



Collective Bargaining Trends

NIU FINANCIAL FORECAST FORUM

JANUARY 20, 2022

Outline

- Contract settlement trends
- Union Organizing Activity
- Amendment 1

Settlement Trends: Wages - Background

- April 2020: Record high unemployment rate: 14.8%
- December 2022: Record low unemployment rate: 3.5%
- Labor Force Participation Rate:
 - Currently, 62.3%
 - February 2020, 63.3%

Bureau of Labor Statistics, January 2023

Settlement Trends: Wages - Background

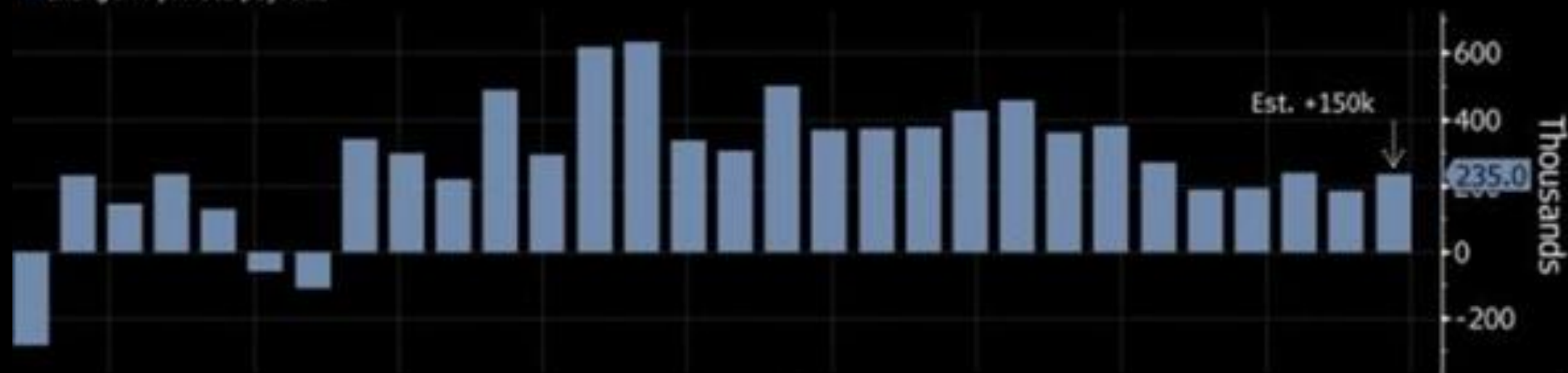
- Non-farm Job Openings Remain High
 - December 2019: 6,741,000
 - November 2022: 10,458,000
- There Are More Job Openings Than Job Seekers
 - November 2022: 6,000,000 Job Seekers

Bureau of Labor Statistics, January 2023

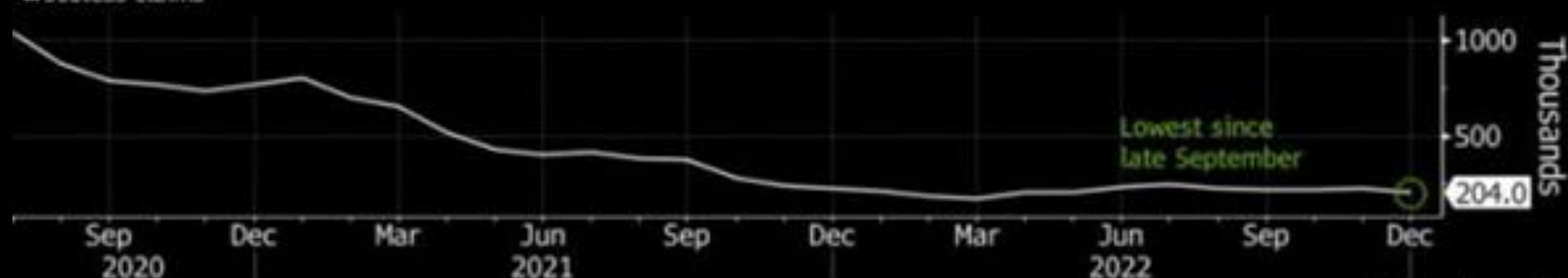
Latest Jobs Data Highlight Resilient Labor Market

