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Police Labor Organizations and Collective Bargaining

Introduction

The purpose of this bulletin is to explore the current state of police labor organizations and collective bargaining in Texas law enforcement agencies. The laws and practices governing the operation and power of police labor organizations varies widely in the United States. Well-known federal labor laws such as the Wagner Act¹ and the Taft-Hartley Act² are generally applicable only to private sector employers. Thus far, Congress has left to the individual states the authority to permit and regulate public sector labor relations, including police unions. While all police officers possess a constitutional right to join labor associations and unions,³ only 38 states and the District of Columbia currently permit some form of collective bargaining by police officers. This bulletin will examine the status of collective bargaining in Texas, review the history of police labor organizations in Texas, describe the major police labor groups operating in the state, and highlight current trends in Texas police labor relations.

Current Texas Statutes Governing Police Collective Bargaining

The laws governing law enforcement collective bargaining in Texas are found in a variety of locations in Texas statutes. The primary laws of concern to this discussion are found in Chapter 617 of the Texas Government Code, Chapter 174 of the Labor Code, and Chapter 143 of the Local Government Code. Since the focus of this article is collective bargaining, only selected provisions of the Fireman's and Policeman's Civil Service Act, Chapter 143 of the Local Government Code, will be discussed.

Government Code, Chapter 617. Government Code Chapter 617 is significant when considering the issue of collective bargaining by police officers in Texas. As the statute itself is brief and self-explanatory, it will be quoted directly.

§617.002. Collective Bargaining by Public Employees Prohibited

- (a) An official of the state or of a political subdivision of the state may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees.
- (b) A contract entered into in violation of Subsection (a) is void.
- (c) An official of the state or of a political subdivision of the state may not recognize a labor organization as the bargaining agent for a group of public employees.

In §617.001, a "labor organization" is defined as:

Any organization in which employees participate and that exists in whole or in part to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment or working conditions.

The above quoted statute purports to ban all collective bargaining contracts with public employees. Exceptions are discussed below. The law, originally enacted in 1947, also declares void any labor contract which a governmental entity might voluntarily agree to. Thus, the legislation bans even "permissive bargaining."

Some Texas court decisions have served to clarify sections of this chapter. In *Beverly v. City of Dallas* (1956),⁴ the Court of Civil Appeals noted that the prohibition on collective bargaining did not affect the right of public employees to present grievances either individually or through a representative.

In a 1993 case, *Moreau v. Klevenhagen*,⁵ the United States Supreme Court confirmed that by Texas law a county could not legally enter into a bilateral agreement with a deputy sheriffs' union, even if the agreement did not amount to a comprehensive collective bargaining contract. In this particular case, the court ruled that the overtime provisions of the federal Fair Labor Standards Act were not intended to force a local governmental employer into a contractual relationship with an employee's union when state law barred such an act.

Texas law also codifies the famous quote of then Massachusetts Governor Calvin Coolidge during the Boston Police Strike of 1919, "There is no right to strike against the public safety by anybody, anywhere, any time." Under §617.003 public employees are prohibited from striking. Public employees, which include police officers and deputy sheriffs, may not strike or engage in organized work stoppages against the state or political subdivisions. Violation of this statute carries severe penalties for offending employees, including the forfeiture of civil service rights, reemployment rights, and other benefits and privileges that the employee may have earned through current or past public employment.

Labor Code, Chapter 174. Chapter 174 of the Texas Labor Code, entitled "The Fire and Police Employee Relations Act," creates the primary exception to the prohibition against collective bargaining. In §174.005, the legislature makes it clear that this chapter supersedes any governmental rules and statutes that may be contrary to its provisions, even those emanating from a home-rule municipality.

Section 174.023 grants police officers the right to organize and bargain collectively with a political subdivision, *if* Chapter 174 has been adopted by the voters of the specific political subdivision. Subchapter C describes the process for adoption of the collective bargaining provisions of this chapter. The procedure requires that a governing body must order an election for adoption of the chapter upon receiving a petition of qualified voters that meets the requirements of

the law. If the proposition passes, the political subdivision must bargain with a representative of its "police officers." The created bargaining unit represents all officers except the head of the agency.

Chapter 174 also provides guidance on a variety of other issues concerning collective bargaining. Some of the topics include the procedure for the selection of a representative bargaining group for employees, mediation and arbitration procedures, and penalties for management lockouts as well as employee strikes. Interestingly, §174.204 provides for fining the collective bargaining unit if strikes are called, but allows reduction of the fine if it can be shown that management provoked the strike. No formal police strike has occurred in Texas since the enactment of this statute.

