# The Politics of Public Sector Unions

Steven Greenhut
Pacific Research Institute

*Steven Greenhut is director of the Pacific Research Institute's Journalism Center in Sacramento. He is editor in chief of www.CalWatchdog.com, a columnist for the Orange County Register, a contributing editor to City Journal California and author of Plunder! How Public Employee Unions Are Raiding Treasuries, Controlling Our Lives And Bankrupting the Nation (2009 The Forum Press).*

To say that the unions have undue influence in the California Legislature, as many critics allege, is to understate the problem. The unions – and the public sector ones in particular – don't just control the Legislature. They *are* the Legislature. Senate President Pro Tem Darrell Steinberg, D-Sacramento, previously worked as an attorney for a public sector union. Assembly Speaker John Perez, D-Los Angeles, is best known as the union organizer who led the Southern California grocery strikes of 2003-2004.

The Democratic Party, which controls every state constitutional office and holds strong majorities in both houses of the Legislature, functions as the cat's paw for the unions. Gov. Jerry Brown was elected with the help of a record-setting $30 million in expenditures from the state's unions, and despite disappointing them on a handful of matters including an encouraging new pension-reform proposal, has governed largely as their advocate in Sacramento.

So even as California sinks under the weight of an unfunded pension liability estimated by Stanford University to be as high as a half-trillion dollars, and even as various cities teeter on the brink of bankruptcy, there is little no appetite for serious reform in the state Capitol. Pension reform has been a non-starter despite some modest criticism by legislative leaders of some of the more outrageous pension abuses. To illustrate how extreme the situation is, a 2010 proposal to strip pensions from government employees convicted of on-the-job felonies couldn't even get a hearing. As Republican insiders told me, the unions exerted their political muscle by saying that such a measure was unfair to the families of the felons – and the legislation was pulled.

Instead of paring back union benefits and rooting out various abuses, ranging from those double-dipping DROP programs (Defined Retirement Option Plan) to "airtime" benefits that allow employees to buy additional retirement credits at a fraction of the cost to the taxpayer, the state Legislature continues to, at best, nibble around the edges of reform and even in some cases expand benefits, in the case of those cancer and heart-attack presumptions for public safety workers. Once, when asked what it is he ultimately wants for his members, a union president retorted, "more." But despite lean times – in a state where unemployment averages above 12 percent, and where those numbers often exceed 20 percent in rural locales – the unions continue to implement more aspects of their benefit-expanding agenda.

**Governor Brown Tilts Toward Unions**

Many observers had hoped that an aging Gov. Brown, back as the governor after a decades-long hiatus, would want to create a legacy rather than become too closely aligned with any interest groups. There was the much-discussed "Nixon goes to China" references to Brown, who could be the one person with the credibility to stand up to the unions that are a stumbling block to the state's fiscal improvement. In a New York Times article before Brown's victory over Republican billionaire Meg Whitman, Democratic consultant Chris Lehane echoed this common viewpoint, "He may be a career politician, but nothing about him has ever been conventional. If he is able to get through a lot of obstacles -- and that is a big if -- he could be the right person at this time, the sort of Nixon-goes-to-China way."

Yet a year into his governorship, Brown has functioned in a "Nixon goes to San Clemente" way. He is less the unconventional politician and more a traditional pro-union politician. Brown is an interesting character, who offers varied rhetoric and prides himself on his Canoe Theory of Politics (paddle a little to the Left, then a little to the Right), but until very recently he failed to confront the unions.

As the Los Angeles Times reported after the close of the legislative session: "When the dust settled on Gov. Jerry Brown's first legislative session in nearly three decades, no group had won more than organized labor, which heralded its largest string of victories in nearly a decade. At the urging of the food workers' union, Brown agreed to crack down on the use of automated checkout machines in grocery stores. At firefighters' request, he approved new restrictions on local governments seeking to void union contracts. He guaranteed wages for workers in public libraries that are privatized — a bill sponsored by another labor group. … 'Finally, after seven long years of [Gov. Arnold] Schwarzenegger, we're moving in the right direction again,' said Steve Smith, a spokesman for the California Labor Federation."

Brown did, however, surprise most Sacramento observers when on Oct. 27 he introduced a 12-point pension-reform plan that goes much further than most Democrats and Republicans expected. The response from Sen. Bob Huff, R-Diamond Bar, the GOP caucus chairman, epitomizes this viewpoint: "The governor's admission today that California is not on a sustainable path when it comes to unfunded pension liabilities is a refreshing step in the right direction. While I believe that all of the governor's proposed reforms should be placed on the ballot for voter approval, I am ready to support his ideas to rein in costs by raising the mandatory retirement age for all new employees and the adoption of a hybrid risk-sharing plan. These proposals are similar to what Senate Republicans brought to the governor last year, and I believe the governor is on the right path."

