change criteria for promotional examinations with less emphasis on seniority and time in grade would obviously have an adverse impact on older officers. However, a corresponding offer by the employer to improve the pension plan might reduce the perceived threat.

The types of civil service issues that can theoretically be negotiated pursuant to a productivity bargaining strategy are many. The following is an analysis of hiring, promotion, and discipline issues governed by a standard civil service system and the extent to which these issues can be resolved through the collective bargaining process:

1. Hiring Criteria. Standards for hiring police officers generally fall within the jurisdiction of a civil service system. These standards include United States and/or state citizenship; height/weight requirements; consideration of arrest and conviction records; physical agility tests; passage of written and/or oral examinations; credit ratings; and armed service experience. These are three reasons why hiring criteria should not be the subject of productivity bargaining. First, these issues are often impermissible as opposed to mandatory subjects of negotiations under a state public employment collective bargaining statute.³⁹ The theory behind labor board rulings on this issue is that hiring standards affect potential employees who are not

³⁹ See, for example, Washington Revised Code, Section 41.56.100 which excludes hiring practices as a subject of collective bargaining.

members of the bargaining unit and therefore are not covered by the contract. Second, the Equal Opportunity Act of 1972 gives the Equal Employment Opportunity Commission jurisdiction over hiring practices that have a discriminatory effect on protected classes (i.e., minority groups, women).⁴⁰ Affirmative action programs which arise out of or are enforced through the Act pre-empt civil service commissions from establishing hiring criteria that deviate from the standards required by law. Third, sound political judgement by union leadership would ordinarily dictate that the union not become embroiled in affirmative action hiring issues, especially when the membership consists of protected groups affected by the program. For example, a union position against an affirmative action program that requires the hiring of a large percentage of black officers would be inadvisable if the membership has a substantial percentage of black officers. Due to these factors, hiring criteria would normally not be the subject of management productivity bargaining proposals. There are some exceptions to this principle, however, which will be discussed below.

2. Promotions. There are many promotional issues that could fall within the scope of productivity bargaining. These include criteria for taking a promotional examination; testing procedures; criteria to be used in determining promotion scores; posting of notices and study materials for a promotional examination; procedure for protesting examination questions; selection from a promotional list; lateral entry; probationary period for officers promoted to a higher rank; and appointment versus competitive examinations for certain promotional positions.
3. Discipline. In the area of police discipline, subjects of productivity bargaining might include the procedure for giving written notice and specification of charges; the identity of officials in the police department with the authority to make recommendations for disciplinary action; methods for perfecting appeals to the administrative board that reviews disciplinary actions; the forum to be used for review of disciplinary cases; the procedures to be followed by counsel in presenting or defending disciplinary cases before an administrative board; and types of punishments that can be meted out in the event an officer is found guilty by an administrative board.

There are some miscellaneous civil service issues that do not fall within the categories of hiring, promotion, and discipline that can also be the subject of productivity bargaining. These issues include standards for selection of the members of the civil service commission; length of terms of commission members; powers of the commission; and use of officers in one job classification to perform duties in another classification.

⁴⁰ 42 United States Code 2000(e) et seq.

The advantage of productivity bargaining over civil service system issues becomes apparent when the wide variety of management practices that can be changed to effectively improve police personnel practices is considered. Unfortunately, there are several obstacles that impede the success of productivity bargaining in those jurisdictions where the employer contemplates the use of this strategy.

First, there is a legal impediment in some states to collectively bargaining over civil service issues. For example, some state public employment collective bargaining statutes exclude civil service issues as subjects of bargaining.⁴¹ In these states, interest expressed by one party in negotiating over hiring, promotion, and discipline issues could be rejected by the other party on the basis that such negotiation is not required by the statute. A few state bargaining laws specifically permit negotiability of civil service issues, thereby making the issue a mandatory subject of bargaining.⁴² In many states, the issue of negotiability revolves around whether civil service issues are "terms and conditions of employment," thereby falling within the scope of the traditional, broad language of public sector laws. Labor board rulings on this issue are mixed, with some jurisdictions holding that civil service issues are mandatory subjects of bargaining, and others that these issues are non-negotiable.⁴³

Second, there is an attitudinal obstacle to productivity bargaining. Due to its novelty, police union representatives and management officials are not accustomed to negotiating on a quid pro quo basis. This concept is foreign to many negotiators in the public sector who have long adhered to the formerly cited principle that the union takes what it can, and the employer keeps what it can. Before productivity bargaining will work in many jurisdictions, a substantial attitudinal change on the part of both labor and management representatives will have to take place.

Third, there is a strong reluctance among some police union leaders to face at a contract ratification meeting the wrath of a membership that feels immediately threatened by bargaining changes that can adversely affect promotional opportunities and disciplinary rights. However, an effective union leader should explain that collective bargaining requires giving by both parties, and in most instances, can point to where the productivity changes will benefit the membership.

Fourth, there is a tendency among some elected officials to pay lip service to productivity and to have no genuine concern for improvement in governmental efficiency. The primary concern of these political officials is to negotiate a collective bargaining settlement that is satisfactory to

⁴¹ See note 44, supra. Also, see Iowa Acts 107, Section 9.

⁴² See Texas Revised Civil Statutes, Article 5154C-1, Section 20.