Companies add more jobs than forecast in December, jobless claims fall

■ Change in private payrolls



■ Jobless claims



Source: ADP Research Institute, US Labor Department

Bloomberg

Settlement Trends: Wages - Background

- Employee Quit Rate is High
 - December 2019: 3,530,000
 - November 2022: 4,173,000
- Layoff and discharge rate has not yet increased
 - December 2019: 1,780,000
 - November 2022: 1,327,000

Bureau of Labor Statistics, January 2023

THE WALL STREET JOURNAL

In This Economy, Getting Fired Takes Hard Work

Companies are putting up with poor performers in a tight labor market because there's no guarantee of finding someone better

May 19, 2022

Recruitment and Retention Challenges

Some Employers Are Forgoing Pre-Employment Drug Screens

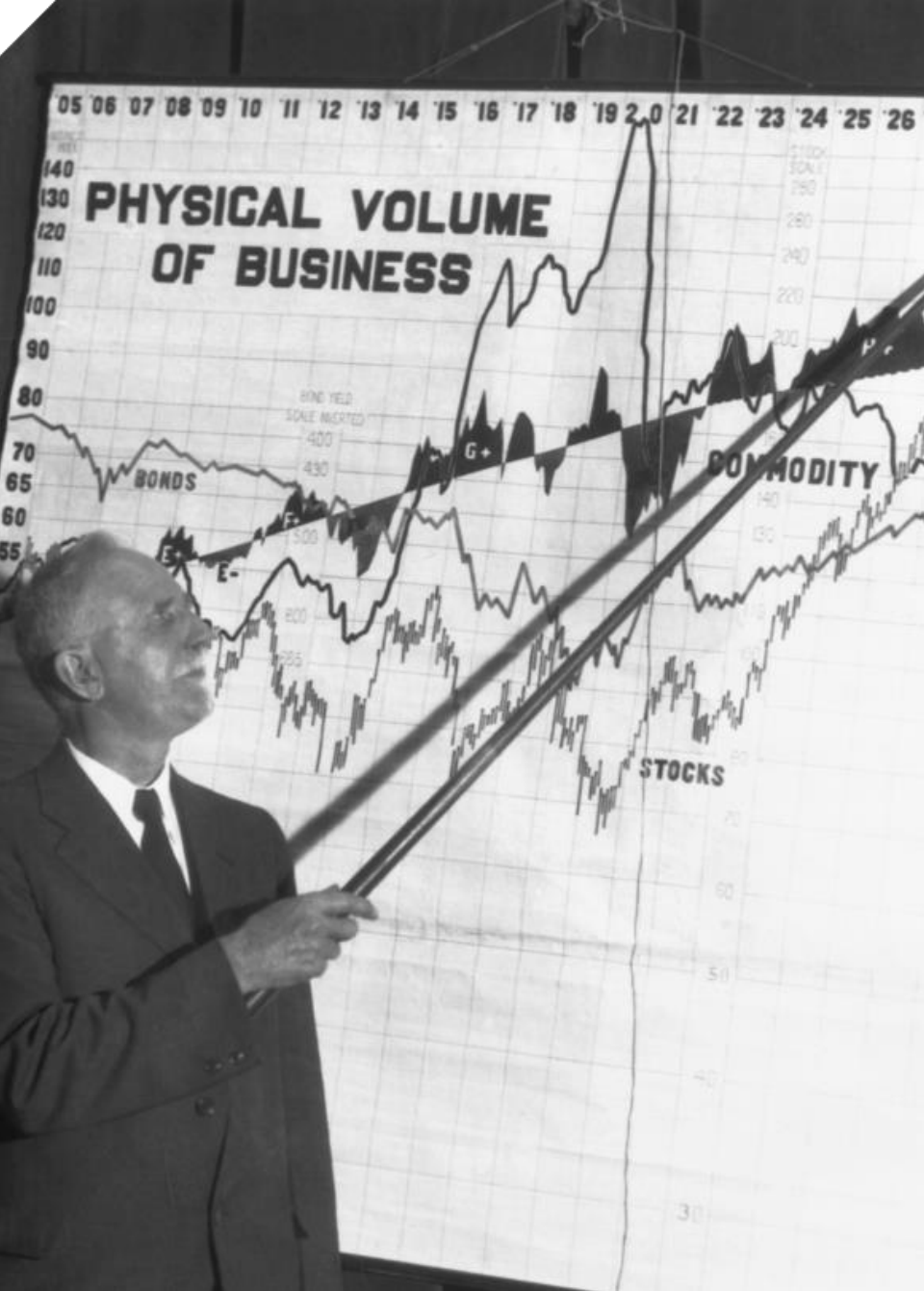
- Fewer employers tested applicants for marijuana last year than in 2020
- Of more than 6 million general workforce urine tests that Quest Diagnosis Inc., one of the country's largest drug-testing labs, screened for marijuana last year, 3.9% came back positive, an increase of more than 8% from 2020, according to Quest's annual drug-testing index
 - That is up 50% since 2017

Is Inflation Starting to Cool Off?