Specifically, the Brown plan – which still must get pushed through a Democratic-controlled Legislature – would raise the retirement age for non-public-safety new hires from 55 to 67, increase employee health-care contributions, ban "airtime" and other pension-spiking methods, and create a mandatory hybrid system for new retirees that apparently applies to public-safety categories also. Unfortunately, as my colleague John Seiler wrote in CalWatchdog, the details are left for a study and who knows what the study will conclude? Brown also calls for an initiative to change the nature of a retirement fund board in the wake of myriad scandals. The good news: the unions already are complaining.

San Diego Councilman Carl DeMaio, known for his statewide pension reform activism, said, “It takes some baby steps forward. But in the end, it’s completely inadequate for protecting taxpayers. It’s deja vu because it’s not reforming existing pensions.” And the pension liability doesn’t go away by reforming things only for new hires.

The Brown pension plan comes against a backdrop of his many pro-union bill signings. As I reported in the Orange County Register: “For instance, the governor signed a bill that makes it nearly impossible for municipalities to declare bankruptcy, forcing them instead to go through a mediation process that is dominated by union supporters who would oppose bankruptcy at all costs. Salaries and benefits are consuming such a large portion of city budgets that officials have no choice but to shut down parks and lay off workers. The unions won’t budge on benefits, so their goal is to make it impossible to abrogate those overly generous union contracts that are the source of the problem.”

Furthermore, the governor signed SB 202, which pushes citizen initiative measures to November general election ballots, thus undermining one of the key measures Californians have to tackle union power – the initiative process. The unions control the governor’s office and the Legislature, so reform can only come at the ballot box. Limiting initiatives to the general election makes it that much harder to qualify initiatives for the ballot and that much easier for big players, such as the unions, to dominate the process and squelch direct democracy.

Brown claims to be promoting democracy – at least that’s his explanation as he pushes Californians to approve new taxes and promotes a measure that would make it easier for localities to pass taxes. But the governor doesn’t like democracy when it comes to bans on those union-only Project Labor Agreements for public works projects. He signed a law that stops local governments from banning PLAs. At the bidding of the police unions, Brown vetoed a bill that was supported overwhelmingly by Democrats and Republicans in both houses of the Legislature.

It would have overturned a recent state Supreme Court ruling that allows police to search everything on an arrestee’s cell phone – a troubling development given the amount of information and number of databases available in a modern smart phone. By allowing police unlimited ability to search these phones, the court has given them unlimited ability to go on fishing expeditions of, say, a reporter’s databases if that reporter were arrested for any reason. The bill would have required a warrant, but Brown did what the unions asked him to do.

Brown signed a deal with the powerful prison-guards union that made it clear that he would not be standing up for taxpayers. As I wrote in City Journal: “The state’s old contract with CCPOA allowed retiring prison guards to collect a payout for up to 80 unused vacation days. In practice, that limit was often unenforced—but the new contract removes it altogether, letting guards bank an unlimited amount of vacation time. That will make it much easier to retire with six-figure payouts. Already, as a *Sacramento Bee* story has revealed, some state employees have walked away with as much as $800,000 in banked vacation time; the new CCPOA contract will make that more common. In fact, the *San Francisco Chronicle* reports that guards and their supervisors have 33 million vacation hours banked, which could cost taxpayers $1 billion or more. All this is in addition to prison guards' '3 percent at 50' retirement arrangement, which allows them to retire as young as 50 with up to 90 percent of their final year's pay—and the guards commonly spike those generous pensions with various gimmicks, such as filing disability claims shortly before retirement."

Brown also signed legislation to crack down on contraband cell phones that make their way to prison gangs. But the bill completely ignores the main source of those illegal phones – prison guards who take bribes and sneak them in. The California Correctional Peace Officers Association refuses to allow the guards to be searched unless they are paid for additional time.

Here we see that union power does more than impose financial costs on California taxpayers. It restricts accountability by public officials. It makes it nearly impossible to debate policy issues in terms of what's best for the public. Such debates – ranging from pensions for felons to police searches of phones to keeping contraband out of prisons – don't get much of a hearing when a dominant interest group flexes its muscle.

**Depth of the Pension Problem**

When Stanford University analyzed the state's pension problem, it argued that the state's main pension funds should use a discount rate of 4.1 percent in determining the size of the unfunded pension liability or debt. In the private sector, of course, most employees receive 401/k-style defined-contribution plans. The employer will, for instance, promise to match a certain percentage of the employee's pay and place that in a retirement account. When the market goes up, the employee's account grows and when it falls, obviously it too falls.