⁴³ See, for example, *Clintonville, P.F.A. vs. City of Clintonville*, Wisconsin Employment Relations Commission (WERC) Decision 121286-B, July 15, 1974; *City of Sun Prairie vs. Teamsters*, WERC Declaratory Ruling, September 26, 1973; *Bargaining Unit of Green Bay Police vs. City of Green Bay and Elmer Madson*, WERC decision 12352-B, January 6, 1975. For a discussion to the contrary, see *Lullo v. Local #1066*, 262A 2d 681 (N.J. 1970).

the police officers, unobjectionable to the taxpayers, and most important, free of labor-management conflict. Less conflict can be translated into more votes during the next election campaign. The attitude of some politicians is that productivity gains made during contract negotiations are desirable, but not at the expense of a politically advantageous settlement.

There are two findings in the PAS study relevant to the potential success of productivity bargaining in police agencies. One finding is that some political officials are apparently willing to give up management rights in order to avoid conflict and gain political advantage. Second, the police union is primarily interested in the attainment of economic benefits for members. Although these findings do express the harsh reality of public sector labor-management relations, there will have to be a change in these conditions if productivity bargaining is to be successful. Whether any change in the attitudes of political officials and union representatives will take place is highly speculative, but will be necessary if productivity bargaining over civil service issues is to succeed.

Collective bargaining over civil service issues can lead to an efficient police operation. The productivity standard of "doing better what we believe we should be doing" can be accomplished. Ultimately, productivity bargaining over civil service issues can reduce, if not completely eliminate, the need for a civil service system.

G. Negotiating Over Civil Service Issues--The Corpus Christi, Texas, Police Collective Bargaining Experience⁴⁴

This paper has argued that civil service is an obsolete personnel system under contemporary labor-management conditions, and that collective bargaining is an alternative that can improve the quality of personnel practices in a police department. It would be timely to now examine one jurisdiction where civil service has been replaced by a collective bargaining agreement as the method for governing police hiring, promotion, and discipline practices--Corpus Christi, Texas.

Corpus Christi is a medium-sized metropolis located in South Texas on the Gulf of Mexico. Its police officers, with their labor organization, the Corpus Christi Police Officers' Association (CCPOA), achieved collective bargaining rights in 1974, and have since negotiated three collective bargaining agreements with the City. During that period, the CCPOA and City have, by mutual agreement at the bargaining table, moved swiftly from a civil service system to a personnel system controlled almost completely by the collective bargaining contract. Civil service for Corpus Christi police officers has become virtually non-existent.

The City has a council manager form of government. The City Council, composed of six councilmen and the Mayor, is charged with the responsibility of establishing broad policies which are then implemented by the City Manager. The current manager, who has been the city chief executive during negotiations leading to the three police contracts, is relatively insulated from the political forces normally present in a city the size of Corpus

⁴⁴ The Author wishes to express gratitude to Charles Speed, Director of Personnel, City of Corpus Christi, Texas, for supplying the data necessary to complete this section of the monograph.

Christi. This fact is best illustrated by a clause in the police contract that requires the CCPOA to deal with the city staff and not make "end-runs" to the City Council. "The parties hereto agree that all negotiations will be conducted exclusively between the designated bargaining representatives of the City and the Association. Neither party will make any effort to bypass the spokesman of the other party during the period of negotiations for amendments to this agreement unless an impasse exists as defined under the 'Fire and Police Employee Relations Act,' Article 5154c of Vernon's Annotated Civil Statutes."

The Police Department has an authorized strength of 313, but currently has an actual strength of 295. Due to a restructuring of the department in 1968, the rank structure differs from that of most other police departments. After the traditional patrol rank, the next rank is sergeant. Unlike most other departments where sergeants perform first-line supervisory duties, however, the Corpus Christi police sergeant serves two functions: in the Patrol Division, as a senior patrol officer; and in the Criminal Investigation Division, as an investigator (i.e., detective). First-line supervisors in the Corpus Christi Police Department are lieutenants. Captains are middle-managers. The next rank is commander, which in some cases is another level of middle-management, and in other instances is a policy-making position. Assistant chief is a top-level management position, answerable directly to the Chief of Police.

The CCPOA is the recognized bargaining agent for all officers in the bargaining unit, which, under Texas Law, is everyone except the Chief of Police. The CCPOA has been in existence since 1948. Although leadership in the organization has generally been moderate in its dealings with city management, there exist strong labor philosophies held by CCPOA leaders and individual members, probably due to the heavy concentration of private sector unions in the City. The CCPOA is affiliated with a statewide organization, the Combined Law Enforcement Associations of Texas, which provides collective bargaining and legal services to the local chapter.

In analyzing the environment for collective bargaining negotiations between the CCPOA and the City of Corpus Christi, two relevant statutes must be considered. First is the state collective bargaining act, the Fire and Police Employee Relations Act.⁴⁵ Adopted by the Texas Legislature in 1973, the act permits police officers to be represented by a labor association and to negotiate over wages, hours, and terms and conditions of employment following adoption of the act by local referendum. The main features of the law include a bargaining unit composed of all officers except the Chief of Police; a requirement that the employer compensate police officers at the prevailing rate in comparable private sector employment in the local labor market; a requirement that the employer and police association bargain in good faith in an effort to reach agreement; in the event the parties cannot reach agreement through bargaining, the establishment of impasse procedures of mediation, voluntary arbitration, and district court as methods of resolving issues; and specific permission to negotiate local and state civil service provisions.

⁴⁵ Texas Revised Civil Statutes, Article 5154C-1 et seq.