Several policies of the state regarding the treatment of police officers in regard to wages and working conditions and membership in labor organizations are described in §174.002. One of the stated policies is that police officers should have the right to organize and to collectively bargain. This section indicates that though police labor strikes, work slowdowns and the like are unacceptable, the legislature recognizes that some sort of alternative action might be necessary to settle bargaining impasse. The statute provides that if the parties cannot reach an agreement, either party may request mediation or binding arbitration.⁶ As of early 1996, state judicial decisions were still in conflict as to whether the courts can mandate a settlement if the parties cannot agree.⁷ Until this issue is finally resolved, Texas police unions will largely depend on the power of political persuasion to force a public employer to enter into a bargaining agreement.

Local Government Code, Chapter 143. The Texas Local Government Code, Chapter 143, is best known as the codification of the state civil service law. Officers in approximately 75 cities are currently covered by its provisions. Part of the statute, however, also creates an exception to the general prohibition against collective bargaining between government entities and law enforcement unions. In 1995, the legislature amended the law to allow police personnel to meet and confer with their employer and enter into an agreement *if* the officers are covered by state civil service, work in a municipality with a population of 460,000 or more, and serve under a city manager form of government.

While appearing to expand police bargaining rights throughout the state, the various qualifying stipulations in the statute create a "bracket law" which currently applies only to the city of Austin and its police officers and fire fighters.⁸

The law, outlined in §143.303, provides that a qualifying municipality (Austin) may enter into an agreement with an association that is the recognized sole and exclusive bargaining agent for police officers of that municipality. That

agreement may cover a broad spectrum of labor issues, including, but not limited to, wages, working hours, terms and conditions of employment, and other personnel issues. The employees' association may not advocate strikes by police officers. Furthermore, police officers of a municipality are prohibited by law from participating in a strike or organized work stoppage against either the state of Texas or any political subdivision.

The recognition of employee associations is covered under §143.304. This section provides that public employers *may* recognize an association that has been elected by a petition signed by a majority of the paid police officers of the municipality. The signers of the petition may not include the department head or assistant department heads immediately below the department head in rank.

The enforceability of a written agreement between employees and the municipality is covered by §143.306. The agreement is not valid until it is ratified by a majority vote of the municipal governing body accompanied by a majority vote of the members of the employees' association. If either party signing the agreement claims the other party has failed to fulfill some contractual obligation, the district court with local jurisdiction has authority to enforce the agreement.

Summary of Statutes Governing Police Collective Bargaining. Chapter 617 of the Government Code essentially prohibits collective bargaining by law enforcement officers. This chapter also prohibits strikes or work stoppages by law enforcement officers, whether the participants belong to an organization or not. Similar prohibitions against law enforcement officer strikes are included in Chapter 174 of the Labor Code and Chapter 143 of the Local Government Code.

Exceptions to the strict language of Chapter 617 are found in the other two sets of statutes. Chapter 143 of the Local Government Code allows officers in the state capital to enter into a labor agreement with the city of Austin.

Both Chapters 617 and 143 are superseded by Labor Code Chapter 174. The latter statute provides for collective bargaining by law enforcement officers only upon voter approval. As of February 1996, bargaining has been approved by voters in 24 cities and five counties.

History of Police Labor Organizations in Texas

Table 1 contains an outline of the development of the police labor movement in Texas. This history has evolved into the current situation, where virtually every major police and sheriff's department has an employee organization. In the

larger cities, such as Dallas and Houston, there are multiple organizations, often competing with one another. In some instances, the groups are organized along racial and ethnic lines. These latter groups are not included in this report as they do not seek to be a representative on wages and working conditions for all officers.

Some of the local police groups are independent but the bulk of them are affiliated with one of four statewide organizations. A thumbnail description of these four organizations is offered in this section.

The oldest of the police organizations is the Texas Municipal Police Association (TMPA) founded in 1950. The group claims police officer members in over 300 different law enforcement agencies in the state. TMPA's stated reason for being is ". . . to promote professionalism, improve job conditions, and enhance communication among Texas peace officers."⁹ TMPA claims about 4,500 members scattered throughout the affiliated local associations. Historically, the TMPA has focused its efforts on legal representation of its members and legislative lobbying. As to legislative lobbying, the emphasis has been primarily on the area of the state police civil service law. In recent years the TMPA has established a slightly more aggressive stance, and for the first time has indicated interest in becoming a labor agent in certain departments where collective bargaining is permitted.