- December 2021–December 2022, CPI-U increased 5.7%
- Recent month-to-month changes have been much lower:
 - November: 0.1%
 - December: -0.1%
 - June 2021 to December 2021: 0.16% total change
- Producer Price Index, Nov–Dec change: -0.5%



What Does the Future Hold?



Survey of Professional Forecasters

"Forecasters Predict Lower Growth and Higher Unemployment Rates"

"The outlook for the U.S. economy looks weaker now than it did three months ago."

Over the next 10 years, 2022 to 2031, annual average headline CPI inflation forecasts increased to 2.95%, up from the prior estimate of 2.80%.

Source: Research Dept., Federal Reserve Bank of Philadelphia

Third and Fourth Quarter 2022 Surveys (8/12/22 and 11/14/22)

The “R” Word

- The Fed is raising interest rates to slow the economy
 - The Fed has increased interest rates at 5 straight meetings
 - Fed Raised Rates 75 basis points in both June and September
 - Largest single increases since 1994
 - The markets anticipate a 25 basis points increase in February, down from prior predictions of a 50-point increase
- More than 60% of CEO's expect a recession in their region in the next 12-18 months, according to a survey of 750 CEO's.

WSJ 6/18/22 and 1/15/23, CNBC 1/18/23

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Get Ready for the Richcession

Well-off Americans could get hurt more than usual in the next downturn

The New York Times

Companies Hoarding Workers Could Be Good News for the Economy

October 12, 2022

"Policymakers are hoping that after struggling through the worst labor shortages America has experienced in at least several decades, employers will be hesitant to lay off workers even when the economy cools."

NATIONAL FIRST YEAR NEGOTIATED WAGE INCREASES – STATE AND LOCAL GOVT. EMPLOYEES (W/O LUMP SUMS)

YEAR	WEIGHTED AVERAGE	AVERAGE	MEDIAN
2012	0.8%	1.1%	1.0%
2013	1.1%	1.6%	1.8%
2014	2.2%	1.8%	2.0%
2015	2.8%	2.2%	2.0%
2016	2.3%	2.4%	2.3%
2017	2.2%	2.1%	2.0%
2018	2.6%	2.8%	2.3%
2019	2.9%	2.8%	2.6%
2020	2.4%	2.8%	2.8%
2021	3.8%	2.8%	2.5%
2022	3.4%	3.7%	3.0%

2022 YTD National First Year Negotiated Wage Increases State and Local Govt. vs. All Employees Less Construction & Govt.

	State and Local Government	All Other Employees	Difference
Weighted Avg.	3.4%	5.0%	1.4%
Average	3.7%	6.3%	2.6%
Median	3.0%	5.0%	2.0%

Average Wage Increases Known Contract Settlements Illinois Public Sector

	2022	2023	2024	2025	2026
Police	2.66%	2.81%	2.83%	2.75%	N/A
Fire	2.52%	2.52%	2.41%	2.38%	3.00%
Public Works	2.48%	2.64%	3.38%	3.06%	3.25%

Be Prepared and Defend Against Exorbitant Wage Demands

- Know your comparables, both internal and external
- ARPA → How did you spend it?
- Don't compare 2022 vs. 2021
- Be prepared to take a deep dive to explain revenues. Did revenue increase for unique reasons? Is that sustainable?
- What expenses were put off for the future?

Cost of Living

The biggest single issue going forward in interest arbitration will be how arbitrators respond to higher cost of living numbers



Interest Arbitrators Take Difference Approaches in How They Apply the Cost-of-Living Factor

- Many interest arbitrators use the determination of which party's final offer is the closest to the cost-of-living in deciding which party is favored on this statutory decisional factor. For example, in *Village of Mokena*, Arbitrator Perkovich explained, "Clearly, the Employer's proposed wage increases of 3.5%, 4.0%, and 3.6% more closely approximates" the changes in the CPI nationally and locally. (1/27/1994)
- Another approach to determining which offer is most reasonable under to COLA factor is base it on the cost-of-living figures for the year prior to effective date of the parties' new contract. Thus, Arbitrator Edward Krinsky in *Taylor County* (4/20/2000) stated:

"For purposes of making a judgment about the reasonableness of a bargain effective in 1999, the relevant cost- of-living figures are those 1998."