The second pertinent statute is the Texas Firemen's and Policemen's Civil Service Act (Article 1269m), adopted by the Texas Legislature in 1947.⁴⁶ This statute gives Texas firefighters and police officers protection in the areas of hiring, promotional, and disciplinary practices. Article 1269m has undergone several amendments since its original adoption. When police negotiations in Corpus Christi began to unfold in 1975, the major provisions of Article 1269m were:

1. A Civil Service Commission to supervise the provisions of the statute;
2. Requires police officers to be classified;
3. Requires cities to pay officers working temporarily in a higher classification at the higher rate;
4. Establishes criteria for testing and hiring procedures for recruits;
5. Establishes a six-month probationary period for newly hired officers;
6. Requires a competitive promotional process for officers desiring to move into a higher civil service classification, including a written examination, and consideration of seniority and performance evaluations;
7. Prohibits officers from engaging in political campaigns while in uniform or on active duty, but otherwise permits political activity;
8. Permits officers to accumulate 15 sick days annually to be accrued on an unlimited basis, and to be paid up to 90 days on termination of employment;
9. Permits accumulation of 15 vacation days per year, which cannot be carried over from year to year without approval of the employer; and
10. Establishes the following disciplinary rights for officers: the right to notice of the charges against the officer, and the specific acts of the officer giving rise to those charges; the right to a hearing on the charges against the officer (the Civil Service Commission has the discretion on whether to conduct a hearing for suspensions up to 15 days; any suspensions over 15 days are known as "indefinite suspension") and a hearing is automatic upon appeal; the right to cross-examine and confront witnesses against the officer; the right to be represented by counsel in the proceedings; the right to appeal the decision of the Civil Service Commission to state district court.

⁴⁶ Texas Revised Civil Statutes, Article 1269m et seq.

Negotiations for the first contract would normally have not begun until April, 1976. A mutual recognition, however, by the City and CCPOA of a woefully inadequate pension system prompted both parties to commence negotiations early so that any pension changes could be made prior to a December 31, 1975, deadline stipulated by the state statute governing the City of Corpus Christi pension system.

The first collective bargaining negotiations between the CCPOA and the City began in October, 1975. The fiscal year in Corpus Christi begins on August 1 and ends on July 31. At the first collective bargaining session, city negotiators firmly articulated the position that the City would take during the course of negotiations: the City viewed collective bargaining as a process from which it had something to gain; the City would be making proposals through which an improvement in the efficiency and quality of the Police Department could be anticipated; and only when the CCPOA demonstrated a willingness to negotiate over city proposals would the City be equally willing to negotiate over economic benefit and working condition proposals of the police association. After revealing the City's intent to engage in productivity bargaining, city negotiators provided CCPOA negotiators with specific proposals, most of which related to changes in provisions of Article 1269m, the State Civil Service Act.

The CCPOA bargaining team was then faced with a crucial policy decision that would undoubtedly affect the interests of association members in this and future negotiations: should the Association negotiate over city productivity proposals that would modify Article 1269m? There were two immediately perceived disadvantages to negotiating over civil service provisions. First, civil service rights were jealously guarded by Corpus Christi and other Texas police officers. The fight for a state civil service law in 1947 had been hard, and many older officers still remembered the days of political appointments and promotions, and arbitrary disciplinary actions. The second perceived disadvantage was that the City's negotiating philosophy was unlike that of most other municipalities in the United States involved in collective bargaining. The question was posed by association representatives as to why they should be bound by the principles of quid pro quo bargaining when other police labor organizations were not.

Further discussion and analysis, however, elicited several advantages to productivity bargaining. First, many of the City's proposals were reasonable and in fact suggested changes in the civil service system that indeed should be made. A second consideration was that the local option requirement of the collective bargaining act made the threat of recall of bargaining rights an on-going reality. If the CCPOA made a sincere effort to negotiate over proposals that improved productivity of the police department, the Association could point to these provisions to demonstrate the success of collective bargaining in Corpus Christi, and why bargaining rights should not be recalled. A third consideration was that a failure to negotiate over city productivity proposals would place the CCPOA in probable violation of the "good faith" bargaining requirement set forth in the Fire and Police Employee Relations Act. Finally, the refusal to bargain over 1269m could result in the City taking a hard-line position against wage and fringe benefit improvements. The potential risk of losing substantial economic gains was not worth a battle over bargaining philosophy.

The original disadvantages of productivity bargaining discussed by the CCPOA bargaining team were also not as threatening as originally contemplated: strong leadership, which the Association in fact had, could overcome the fears of some officers that negotiation over civil service issues would destroy Article 1269m; and the traditional method of public sector negotiations in other cities should not impair the parties in Corpus Christi from experimenting with new bargaining techniques. The CCPOA bargaining team therefore made a decision to negotiate sincerely with the City over its productivity proposals in a manner that would try to satisfy both city management interests and at the same time protect the rights of CCPOA members.

During the first negotiations in 1975, that led to a 19-month contract, and in the two subsequent negotiations and contracts, both the City and Association have consistently maintained their respective bargaining philosophies. The City has constantly pushed for productivity improvements at the bargaining table. The Association has always been willing to bargain over city productivity objectives, even in spite of a change in association leadership between the first and second contracts. The result has been a collective bargaining agreement constructed along the model of private sector contracts--personnel practices affecting employees are bargained over and placed in the agreement.

Many civil service provisions have been negotiated into the three Corpus Christi police collective bargaining agreements. Among the most important are those analyzed below.

1. Promotion/Demotion of Assistant Chiefs and Commanders. Article 1269m requires that promotion of all classified ranks except the Chief of Police can be made by competitive examination. Also, demotion of officers to a lower rank can only be made after affording the officer an opportunity for a due process hearing before the Civil Service Commission.