By contrast, most public sector employees receive defined-benefit plans. They are promised a defined level of benefit based on a formula regardless of how the stock market performs. Taxpayers are backing the promises made by politicians and must pay up if the pension fund investments don't perform as promised. In California, these formulas can be rich. For instance, public safety officials receive the most generous formulas, including the common "3 percent at 50" formula. Police, deputy sheriffs, firefighters, prison guards and an expanding list of safety officials (such as lifeguards, who can earn more than $200,000 a year in Orange County) can retire at age 50 with benefits equaling 3 percent of their final year's pay times the number of years worked. If an officer begins his police career at age 20, that means he can retire at age 50 with 90 percent of his final year's pay – and that's before the various pension-spiking gimmicks that can push those numbers even higher. In most California communities, firefighter pay and benefit packages average more than $170,000 a year, so these are expensive for taxpayers.

The agency that hires the employees and the employees contribute a portion of their salary into the pension funds, which then invest the money. In many instances, the agency – i.e., the taxpayer – pays the employer and the employee portion of the contribution. Especially with public safety, the employee often contributes nothing to his own retirement plan. Investment income is supposed to pay for the future pensions, so this becomes a guessing game.

The pension funds estimate the highest-possible rates of return on their investments because the higher the discount rate the less the predicted liability. The nation's largest pension fund, the California Public Employees' Retirement System (CalPERS) estimates that its investments will earn 7.75 percent a year for the next 30 years, which strikes most observers as optimistic. The goal of CalPERS and the public employee unions are to minimize the size of the problem so that politicians do not tinker with the generous pensions they receive.

In an April 2010 study called "Going for Broke," Stanford University suggested using the risk-free rate of 4.1 percent to determine the true unfunded pension liability for the state's three major pension funds. According to the report, "Adjusting the discount rate used on liabilities to a risk-free rate, we estimate the combined funding shortfall of CalPERS, CalSTRS, and UCRS prior to the 2008/2009 recession at $425.2 billion (see Table 2). At the time of this writing, the funds have not released more recent financial reports, but due to the previously mentioned $109.7 billion loss the three funds collectively sustained, we estimate the current shortfall at more than half a trillion dollars."

CalPERS was aghast at this study and its officials have been blasting it ever since, even though it was produced by a highly respected academic institution and its research was led by a well-known former Democratic state legislator who has taken particular interest in the pension crisis.

Ironically, as I reported recently in the Orange County Register, CalPERS' own numbers actually make the case for an even lower discount rate than the one used in the Stanford study: "When the taxpayer is backing up the entire liability for the pensions received by members of the California Public Employees Retirement System, then CalPERS officials are exuberant about the stock market. They insist that a predicted rate of return of 7.75 percent is perfectly realistic. When their own funds are on the line, however, CalPERS can be extremely conservative as it embraces one of the lowest annual return rates imaginable: 3.8 percent."

The latter number is what CalPERS uses when it pays localities that are interested in exiting the CalPERS plan. It's the "rubber meets the road" number CalPERS uses when its own funds, rather than our funds, are on the line. It also is vindication that the Stanford study is on the mark and that the state's unfunded liability is higher than expected. Former Orange County Treasurer Chriss Street pins that number at nearly $900 billion if the 3.8 percent figure is used.

But thanks to union power, reform has gone nowhere in the Capitol and even the discussions about reform – and local initiative-based reform measures – deal almost solely with new hires. But reforming pensions only for new hires doesn't stave off economic problems. During one state Senate hearing about a Republican-backed pension reform measure last year that would have lowered pensions and increased contributions for new state employees, Democrats objected by arguing that it wouldn't do anything anyway – it would be too many years down the road before savings would be realized. They weren't arguing for a tougher measure that lowered pensions for current employees. Rather they wanted to do nothing. They said that this issue ought to be resolved at the negotiating table. Never mind that unions control both sides of that table, especially at the local governmental level.

The unions essentially elect their own bosses. In many local pension negotiations, the employees who supposedly represent that taxpayer are actually members of the union that sits at the other side of the negotiating table. They have every incentive to negotiate a deal that improves their benefits regardless of what it means for taxpayers. These negotiations are done in closed session, so the public rarely learns about the deals until it's almost too late to organize to stop them. City council members and supervisors love to gain the union endorsements and to pose next to the squad cars and fire trucks. The average citizen hardly has a chance.

**Tackling Reform at the Ballot Box**

The pension issue won't be fixed at the negotiating table. In California, which has liberal rules governing the initiative process, the only hope for reform is direct democracy. Last November, for instance, eight out of nine local pension-reform initiatives were approved by voters. The one losing measure was in liberal San Francisco, and this November's election is dominated by pension reform even in that city.

In San Francisco, voters will choose between Proposition C, the "city family" measure backed by the establishment and the city's public-sector unions, and Proposition D, a more hard-hitting measure championed by Public Defender Jeff Adachi, who also is a candidate for mayor.