INTEREST ARBITRATORS TAKE DIFFERENT APPROACHES IN HOW THEY APPLY THE COST-OF-LIVING FACTOR (Cont.)

Arbitrator Raymond McAlpin in *Village of Barrington Hills and MAP* (1/21/2013):

“[T]he movement in the consumer price index is generally not a true measure of an individual family's cost of living due the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables.”



Eastern Illinois University and FOP
(Arb. Hill, Nov. 12, 2022)



Parties' Final Offers

University's Final Offer:

- 2022: 1.25%
- 2023: 1.50%
- 2024: 1.50%
- 2025: 1.50%

Union's Final Offer:

- 2022: 7.50%
- 2023: 2.50%
- 2024: 2.50%
- 2025: 3.00%

Arbitrator's Ruling

"Overall, the University's financial picture is anything but enviable and cannot be dismissed from consideration."

"What stands out for a patrol officer in 2021 is this: The bargaining unit is dead last in every category relative to the bench-mark jurisdictions, and the difference only gets worse as an officer progresses to the top pay (which is a staggering 34% less than the average for the comparables)."

Arbitrator's Ruling

"The situation at EIU is comparable to the problem of inequality in America. In short, the rich will always get richer relative to the poor because they start from a higher base... While one seldom sees a 7.5% increase in the first year of a four-year contract, anything less really places the unit in a comparative 'black hole.'"

"Bottom line here, while not dispositive of the outcome in this case, trends in the CPI clearly favor acceptance of the Union's offer. The Union is not only dead last relative to the comparables, but is experiencing a high cost of living, the worst of both worlds."

FOP attorney Bill Jarvis: "... this is an unusual case in the sense that we have both a high cost of living and a very, very, very low, in the comparability they're dead last, they're not even close."



Village of Oak Park and FOP (Arb. Benn, Oct.
26, 2022)

3-Page Award

Wages:

Jan. 1, 2021: +2.50%

Jan. 1, 2022: +2.50%

Jan. 1, 2023: +3.00%

New Step:

New top step after 15 years of service:
+1.00%



Mid-Term Interest Arbitration

Village of Oak Brook and IAFF (Arb. Gibbons, 2022)

Bargaining History

- Unique Contracting clause
- Unique Entire Agreement clause
- Unique bargaining history in prior negotiations
 - 28 → 27
 - Demand to add a staffing clause
- Pandemic concessions

Village Steps

- January 2021, Village Announced it Was Eliminating PSI Contract
- Net effect was to decrease on-duty staffing from 11 to 8
- Impact on call times:
 - Union's own data showed ambulance response times improved

Interest Arbitration –Final Offers – Impacts and Effects

- Village: Status quo
- Union:
 - Add new minimum staffing clause: 9+1
 - Increase pay by 1.0%
 - Rank staffing: 2 lieutenants per shift

Interest Arbitration - Decision

- Status quo carries the day
- Union's proposal is a significant breakthrough
- The Union offered no *quid pro quo* in return
- NFPA 1710 is an "aspirational goal, but it can be given little weight in considering the matter."
- "If anything, data suggests that the new model of deployment is faster and safer."

Increase in Union Activity

- High profile Union organizing drives
 - Amazon
 - Starbucks
 - Microsoft
 - Apple
 - Activision Blizzard