The City proposed that it have the right to appoint assistant chiefs and commanders, and also captains, without resort to a competitive examination, and demote these officers to their original position without benefit of an appeal to the Civil Service Commission. The basis for this proposal was that the police chief needed to develop a top-level management corps that would be responsive to his organizational goals, and that the competitive examination process precluded this objective. The CCPOA bargaining team was receptive to this proposal insofar as assistant chiefs and commanders were concerned; but not as to captains, since this rank was distinctly middle-management and did not fall within the city rationale of developing top policy-makers who were compatible with administration goals. One factor especially persuasive to the CCPOA was that many of the assistant chiefs and commanders were good test-takers but not proficient administrators, and that it would be in the best interest of not only the City, but line officers to develop a more qualified management cadre at the highest level.

The clause that was finally agreed to in the contract was that the Chief would have the right to appoint future assistant chiefs and commanders from the next lowest rank, and demote them back to the original rank without right to a hearing, with all seniority rights being retained at the lower rank in the event of a demotion. All existing commanders and assistant chiefs were grandfathered into their ranks under the old Article 1269m system, whereby they could only be demoted after an appeal to the Civil Service Commission. Since the inception of the assistant chief/commander appointment clause in 1975, four appointments have been made to the rank of commander, and one to assistant chief, out of a total of 10 positions. Due to the limited number of appointments that have been made, it is difficult to assess the extent to which this clause has yet had an impact on the policy-making positions of the Corpus Christi Police Department. Still, the current police chief does feel that the appointment clause will eventually give the Police Department the capacity to have a unified management corps.

2. Probationary Periods for Recruits/Supervisors. Article 1269m establishes a six-month probationary period for police recruits. During this time the officer can be terminated from employment without resort to a civil service commission hearing. There is no provision in Article 1269m for a supervisory probationary period, and any supervisor, irrespective of length of service, can only be demoted after a civil service commission hearing. The City of Corpus Christi wanted an extended probationary period for future police recruits in order to give more time for management to evaluate their performance, and proposed an increase from six months to one year for this purpose. The City also proposed a one-year probationary period for all officers promoted to higher ranks for the same reason as the recruit probation.

The CCPOA bargaining team readily conceded to the City's proposal on extending the recruit probationary period to one year. The negotiators felt that the proposal affected police officers who were not yet members of the Association, and therefore, no organizational interests were involved.

The city proposal on a one-year probationary period for supervisors gave the CCPOA bargaining team more internal problems than any other of the city proposals discussed herein. Association representatives readily agreed that the proposal was a valuable one, recognizing that management does need a period of time to evaluate the performance of officers promoted to a higher rank. At the same time, there was a strong sentiment expressed by Association members that they did not want the police chief to have them "under the gun" for one year during which they would be without civil service protection. The validity of the

City's proposal was ultimately persuasive, however, and the CCPOA bargaining team made a reluctant concession to give the City a one-year probationary period for promoted officers, with the right of the chief to demote the officer during that time to the previous rank without benefit of a civil service hearing.

Since implementation of these clauses in 1975, two recruit officers have been terminated between the sixth and twelfth month of the recruit probationary period, leading to the conclusion that the City is utilizing the additional six months for evaluation of recruit performance.

The success of the probationary period for supervisors is more difficult to evaluate. Since its inception, some officers promoted to supervisory positions have complained that the probation makes them reluctant to forcefully supervise for fear of making mistakes. Since inclusion of this clause in the contract, there have been 34 promotions to a higher rank (excluding promotions of commanders and assistant chiefs which are covered by another clause), and not one officer has been demoted back to his or her original position.

3. Suspension of Officers. Article 1269m provides that a police chief may suspend an officer for a specific number of days, up to 15 days. For any suspension over 15 days, the Chief must give the officer an indefinite suspension, which is tantamount to a recommendation for dismissal. The civil service law permits a suspended police officer to appeal all suspensions. On suspensions up to 15 days the Civil Service Commission has the discretion to conduct or not conduct a hearing, but this statutory provision was modified by a regulation of the Corpus Christi Civil Service Commission to require a hearing on any appeal of a police officer. The Commission is required by Article 1269m to conduct a hearing on appeal of any indefinite suspension.

In contract negotiations, city negotiators expressed a need for the police chief to be able to take action for more than 15 days but less than a recommendation for dismissal (i.e., indefinite suspension). The City therefore proposed that the Chief be empowered to suspend up to 30 days, and thereafter recommend an indefinite suspension. Additionally, for those extraordinary situations involving officers who should be suspended more than 30 days but should not be terminated, the City proposed that the Chief could negotiate suspensions of 31 to 90 days with the officer. If an agreement on the number of days could not be reached between the Chief and the officer, then an indefinite suspension would result.

The CCPOA negotiators viewed the city proposal as being in the best interest of Corpus Christi officers since there were many disciplinary situations that required more than 15 days suspensions but less than an indefinite suspension;

and situations where officers would willingly negotiate a longer suspension (i.e., 31 to 90 days) rather than face the risk of a hearing before the Civil Service Commission on an indefinite suspension that could result in termination.

The City and CCPOA came to mutual agreement on this proposal during the 1975 negotiations. Since that time, the police chief has exercised his power to suspend officers from 15 to 30 days three times; and has negotiated three suspensions between 31 and 90 days.