The largest of the statewide groups is the Combined Law Enforcement Associations of Texas (CLEAT). CLEAT was founded in 1976 by individuals who felt TMPA was not sufficiently aggressive on behalf of its membership. CLEAT today claims 16,000 members. While single memberships exist, the bulk of members come as a result of about 60 local police associations which are affiliated with CLEAT. CLEAT, by its very name, indicates that it is an association of local organizations. The largest CLEAT affiliates are in San Antonio, Fort Worth, Corpus Christi, and Austin. The organization also has a political affiliation with the Houston Police Officer's Association (HPOA), the largest local police group in the state, and the Dallas Police Association (DPA). About 25 percent of CLEAT's members come from these two groups. In 1992, CLEAT became indirectly affiliated with the AFL-CIO through a partial linkage with the Communication Workers of America Union (CWA). Full affiliation with the CWA was attained in 1994. Due to the CWA connection and AFL anti-raiding rules, the HPOA is prohibited from fully affiliating with CLEAT because an AFL-CIO union, the Houston Police Patrolmen's Union, already exists for the city's officers.

As can be seen from Tables 2 and 3, CLEAT serves as the bargaining agent for the overwhelming bulk of the eligible police units in the state. The leadership's stated goal is

Table 1

Police Labor Movement in Texas

1945	Houston Police Officers Association (HPOA) formed.
1947	Fireman's and Policeman's Civil Service Act (Art. 1269m, now Chapter 143 of Local Government Code) enacted. Local option election required.
1950	Texas Municipal Police Association (TMPA) formed.
1973	Fire and Police Employee Relations Act enacted. Local option election required for bargaining.
1974	International Brotherhood of Police Officers (IBPO) organize Beaumont and Laredo officers. First police affiliation with organized labor.
1976	Combined Law Enforcement Associations of Texas (CLEAT) formed as alternative to TMPA.
1979	Houston Police Patrolmen's Union (HPPU) chartered by AFL-CIO unit, International Union of Police Associations (IUPA).
1980	CLEAT gains affiliation of large city locals: San Antonio, Fort Worth, El Paso, and Corpus Christi.
1981	CLEAT affiliates with IBPO.
1983	CLEAT disaffiliates from IBPO in acrimonious manner.
1983	Texas legislature provides three members of Commission on Law Enforcement (TCLEOSE) to be drawn from working officers, two non-supervisory.
1986	Fraternal Order of Police seeks to establish Texas presence, primarily in West Texas and Dallas area.
1987	CLEAT and Dallas Police Association form an "administrative" affiliation.
1988	IUPA charts local in Dallas, the Dallas Police Patrolmen's Union.
1989	Legislature provides independent arbitrator as alternative appeal process in state civil service.
1991	Collective bargaining election fails in Dallas.
1992	HPOA gains partial affiliation with CLEAT after failed merger bid with HPPU.
1992	CLEAT affiliates with Communication Workers of America, AFL-CIO.
1994	IUPA gains first Texas bargaining unit (Weslaco Police Assn.)
1995	Legislature grants Austin officers the right to meet and confer.
1996	Approximately 77 cities are covered by state or local civil service while 25 cities and 5 counties are eligible to collectively bargain.

collective bargaining for all police officers in the state without the current local election requirement.

The third group of interest is the Texas Conference of Police and Sheriffs (TCOPS). TCOPS is the state council for the International Union of Police Associations (IUPA), which is affiliated with the AFL-CIO. The IUPA is the only police union directly chartered by the AFL-CIO. TCOPS serves as the state umbrella organization for many of the approximately 40 IUPA local unions.

The largest of the IUPA locals are the Houston Police Patrolmen's Union, the Dallas Police Patrolmen's Union, and the Harris County Deputy Sheriffs' Union. These three groups serve as competitors to the older associations already in existence in those jurisdictions, the HPOA, the DPA, and the Harris County Deputy Sheriffs' Association. Most IUPA/TCOPS locals are found in the Houston and Dallas suburbs and in the Rio Grande Valley. This group has been quite active in organizing new locals in recent years, selling

their services as an alternative to CLEAT. IUPA has also expended some effort in organizing non-sworn support personnel, such as dispatchers. IUPA represents one of the organizations which bargains collectively, the Weslaco Police Association. Total membership in IUPA/TCOPS is estimated at 4,500 statewide. IUPA/TCOPS locals tend to be formed along traditional organized labor union lines: each local carries a number and is proud of its affiliation with the AFL-CIO.

