

## Smart Thinking about Police Unions and Labor Law

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Ayesha Hardaway, [Time is Not On Our Side: Why Specious Claims of Collective Bargaining Rights Should Not be Allowed to Delay Police Reform Efforts](#), 15 *Stan. J. Civ. Rts. & Civ. Liberties* 137 (2019).

Much has been written and said about police unions lately, most of it justifiably impassioned but not all of it well-informed by public-sector labor law rules and practices. This article is both. And while the question of the effect of police unions on police reform has been a hot topic in 2020, it is worth noting that Professor Hardaway identified this as a significant issue before it was as much in the limelight as it is now.

The article begins by recounting a series of tragic killings by police and calls for reform via the Violent Crime Control and Law Enforcement Act of 1994. The article then carefully describes a long history of racism in policing. Moving to modern times, the article catalogues the inadequacies of private litigation in achieving police reform.

It then moves to Justice Department investigations into police misconduct, which have led to settlements and court-monitored reforms such as use of deadly force policies and ways in which to hold officers accountable for misconduct. Police unions, in reaction, insisted that at least some of those reforms involved areas that were mandatory subjects of bargaining under relevant labor laws, and thus could not be made without bargaining with the police union. The article provides a very useful survey of all consent decrees since 1997, discussing their interaction with union contracts. Courts, Professor Hardaway shows, have liberally granted unions the right to intervene in these settlements. Notably, unions argue that they cannot be bound by these settlements because they were not parties to them. This, Professor Hardaway persuasively argues, has hampered enforcement and court oversight.

The article correctly notes that use of force polices are not mandatory subjects of bargaining. The article suggests limiting collective bargaining rights such that unions could not claim that other issues that might be covered by consent decrees, generally labeled “police accountability” and “public interest” matters, are mandatory subjects of bargaining. Unlike some discussions of this issue, Professor Hardaway does a nice job of specifying what specific changes she would like to see in terms of rules about negotiability.

Professor Hardaway understands relevant and critical legal rules. For example, not all states permit police to bargain collectively, and in general, in states that do, some topics are not mandatory subjects of bargaining because the issue impinges too much on the public interest. She traces the history of police and public-sector bargaining rights effectively and accurately. Overall, her discussion of these issues is more sophisticated and nuanced than much of what one sees in popular and even scholarly debates on this topic.

I personally would have talked a bit more about how police *management* fits into this picture, both in negotiating and enforcing collective bargaining agreements, and also about the *political* role of both police management and unions. Perhaps these topics could be next in a series. But this article takes on a wealth of complex material, both as to law and policy, and does really well with it. And I strongly agree with her main conclusion: as far as labor law reforms go, this issue is best dealt with by excluding, in a surgical manner, certain topics of bargaining that may intersect with reform efforts.

This is an especially impressive piece given that Professor Hardaway was appointed as an Assistant Professor in 2016, and thus wrote this while still quite early in her career. I liked it a lot.

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