4. Reduction in the Power of the Civil Service Commission in Disciplinary Cases. During negotiations for the second contract, Corpus Christi negotiators pinpointed two problems facing the Police Department in its relationship with the Civil Service Commission. First, the Commission had on several occasions exercised its power under Article 1269m to conduct investigations into disciplinary problems of the Police Department. The City felt that the Commission's activities had substantially interfered with the effective conduct of internal investigations; and that the situation could only be remedied by removing the Commission's authority to conduct investigations into matters within the jurisdiction of the police internal affairs unit.

The second problem posed by the City was that the Civil Service Commission was composed of laymen that did not understand how to properly conduct an administrative disciplinary hearing. The City cited examples of Commissioners who could not follow basic principles of admissibility of evidence; could not properly apply the standard of "cause" to the evidence presented in the case; and did not understand how to evaluate the severity of the offense, and mitigating and aggravating circumstances in arriving at an appropriate punishment. The result of the Civil Service Commission's inability resulted in many of the Chief's recommendations for suspension or indefinite suspension being denied, or at least modified (e.g., recommendation for a 10-day suspension being reduced to three days). The City proposed to eliminate the Commission as the forum for hearing disciplinary cases; and substitute an arbitrator to review all appeals of disciplinary suspensions and indefinite suspensions. All other disciplinary rights extended to police officers under Article 1269m would remain the same (e.g., right to cross-examine and confront witnesses, right to counsel, district court appeal procedures).

CCPOA negotiators were quick to accept the City's proposal to revoke the Commission's power to conduct investigations of disciplinary matters. There was a comparable concern among Association leaders that the investigative power of the Commission was being used to turn that body into a quasi-civilian review board. CCPOA leaders were relatively satisfied that investigations conducted by the police internal

affairs unit were fair, and that officers received a better opportunity for competent investigation by that unit than the Civil Service Commission.

The second proposal seeking substitution of arbitration for the Commission to review appeals of disciplinary actions gave CCPOA negotiators some cause for concern. The current Commission had consistently ruled in favor of police officers. Acceptance of the city proposal would therefore give the City a better chance to win disciplinary appeals. Also, there was a fear expressed that the membership would react unfavorably to a new system that on the surface did not offer any advantage to officers. A closer evaluation of the city proposal, however, revealed other considerations that mitigated in favor of arbitration. Some past Corpus Christi Civil Service Commissions had been weighted heavily in favor of management, resulting in unfair decisions supporting the Chief's recommendation for suspension or indefinite suspension. The current composition of the Commission could change at any time from an employee-oriented forum to one ingrained with management bias. Also the CCPOA negotiators did agree with the City that laymen on the Commission were not properly trained to conduct administrative disciplinary hearings, and that the result was inconsistent decisions on cases.

In the final analysis, CCPOA negotiators saw no short-term advantage to arbitration but did perceive a long-term benefit by eliminating the threat of management dominated commissions and inconsistent decision-making. The City proposal to substitute arbitration for the Civil Service Commission on disciplinary appeals was therefore accepted.

The contract provision eliminating the Civil Service Commission's authority to investigate disciplinary cases has been mutually satisfactory to both the City and the CCPOA. The only criticism against this clause was registered by one of the Civil Service Commissioners who complained that the City and CCPOA had subverted the intent of Article 1269m to authorize commission investigations. To date, both parties have expressed satisfaction with the disciplinary arbitration procedures under the collective bargaining agreement. Three arbitration cases have been conducted since the inception of this provision. A three-day suspension by the Chief for verbal abuse and false arrest was sustained. A two-day suspension for insubordination was overturned with a finding of not guilty. A third case, involving an indefinite suspension for alleged theft by an officer, has been arbitrated, but the final decision is being withheld pending adjudication of a related criminal charge, due to possible prejudice by the announcement of the arbitration award.

6. Power of Assistant Chiefs, Commanders to Recommend Suspensions. Under 1269m, only the police chief has the authority to make recommendations for disciplinary action.

In an effort to increase the management consciousness of top-level management in the Police Department, the City proposed that assistant chiefs and commanders be empowered to recommend suspensions of officers under their supervision up to three days. CCPOA negotiators agreed that the City's long-range objective of developing a strong management cadre of managers (see #1 above) could only be accomplished by giving these officers more authority. The CCPOA therefore agreed to this proposal so long as full appeal rights to arbitration for suspensions by assistant chiefs and commanders were retained. This latter stipulation was accepted by the City and a clause giving assistant chiefs and commanders suspension authority up to three days with full appeal rights to suspended officers was placed in the contract. This suspension power has been exercised on 15 occasions by commanders.

7. Promotions. During the negotiations leading to the second collective bargaining agreement, the City negotiating team raised two issues with respect to promotions. These two issues were:

- a. Promotional Examinations. City officials expressed dissatisfaction with the promotional examinations being given to officers. Article 1269m requires that the criteria for promotional examination include a written test, worth up to 70 points; the past two semi-annual performance evaluations, worth up to 30 points; and seniority, worth one point for each year of service up to 10 years. Oral interviews are strictly prohibited under the statute. The sources of the City's dissatisfaction included too much emphasis on written tests; no oral interviews, especially those related to special assessment testing (i.e., job related problem-solving tests); performance evaluations that were too subjective; and too much weight on seniority.

CCPOA negotiators agreed that the 1269m promotional examination process had many defects, but were not certain as to specific proposals they wished to make. This uncertainty was due to a combination of lack of technical expertise among bargaining team members on the subject of promotional testing; and a large variance of opinion among the CCPOA rank and file as to what criteria should be included in a promotional test. The city officials voiced a similar hesitation to make changes in the promotional examination process. Both parties agreed that too hasty agreement on an issue affecting the future of all officers in the Police Department would be unwise.