The last group that has statewide membership in Texas is the Fraternal Order of Police (FOP). The national FOP was formed in 1915 and has grown to become the largest police labor organization in America, claiming in excess of 250,000 police officer members. FOP membership in Texas, however, has historically not been large but is growing steadily. Approximately 40 local lodges exist in the state as well as a state umbrella organization. To date, the Texas FOP has not attempted to supplant any other labor group as a bargaining agent nor has it been active in legislative lobbying.

Table 2

**Texas Municipalities Authorized to Bargain With Police Officers
February 1996**

<u>City</u>	<u>Date Approved</u>	<u>No. of Officers*</u>	<u>Bargaining Agent</u>
Austin**	August 28, 1995	900	APA (CLEAT)
Beaumont	May 14, 1974	265	BPOA (CLEAT)
Beeville	August 12, 1995	17	BPOA (CLEAT)
Bridge City	May 7, 1994	13	BCPA (CLEAT)
Brownsville	August 13, 1974	164	BPOA (CLEAT)
Corpus Christi	March 2, 1975	384	CCPOA (CLEAT)
El Paso	March 29, 1975	849	EPPOA (CLEAT)
Galveston	April 3, 1982	158	GPA (CLEAT)
Groves	August 8, 1992	14	GPA (CLEAT)
Horizon City	May 7, 1994	4	HCPA (CLEAT)
La Marque	November 7, 1989	20	LMPA (CLEAT)
Laredo	July 16, 1974	215	LPOA (CLEAT)
Nederland	August 10, 1991	17	NPA (CLEAT)
Orange	April 3, 1982	40	OPA (CLEAT)
Pinehurst	May 6, 1989	3	PPA (Ind.)
Port Arthur	August 11, 1990	107	PAPA (CLEAT)
Port Neches	April 7, 1979	16	PNPA (CLEAT)
San Antonio	December 17, 1974	1661	SAPOA (CLEAT)
San Benito	May 7, 1988	31	—
Santa Fe	August 8, 1993	13	SFPA (CLEAT)
Silsbee	August 13, 1994	13	SPA (CLEAT)
Texas City	November 20, 1973	74	TCPA (CLEAT)
Vidor	April 5, 1980	20	VPA (CLEAT)
Weslaco	May 7, 1994	38	WPA (IUPA)
West Orange	May 7, 1994	7	WOPA (CLEAT)

* Number of officers is derived from Table 78 - Number of Full-time Law Enforcement Employees, Cities, October 31, 1993, *Crime In the United States -1993* minus one. Computation is based on state law, Texas Labor Code §174.003 (Vernon's 1993), which provides that the bargaining unit shall consist of all officers except the chief of the department.

** Authorized to "meet and confer" and enter into voluntary contract. *Texas Local Government Code §§143.301 -143.310.*

Table 3

**Texas Counties Authorized to Bargain With County Law Enforcement Officers
February 1996**

<u>County</u>	<u>Date Approved</u>	<u>No. of Officers*</u>	<u>Bargaining Agent</u>
El Paso	April 3, 1982	192	EPCSOA (CLEAT)
Jefferson	August 11, 1990	150**	JCADSCO(CLEAT)
Liberty	November 2, 1993	90***	LCCOA (CLEAT)
Orange	August 11, 1990	43	OCIEA (UPIU)
Webb	April 3, 1982	167	WCDSA (CLEAT)

* Except as noted, the number of officers is derived from Table 80 - Number of Full-time Law Enforcement Employees, Cities, October 31, 1993, *Crime In the United States - 1993* minus one. Computation is based on state law, Texas Labor Code §174.003 (Vernon's 1993), which provides that the bargaining unit shall consist of all officers except the chief of the department.

** Bargaining unit includes civilian jailers who are not deputy sheriffs and deputy constables. Number of officers shown includes both sworn deputies, jailers, and deputy constables.

*** Bargaining unit includes civilian jailers who are not deputy sheriffs. Number of officers shown includes both sworn deputies and jailers.