Election petitions increased by
63%

Unions won more elections
in 2022 (1041) than any
year since 2015

Total Union Members
Increased by 273,000

Bureau of Labor Statistics; National
Labor Relations Board

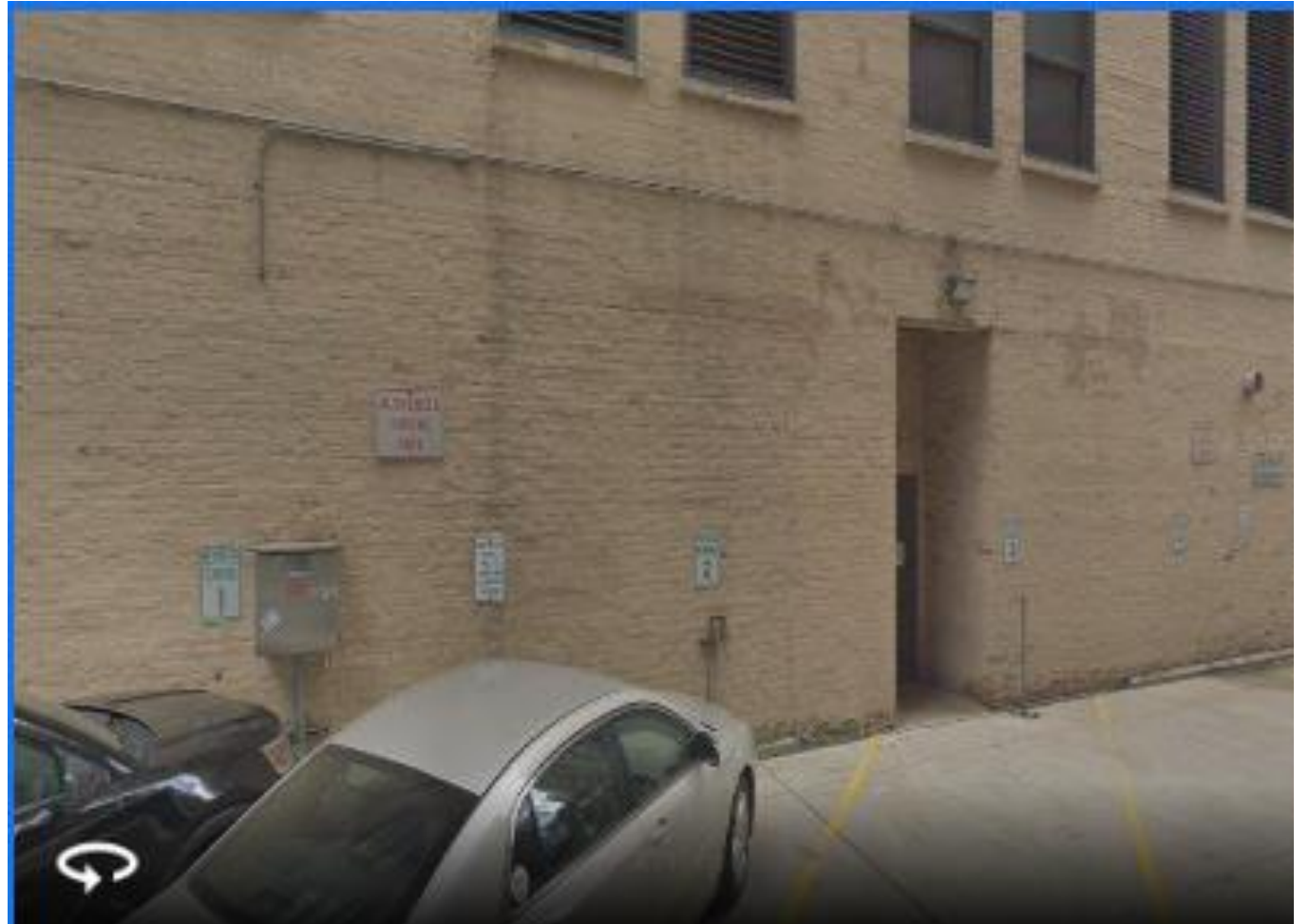


Illinois Public Sector

Public Act 102-0682 – Fire
Department Supervisors

House Bill 5107 – CPS Principals

ILRB: 34 Bargaining Unit
Certifications in CY 2022



Battalion Chief Organizing

Management Concerns:

- Supervisors are asked to “serve two masters”
- Loss of management control, especially when determining staffing levels and the overall organizational structure
- Promotions issues

Possible Responses to Organizing Petitions:

- Exclusions
- Appropriate unit
- In some cases, historical units


Library Workers across the nation are unionizing

“They’re geographically dispersed, but library systems in Hillsboro, OR; Niles, IL; Worthington, OH; Northwestern University, Evanston, IL; Skokie, IL; St. Charles, IL; the University of Michigan, Ann Arbor, MI; and Baltimore County, MD, had one thing in common in 2021: Their staff members all voted to form unions. ...They, along with other library workers in academic and public settings who either started or completed their journey to unionization last year, join a little more than a quarter of the library workforce.”