A clause was therefore inserted into the second contract agreement that the City and Association would during the life of the agreement develop and mutually agree on new promotional testing procedures for all ranks. The contract states that the new examinations will measure

qualifications based on job knowledge, ability and job performance related to the specific job classifications. Under this clause, the authority of the Civil Service Commission under Article 1269m to approve promotional tests was eliminated, one more step between the parties to bring all personnel practices under the collective bargaining agreement. Currently, the City is conducting, in consultation with the CCPOA, a study of all job classifications. When this study is completed, negotiations with the CCPOA will reopen in order to implement the new promotional testing process in the Police Department.

- b. "Rule of Three." Article 1269m states that when a promotional list is established, the police chief may pick one of the top three eligibles from the list. If the Chief passes over one of the eligibles, he must state his reasons for doing so. The officer passed over may then appeal to the Civil Service Commission, contesting the Chief's reasons for the pass-over. In Corpus Christi, the Civil Service Commission had elevated a pass-over appeal to a full due process hearing, with the Chief having the burden to prove that the pass-over was proper.

The City felt strongly that the Commission was improperly interpreting Article 1269m by permitting full-scale hearings on the issue of pass-over, and this procedure severely limited the Chief's authority to select the best possible supervisory personnel. City negotiators proposed that the Chief be permitted to select any officer from the top three on a promotional eligibility list, with no right to appeal a pass-over.

CCPOA negotiators agreed that a full-scale pass-over hearing to the Civil Service Commission was not a proper interpretation of 1269m, but were also concerned that without some form of appeal rights for a promotional pass-over, there would be no accountability for the police chief's actions. Association negotiators offered a compromise proposal that they felt would balance the need of the Chief to pass over certain officers in order to select other eligibles more compatible with departmental goals; and the Association's desire for accountability of the Chief in order to protect against an arbitrary pass-over. This proposal gave the police chief the right to pass over a promotional eligibility list of three officers, but the officer passed over could appeal to an arbitrator alleging that the pass-over was for some reason other than the officer's ability to perform duties at the higher position. The burden of proof would be on the officer to show that there was some reason other than his ability to perform at the higher position. CCPOA negotiators held firm on this compromise, and agreement was reached between the parties on the basis of this proposal.

Since the inclusion of this clause in the agreement, the police chief has exercised his right to pass-over one time on a promotion to sergeant (i.e., senior patrolman/investigator). The basis for the Chief's decision was that the officer's bad credit record, coupled with many complaints by creditors to the Police Department, would have affected his ability to assume more responsibility and authority in the sergeant's position. The officer appealed this decision to arbitration, and the arbitrator upheld the Chief's pass-over decision.

8. Miscellaneous Civil Service Changes. Several other minor changes in Article 1269m were negotiated into the Corpus Christi police collective bargaining contract. These changes included creation of the Chief's right to exchange patrol officers and sergeants between the patrol and detective division in order to develop investigative experience among patrol officers without having to pay patrol officers at the sergeant rate of pay while performing investigative duties; creation of a new job classification of Field Training Officer, to provide additional compensation to patrol officers who train recruits in the field; and giving the City Personnel Director authority to conduct police entrance examinations at any time without regard to group testing in order to ensure the presence of the best possible candidates on a recruit hiring list. All of these changes would ordinarily have required prior approval of the Corpus Christi Civil Service Commission, but through the collective bargaining process, the Commission was side-stepped in favor of bilateral decision-making at the bargaining table on these issues.

Not all city proposals affecting Article 1269m culminated in agreement with the CCPOA. During the negotiations that led to the three bargaining agreements, city negotiators made many other productivity proposals that the CCPOA could not agree to. Following are two illustrative proposals made by the City that were discussed extensively at the bargaining but upon which no agreement could be reached by the parties:

1. Prohibition Against Political Activity. Article 1269m permits police officers to engage in political activity so long as such activity is not conducted on duty or in uniform. The Texas civil service statute is more liberal than most public employee political activity regulations in the United States. Preceding negotiations that led to the 1978-79 contract, the City became concerned that recent political endorsements by the CCPOA of judicial and state legislative candidates, coupled with other projected endorsements in future elections, would have an adverse impact on relationships between the City and other governmental entities. For example, one unsuccessful endorsement by the CCPOA of a judicial candidate was cited by the City as causing friction between the judge elected (i.e., the candidate who was not endorsed) and police officers called to testify in that court. The City feared that future CCPOA

endorsements of unsuccessful candidates for such offices as district attorney and sheriff would cause considerable conflict between the Police Department and other local agencies, resulting in a reduction in quality of service to the public. The City proposed that individual officers not be permitted to engage in political activity, and the CCPOA refrain from making political endorsements.

Although CCPOA negotiators agreed that the consequences of endorsement of unsuccessful candidates might have adverse effects, other overriding factors existed. A recent judicial interpretation of the Fire and Police Employees Relations Act held the court impasse procedures of the Act unconstitutional.⁴⁷ Because the City had consistently refused to even consider invoking the voluntary arbitration provisions of the Act, a final and binding solution to collective bargaining disputes was unavailable. The CCPOA had lost a strong form of leverage for contract settlements. A strike by Corpus Christi police officers was not a sound alternative, being prohibited by no less than three different Texas statutes.⁴⁸ The CCPOA's only effective source of bargaining power until such time as the statute could be amended to cure the defective impasse resolution procedures would be political alliances, whereby key political figures in the community who had been supported by the CCPOA in the past could be contacted for assistance during contract negotiations. The city proposal was therefore rejected by CCPOA negotiators.