Texas Governmental Units Authorized to Bargain With Police Labor Organizations

As noted previously, §174 of the Texas Labor Code empowers municipalities to enter into collective bargaining agreements with law enforcement labor organizations under certain conditions. Table 2 provides a list of Texas municipalities that had achieved bargaining authorization as of February, 1996. Not all of these agencies are currently signatories to a contract, however. Several Texas county governments have also acquired authorization to conduct collective bargaining with organizations representing county law enforcement officers. The county collective bargaining units are listed in Table 3. In both Tables 2 and 3, the governmental unit is identified, followed by the date upon which bargaining was authorized by voters, the number of law enforcement officers who are eligible to be included in the bargaining unit,¹⁰ and an identification of the initials of the local collective bargaining unit with the initials of the parent organization, if any (such as CLEAT or IUPA).¹¹

Trends in Texas Police Collective Bargaining

While attempting to predict the future is fraught with peril, a few reasonable observations can be made about the future of collective bargaining in Texas. First, the national trend is toward the granting of bargaining rights for police officers. Only a few states, primarily in the South, deny officers the

right to work under a contract. In some areas, particularly the more industrialized states, police bargaining contracts are commonplace. Legislation has even been introduced in Congress which would grant bargaining rights to police officers nationwide. Second, in recent years organized labor has increased recruiting efforts among public sector employers because private sector membership has been in decline. Even the International Brotherhood of Teamsters has had recent success in signing up police units in other states. Second, the Texas Legislature appears willing to permit a bargaining agreement to be executed if the local government entity does not object. The recent meet and confer law for Austin officers and a predecessor law passed in 1993 benefiting Houston fire fighters are indicative of this philosophy.¹² These two statutes would appear to be precursors to statewide authorization for "permissive bargaining." A permissive bargaining law would not require bargaining by a local governmental entity but would simply lift the prohibition found in Chapter 617 of the Government Code. Finally, CLEAT, TMPA, TCOPS, and the FOP can be expected to continue legislative lobbying efforts to expand police officer rights. Given the influence police groups have traditionally had with legislators, passage of a state-wide bargaining law without local voter approval is not beyond the realm of possibility in the near future.

Footnotes

¹National Labor Relations (Wagner) Act, 29 U.S.C.A. §§151 *et seq.* (West 1973).

²Labor Management Relations (Taft-Hartley) Act, 29 U.S.C.A. §§141 *et seq.* (West 1973)

³*Thomas v. Collins*, 323 U.S. 516 (1945)

⁴292 S.W.2d 172 (Tex. Civ. App. - El Paso 1956, writ ref'd n.r.e.)

⁵113 S.Ct. 1905 (1993)

⁶Texas Loc. Gov't. Code Ann. §174.163 (Vernon 1988)

⁷See, *International Association of Fire Fighters, Local Union No. 2390 v. City of Kingsville*, 568 S.W.2d 391 (Tex. Civ. App. - Corpus Christi 1978, writ ref. n.r.e.), holding that statute authorizing District Court to set wages and terms and conditions of employment in case of impasse violates Article II, Section 1 of the Texas Constitution mandating separation of powers across the three branches of government. But, see also, *City of Port Arthur v. International Association of Fire Fighters, Local Union No. 397*, 807 S.W.2d 894 (Tex. App. - Beaumont 1991), ruling that city ordinance requiring binding arbitration following impasse is judicially enforceable. Court further noted, "We disagree with the decision in *Kingsville* that §16 of the Act [granting District Court authority to act in case of impasse] is unconstitutional."

⁸Cities larger than Austin do not qualify for a variety of reasons. Houston is specifically excluded by the statute; Dallas has not adopted state civil service; San Antonio already bargains; and Fort Worth barely misses the population requirement.

⁹Undated membership application of Texas Municipal Police Association.

¹⁰The bargaining unit consists of all police officers except the executive of the agency. Because of the broad statutory definition of "police officer," some county bargaining units include jailers and deputy constables.

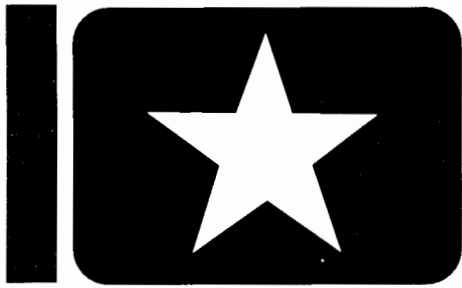
¹¹While most of the bargaining units are affiliated with either CLEAT or IUPA, deputies in Orange County are represented by a local of the United Paperworkers International Union, AFL-CIO!

¹²Tex. Local Gov't Code Ann. §§143.201 *et seq.* (Vernon 1988)

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Jamie L. Tillerson, Program Manager

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This bulletin was prepared by Mr. John Fenske and Professor Jerry L. Dowling. Mr. Fenske is currently pursuing a Ph.D. in criminal justice at Sam Houston State University. He previously served as a deputy sheriff in Wisconsin. Professor Dowling teaches in the areas of administrative law and criminal law. His research interests include police personnel practices. He conducts instruction on labor relations for the Bill Blackwood Law Enforcement Management Institute of Texas.

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