Library Journal, 2/14/22

Nurses' Strike Ends in New York City After Hospitals Agree to Add Nurses

Nurses at Montefiore Medical Center in the Bronx and Mount Sinai in Manhattan will return to work after the hospitals agreed to add staffing and improve working conditions.

 Give this article



 63



Nurses marched on picket lines at Montefiore Medical Center in the Bronx starting on Monday. Jeenah Moon for The New York Times



City public-sector nurses rally ahead of contract negotiations

BY EDRIC ROBINSON | NEW YORK CITY
PUBLISHED 9:36 PM ET JAN. 18, 2023

UIC Faculty Strike



Faculty and their supporters chant during a strike at the University of Illinois Chicago on Tuesday, Jan. 17, 2023. | Pat Nabong/Sun-Times

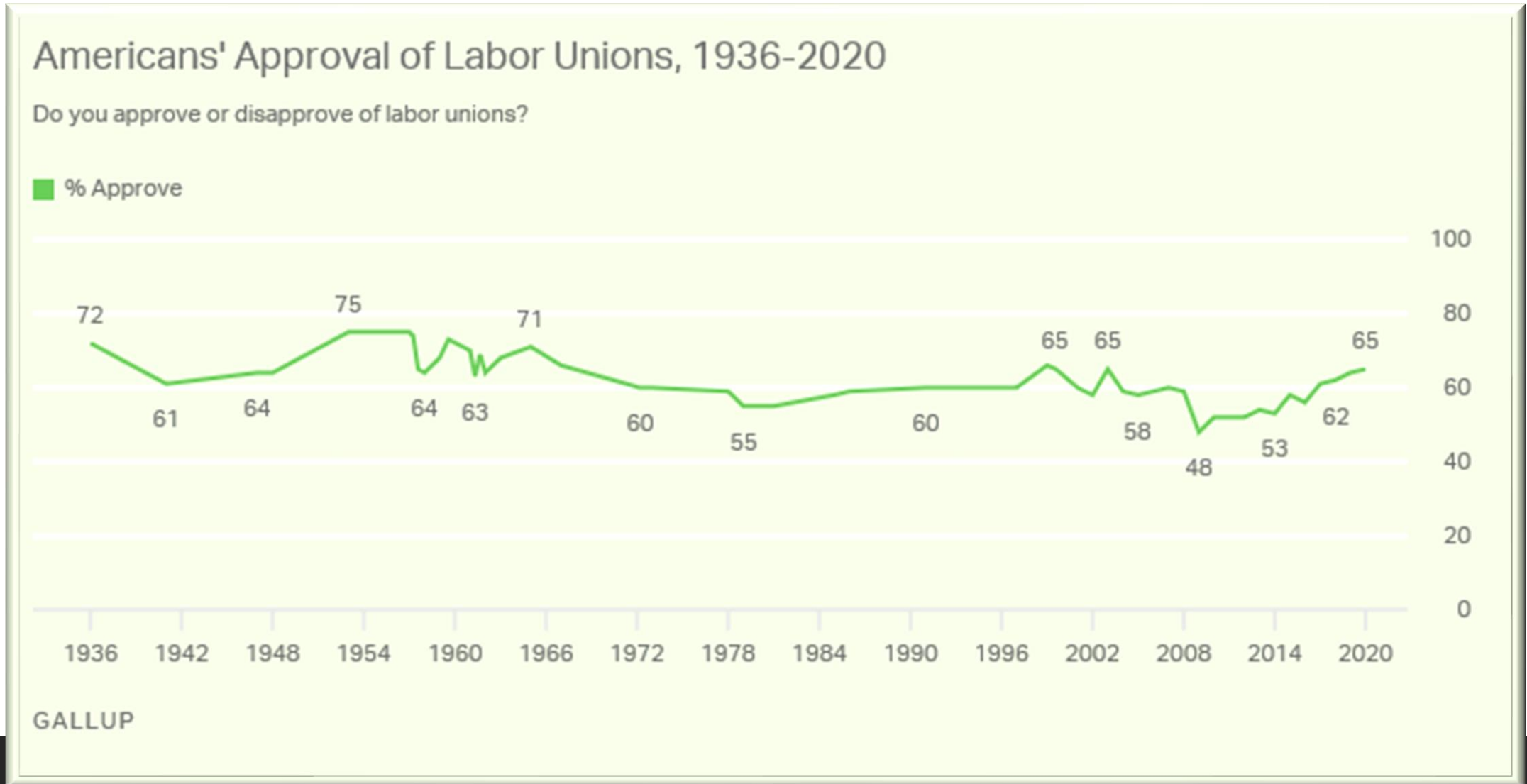
Union represents 1500+ professors, 850+ are members