The city establishment has rigged the game to ensure C's passage. As I wrote for City Journal: "Prop. D is clearly the better of the two initiatives, which is why city officials are taking no chances that Adachi's reforms will prevail over the establishment's compromise half-measure. Mayor Lee pulled a sneaky behind-the-scenes stunt to ensure that Adachi's measure would be less effective, even if it wins the most votes. Under a memorandum of understanding Lee negotiated with the police and firefighter unions in July, most of the city's highest-paid workers would be exempt from the provisions of Prop. D that require higher pension-contribution rates. Despite an exposé by the *San Francisco Examiner* and ensuing controversy, the city's board of supervisors unanimously approved the memorandum. Adachi rightly was appalled at the anti-democratic nature of a secret deal exempting particular classes of public workers from a ballot measure that the public hasn't even had a chance to consider. He also was angered at the way the city's controller, a Lee ally, skewed a supposedly independent analysis of the two measures to minimize the expected savings from Prop. D."

The San Francisco Chronicle argued that "Neither would come close to covering the escalating general-fund obligation to meet promised pensions and health-care coverage for retired city workers." But instead of siding with the more far-reaching measure, it backed Prop. C because that proposition has backing from the establishment and is less divisive. But given the degree to which pensions are consuming public budgets, officials in San Francisco and elsewhere are going to have to embrace measures that cut deeply into the problem.

Adachi, a progressive Democrat, has been making the progressive case for pension reform. In his view, unless San Franciscans cut back on millionaire's pensions for public employees (a person would indeed need several million dollars saved to receive these six-figure cost-of-living adjusted deals), then the city will face a continued decline in the quality of life and in the quality of services there. David Crane, the liberal Democrat who was former Gov. Arnold Schwarzenegger's chief pension adviser, said at a Senate hearing: "One cannot both be a progressive and be opposed to pension reform. The math is irrefutable that the losers from excessive and unfunded pensions are precisely the programs progressive Democrats tend to applaud. Those programs are being driven out of existence by rising pension costs."

Instead of embracing modest reform, Californians might soon need to listen to the reform-oriented official government watchdog called the Little Hoover commission, earlier this year "urged the Governor and the Legislature to establish the legal authority for the state and local governments to freeze pension benefits for current workers. The Commission recommends that, going forward, current workers accrue benefits under more sustainable pension plans. Payments to current retirees would not be affected."

This was a groundbreaking suggestion. We're not talking about stripping pensions from current retirees or changing the retirement formula going backward – even though unions have repeatedly succeeded in increasing pension benefits retroactively. Little Hoover simply is calling for the state to do what many private-sector companies have done: Make good on pension promises up until today, then implement a new, lower benefit tier starting tomorrow. Unless this is done, the current unfunded liability will not be addressed and pension and other retiree benefits will continue to consume an ever-larger portion of city budgets.

**Cutting Pensions or Cutting Services**

After Vallejo, Calif., went bankrupt – the result of excessive pensions and pay packages, including average compensation of more than $170,000 a year for firefighters and a $300,000 pay package for a police captain – the city had to shutter fire stations, parks and community centers and reduce the police force by a third. Citizens were warned to use the 9-1-1 system only in the most dire emergencies. So as governments pay too much to public employees, the services the public receives are greatly diminished. The Sacramento Bee once opined that city governments are becoming pension providers that offer services on the side.

The problem has been bipartisan. Although the state's Democrats are most closely aligned with the unions, at the local level Republicans have been particularly eager to expand pay and benefits for police and firefighters.

Meanwhile, the state's key pension reform activists have not been able to agree on a pension reform initiative, which leaves reform to the local level. A Paycheck Protection measure is going forward, however, which would limit the ability of unions to tap their members' paychecks for political funds without them first opting in. The new measure includes restrictions on corporate donations also as a way to blunt some of the expected criticism from the Left.

And the SEIU has been dispatching action teams to places where signature-gatherers are collecting signatures for this measure in an effort to confront and even intimidate voters away from signing the petition. Unions still like to flex their muscle, whether at the Capitol or in front of grocery stores. Researchers at union-backed think tanks affiliated with the University of California have produced easily debunked studies that claim to show that public sector workers earn less than their private-sector counterparts. Clearly, they are fighting back as public opinion shifts in favor of pension reform.

Reformers are winning the debate but losing the policy battle thanks to the deep roots the union movement has sunk in California. It's hard to overcome a union-backed governor, a union-owned Legislature and big union money that come into play during statewide initiative battles. But running out of money focuses the mind, which seems to explain Gov. Brown's pension-reform proposal. As states and municipalities go broke, elected officials will have no choice but to reform overly generous pension deals for public employees and not just for new hires.