2. Lateral Entry. Article 1269m states that all candidates for promotional positions within a police department must be employed by that department. The act precludes application of the lateral entry concept whereby police officers from other jurisdictions compete for promotional positions within the department. The City proposed during the negotiations leading to the last two agreements to initiate a lateral entry program in order to seek the most qualified candidates for supervisory positions in the Corpus Christi Police Department.

CCPOA negotiators agreed with the theory of lateral entry but found many practical obstacles to successful implementation of the program in Corpus Christi. First was the obvious internal political consideration that lateral entry would threaten promotional advancement for members of the Association. Also, the CCPOA felt that adoption of lateral entry must be contingent upon mutuality of the program between police departments. For example, if a San Antonio police officer could compete for promotional positions in Corpus Christi, then the Corpus officer should be permitted

⁴⁷ International Association of Firefighters Local #2390 v. City of Kingsville, Court of Civil Appeals, 13th Supreme Judicial District of Texas, Cause Number 1249, Reported May 1978.

⁴⁸ Texas Revised Civil Statutes, Articles 5154c(3); 5154c-1(17); and 1269m(27).

to compete for San Antonio positions. Implementation of inter-department lateral entry would pose such additional problems as transfer of pensions between differing pension systems; seniority rights; and varying standards and quality of training among departments. After much discussion on this issue, it was agreed by the parties that lateral entry was not feasible for the Corpus Christi Police Department.

Considerable attention has been paid thus far to gains made by the City at the bargaining table in the three contracts. Corpus Christi officers also received considerable improvements in their economic benefits and working conditions. Outlined below are the bargaining accomplishments of the CCPOA made during the same period covering the city productivity objectives previously discussed. It should be emphasized that prior to collective bargaining, Corpus Christi police officers had a woefully inadequate wage and benefit package, and the benefits discussed herein, although standard in many police departments, were benefits that Corpus Christi officers did not have and would not have received as rapidly as they did except for collective bargaining.

1. Association security provisions, including dues checkoff, time off with pay for board members to attend board and membership meetings, and a pool of nine paid days for board members to attend labor conference and training programs.
2. A grievance procedure for enforcement or interpretation of the contract, with voluntary binding arbitration or compulsory, binding court procedures as the last step of the procedure.
3. Improvement in the room rate benefit and lifetime maximum under the health insurance plan.
4. Wage increases totalling 27.9 percent for a 36-month period (top step patrol officer and wage increases at other ranks were substantially similar).
5. Court time and call-back compensation paid at time and one-half with a minimum of three hours pay. Court time and call-back during a vacation paid at double time.
6. Educational incentive pay for officers satisfactorily completing courses applicable to a degree in Police Science at the rate of 70¢ per credit hour per month.
7. The City is to provide to every uniformed employee all initial clothing items and equipment, and thereafter to pay 100 percent of all replaced clothing and equipment items.
8. A clothing allowance for officers required to wear plain clothes of \$300 per year.
9. One additional holiday.
10. Extensive changes in the pension plan, including vesting of pension benefits after 20 years and an increase of benefits for retired officers of 50 percent.

11. Uniform/clothing maintenance allowance (i.e., cleaning) of \$15 per month.
12. Retired officers able to remain in the City Group Health Plan at their own expense.
13. The City is to provide legal representation to officers sued in civil actions for conduct arising out of the official performance of police duties.
14. The City is required to post the monthly shift schedule change at least 48 hours in advance of the change so that officers can make plans based upon knowledge of their shift assignment.
15. A Police Officers' Bill of Rights to give officers being investigated by internal affairs certain protections while they are being interviewed.
16. A labor-relations committee composed of city and CCPOA representatives to discuss employee problems and solutions to those problems. This committee was instituted in order to resolve many labor-management problems away from the bargaining table.
17. A past practices clause incorporating all other wages, hours, and conditions of employment not specifically mentioned in the collective bargaining agreements. Benefits that are incorporated by this provision include vacation and sick leave, the overtime policy, group health insurance contribution by the City (the City pays 100 percent of the employee premium and \$45 per year toward the dependent premium), and tuition reimbursement for college programs.

One obvious question that arises when examining this itemized list of economic benefits and working conditions achieved by the CCPOA during negotiations is whether, by refusing to bargain over the City's productivity demands, the officers would have still achieved the same benefits through the collective bargaining process. The answer is that Corpus Christi officers definitely would not have achieved all of these benefits if the CCPOA had insistently refused to collectively bargain over civil service system issues. The strong bargaining position of the City on productivity bargaining, coupled with a CCPOA refusal to bargain, would have undoubtedly led to a bargaining impasse, a most undesirable prospect for both parties.

A second question that should be considered is whether, with a city administration not committed to productivity bargaining, Corpus Christi police officers would have received equivalent benefits. The answer is probably yes, but the incredible gains by management, in quality and efficiency of hiring, promotional, and disciplinary practices would have been lost.

There is a high degree of satisfaction expressed by both city officials and CCPOA leaders with the Corpus Christi police collective bargaining contract. Although the City has not achieved every change in Article

1269m that it sought at the table, sufficient changes have been made to provide management with tools to more effectively hire, promote, and discipline police officers. Although there is still a vocal minority in the rank and file of the CCPOA that feels the contract has eroded hard-won civil service rights, the majority of Corpus Christi officers feel that there are still sufficient protections in the agreement to insure against political and arbitrary management practices that would threaten the hiring, promotion, and disciplinary processes of the Police Department.