Union demands:

- Higher minimum salaries
 - University proposed 4.25%
- Salaries that keep up with inflation
- Learning disability assessments for students & boosting mental health resources for students
- Earlier reappointment notices
- Due process for tenure-track faculty

Public support for labor unions has surged to its highest level since 1965!

More than 2/3 of Americans approve of unions according to a Gallup poll, a 12% increase in 5 years



Rise of Unions

President of AFL-CIO says
this is a unique moment in
time for labor movement
“that will build upon itself ...”

Liz Shuler, as quoted in Barron's 5/16/22



AFL-CIO

AMERICA'S UNIONS

Rise of Unions

As Unions increase memberships, that translates into more dues \$\$ which translates into more political power

- New legislative pushes (e.g., higher minimum wages and more paid time off)
- Under President Biden the NLRB is more labor friendly
 - NLRB is willing to certify microunits
 - NLRB added “consequential damages”

Rise of Unions

- There has never been a more important time for you to know how to bargain a management-oriented CBA, with competitive wages and benefits, while retaining your right to set the mission and manage the workforce
- Do not give away management rights in exchange for lower wages!

Bargaining Over Safe-T Act

- Body Worn Camera Policies
 - Take home cameras
 - Technology stipends
 - Wearing cameras during rest and meal periods
- Critical Incident Policies
 - Drug testing
 - Taking statements
 - Viewing Body Worn Camera footage
- Liability and indemnification
- “We need more money because our job is harder”

If You Believe a Recession is Coming in 2023, Consider:

- Shorter term CBA or a reopener
- Avoid locking in inflationary based increases on a long-term basis
- Preserve Management Rights
- Especially preserve the rights to reorganize, outsource, attrit and layoff
- Avoid minimum manning clauses
- Avoid minimum hours guarantees
- Have an impasse contingency plan - just in case

Responding to High Wage Demands at the Table:

- Take credit for step increases
 - And the invisible paycheck (pensions, insurance, time off, roll up costs)
- If prior wage increases outpaced low-level inflation, be sure to say so
- Cite recent market settlement trends, often well below current CPI
- And Remember--Cost of living is just one factor to consider
 - Internal comparability matters
 - External comparability counts
 - So does your financial condition
 - And your hiring and retention record
- If you have to pay more than you might want, get something back!

Amendment 1:
The “Workers’ Rights
Amendment”

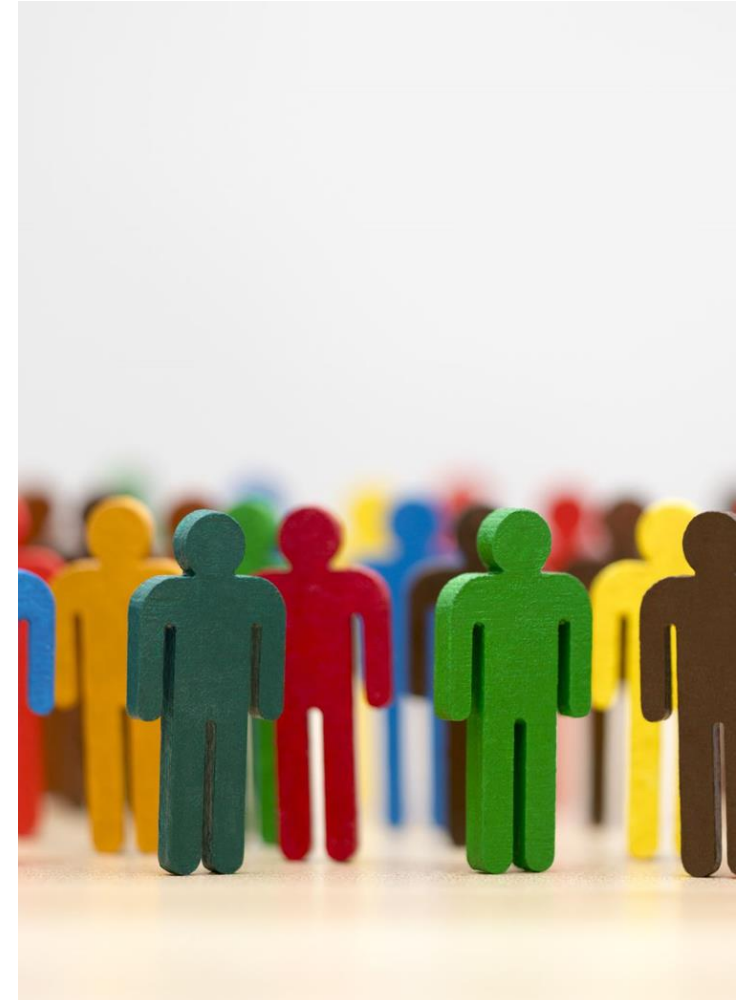


Constitutional Right to Collective Bargaining

Fast Facts

- The U.S. Supreme Court has not recognized collective bargaining as a constitutional right; in a unanimous 1979 opinion the Court stated:

The First Amendment does not impose any affirmative obligation on the government “to recognize the association and bargain with it.”
- Only four other states—Florida, Hawaii, Missouri, and New York—constitutionally protect collective bargaining, but none go as far as Amendment 1
- How those states have interpreted the constitutional right to collective bargaining could be a concern



Illinois Constitution, Art. 1, Sec. 25

Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.



Key Language of the Amendment

- “No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, ...” (emphasis added)

- Compared With the Labor Act -

- “... negotiate in good faith with respect to wages, hours, and other conditions of employment, not excluded by Section 4 of this Act.”



The Amendment Does Three Major Things

1. Makes Collective Bargaining a Constitutional Right
2. Prohibits Enactment of any Law Interfering With, Negating or Diminishing Collective Bargaining Rights and workplace safety
3. Prohibits Enactment of Right to Work Ordinances

Constitutional Right to Collective Bargaining

The Florida Supreme Court ruled that retirement benefits are part of the collective bargaining process. Thus, the legislature's exclusion of it as a subject of bargaining violated the constitutional right to collective bargaining.





What may the Constitutional Right to Bargaining Mean for Public Employers?

- Will more public sector employees have the right to bargain collectively?
- Will more private sector employees have the right to bargain collectively?
- Will permissive subjects of bargaining become mandatory?
 - Especially issues of “workplace safety?”

The First Line of Defense To Expanded Bargaining Demands

Senator Villivalam:

“It is the drafters' intent that this new Section creates a constitutional floor for bargaining in Illinois; however, it does not and is not intended to preempt or disturb any portion of the Illinois Public Labor Relations Act or the Illinois Educational Labor Relations Act, or any accompanying regulations or judicial precedents, as currently construed upon the passage of this proposed Amendment.”

“With that in mind, the drafters referred to "employees" in the context of collective bargaining and organizing with the understanding that it implicitly incorporates the well-organized and accepted understanding of an "employee" for purposes of organizing under the IL -- the IPLRA and the IELRA as understood and construed upon passage of this Amendment.”

The First Line of Defense To Expanded Bargaining Demands

Representative Evans:

“With that in mind, the drafters referred to employees and the context of collective bargaining and organizing with the understanding that it's... implicitly incorporates the well-recognized and accepted that understanding of an employee for the purpose of organizing under the IPLRA and the IELRA, as understood and constructed upon the passage of this Amendment.”

“Nothing on the current law is changing. So, you can... we can create various scenarios, but nothing on the current law is changing.... So, the Illinois Public Labor Relations Act is still not affected.... **It is not an expansion. It is a protection.**”

What if the Courts Disagree With the Legislature?

- When all else fails, “No, is a complete sentence”.
- Remember the status quo



What is “Protected?”

Minimum Staffing

Card check “elections”

Substitutes Act

Union Access to Employer Workplace

Employer Free Speech Restrictions

FOIA Restrictions

Fire Department Promotions Act

Interest Arbitration for Public Safety

First Contract Interest Arbitration

No BFPC / Civil Service Commission for Discipline

Restricting Management’s Ability to Bargain Residency Restrictions

Giving Interest Arbitrators Authority to Rule on Residency Restrictions

PSEBA

PEDA

Mandatory Dues Deductions After A Contract Expires

Retroactive Wage Increases

Prohibits Lockouts

Pension Presumptions

Stacked Pension Boards