The reasons for success of negotiating over civil service issues in Corpus Christi, Texas, can be attributed to the lack of obstacles to productivity bargaining that were cited in the previous section. First, the legal climate gave negotiators for the City and the labor organization a free hand to negotiate and come to terms on civil service issues including hiring problems. The Texas collective bargaining act made civil service issues a mandatory subject of bargaining, and gave specific authorization for the parties to reach an agreement on 1269m issues that would supersede the civil service statute.

Second, there was no attitudinal impediment to productivity bargaining. Since collective bargaining was unique to both parties, neither felt bound by the restrictions of traditional public sector bargaining methods. Both parties expressed a willingness to negotiate on the basis of mutual quid pro quos.

Third, the CCPOA leadership was willing to face any opposition to changes in civil service law raised by the membership. Indeed, there was some strong opposition to contract provisions on hiring, promotion, and disciplinary practices, but CCPOA leadership patiently and methodically explained that in bargaining over these issues, the rights of members had still been protected, and that in the long run, the quality of the Police Department would be improved by the changes.

Finally, management representatives in Corpus Christi took a firm bargaining stance in favor of productivity bargaining. An initial bargaining position was taken by the City that more than mere lip service would be paid to civil service issues. This bargaining position was reinforced by a historical government system that insulates the City Manager's Office from politics. This situation forced the CCPOA to deal directly with the manager and his staff.

H. Application of the Corpus Christi Experience--Some Caveats

Collective bargaining over civil service issues has had a positive effect on labor-management relationships in the Corpus Christi Police Department. This experience can be applied to the bargaining process in other jurisdictions. Several warnings, however, must be given before the application of these bargaining principles can be made.

First, the legal environment in Texas for negotiating collective bargaining agreements is not restrictive, permitting full and free negotiation of virtually all civil service issues. This situation does not exist in many other states with public employment collective bargaining acts, where civil service issues are either impermissible subjects of negotiation, or only certain aspects of civil service can be discussed at the bargaining table. In states with these forms of limitations, the Corpus Christi experience would have no application.

In those jurisdictions where the collective bargaining statute permits negotiation of civil service issues, another warning must be given. Texas law is not necessarily typical of civil service laws in other state or local jurisdictions. Although it is arguable that there is no one model for civil service, laws in most jurisdictions contain features not present under Texas state law, and which were only negotiated in Corpus Christi through the collective bargaining process. Examples of common features in other jurisdictions include a one-year probationary period for recruits, a supervisory probationary period, and appointment of top ranking management officials. Therefore, to some degree Corpus Christi was playing "catch up" with other civil service systems in the country.

However, there are many personnel issues falling within the scope of civil service not consistently found in civil service systems that merit serious consideration as bargainable issues for the improvement of the quality and efficiency of police departments. These include job-related criteria for hiring and promotional examinations; the quality and validity of rules and regulations (e.g., residency requirements); lateral entry; experimentation with disciplinary appeal forums other than civil service commissions, such as arbitration; and political activity by police officers. These personnel issues have received considerable attention in recent years by law enforcement commentators as methods by which improvements in police departments can be made. Collective bargaining offers a process by which such improvements can realistically be made.

I. Advantages of Productivity Bargaining to the Union

The main emphasis in this paper has been on the gains to be made by management through collective bargaining over civil service issues. It should be stressed, however, that police unions and members will not suffer from acceptance and participation in this process, and in fact, can use productivity bargaining to further union objectives.

The perceived advantages of civil service systems are still retained (see "How Police Unions Perceive Civil Service Systems" above). A non-political, rational process for hiring, promotion, and discipline can still be accomplished through the collective bargaining agreement. Also, the disadvantages of civil service cited by union officials (e.g., management domination of commissions) can be addressed and resolved through collective bargaining.

The Corpus Christi bargaining experience illustrates that many of the management proposals for improvement of hiring, promotion, and disciplinary practices are not only reasonable, but also better serve the interests of rank and file police officers. For example, a management proposal to change the forum for disciplinary appeals from the civil service commission to arbitration will inevitably result in more consistent and fairer decisions in suspension and discharge cases. Police officers' disciplinary rights are thereby better protected.

There is also a positive public relations value derived from productivity bargaining. At a time when the public is skeptically questioning the quality and effectiveness of police and other government services, a politically astute police union leader will earnestly bargain over the public employer's proposals, and then point with pride to the union's cooperation in improving the productivity of the Police Department. This approach will enhance the public image of both the union and the collective bargaining process.

In those instances where management's proposal threatens the job interests of members (e.g., the Corpus Christi lateral entry program), the union leadership must balance the potential consequences of acceptance or rejection of the proposal. Where a compromise to management's proposal is possible that will satisfy the employer's objectives and protect members' rights, then such an accommodation should be sought. Where there is simply no room for agreement on a productivity proposal, then the union leadership always retains the option of rejecting the proposal, just as management can in good faith reject union bargaining demands.

J. Conclusion

In the final analysis, civil service has served a valuable purpose in government. It has insured a measure of insulation of government employment from the evils of political influence. At the same time, however, it has failed to respond to a public expectation of more efficient services. It is therefore not only necessary but crucial for both public officials and police union leaders to consider alternatives to civil service systems that will bring about more productive operations. The option offered in this paper, collective bargaining over civil service issues, can, with the support and cooperation of labor and management, bring about concrete changes in the quality and effectiveness of police services provided to the public.