

**ARE YOU PREPARED IF THE LABOR PENDULUM SWINGS THE
OTHER WAY?**

**MAINTAINING POSITIVE MANAGEMENT-LABOR RELATIONSHIPS
WITH AT WILL EMPLOYMENT FOR CALIFORNIA LAW
ENFORCEMENT OFFICERS**

by

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The Command College Futures Study Project is a FUTURES study of a particular emerging issue of relevance to law enforcement. Its purpose is NOT to predict the future; rather, to project a variety of possible scenarios useful for strategic planning in anticipation of the emerging landscape facing policing organizations.

This journal article was created using the futures forecasting process of Command College and its outcomes. Defining the future differs from analyzing the past, because it has not yet happened. In this article, methodologies have been used to discern useful alternatives to enhance the success of planners and leaders in their response to a range of possible future environments.

Managing the future means influencing it—creating, constraining and adapting to emerging trends and events in a way that optimizes the opportunities and minimizes the threats of relevance to the profession.

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MAINTAINING POSITIVE MANAGEMENT-LABOR RELATIONSHIPS WITH AT WILL EMPLOYMENT FOR CALIFORNIA LAW ENFORCEMENT OFFICERS.

Let's be honest; every law enforcement executive manager has pictured a scenario of walking into briefing, grabbing the known deadwood of the organization and simply stating, "You're fired." No cause needed. No disciplinary cause of action. No labor union pushback. The reason for the termination could simply be the fact the officer is not performing to standards expected by the executive. Far beyond any dream, this scenario could actually play out if California goes to at will employment for law enforcement officers. It has happened elsewhere, and could happen here if events continue to unfold to push it to reality.

The Economics of Public Sector Employment

The economic climate in California has caused the public and politicians to focus on public employment salaries, retirements, and other benefits. This added scrutiny is particularly true for law enforcement employees. Public sentiment for enhanced safety retirement benefits, generous salaries and other benefits for law enforcement employees has deteriorated. (Greenhut, 2012) This has driven labor associations representing law enforcement unions back to the collective bargaining table to negotiate lower pay, reduced retirement plans and other give-backs to previously negotiated benefits. The question now is whether the public and the legislature are satisfied with the monetary reductions, or will they ask for more? The "more" could be an elimination or reduction in civil service protections for public employees, including law enforcement officers.

Police Labor History

A look back into police labor history provides some valuable insight into some of the struggles associated with at will employment and the employer-employee relationship. In 1919,

the Boston Police Department became the epicenter of an employer-employee relationship struggle. Approximately 1,117 of the department's 1,544 police officers decided to strike, among other reasons, over employment rights including the right to unionize. (Farmer, 2011) The strike lasted four days and caused panic among the law-abiding citizens of the city because of looting and general lawlessness. In the end, all of the officers involved in the strike were terminated because they were at will employees. Massachusetts Governor Calvin Coolidge defended the decision not to rehire the strikers in a remark to the union leaders, proclaiming, "There is no right to strike against the public safety by anybody, anywhere, any time." (Farmer, 2011)

The damage to the reputation of the organization and police labor movement took years to rectify. Part of the reason for the long recovery was due to the connection of the strike to the Red Scare, a fear that the Soviet Union and communism was going to take over the United States. After the strike the LA Times wrote, "...no man's house, no man's wife, no man's children will be safe if the police force is unionized and made subject to the orders of Red Unionite bosses." (Massachusetts AFL-CIO, 2013). Forty-six years later, the Boston police officers finally unionized the labor force 1965.

While this example is nearly 100 years old, it does serve as a key study point from which modern law enforcement executives may learn. It reminds us that unrest in the public safety labor force can have a devastating negative impact on your community and the trust the community has in its police force. The strike was about more than wages, it was about employee rights and representation that were nonexistent with at will employment.

Recent Labor Movement in California

In 2011, the California Center for Public Policy circulated the “End Public Sector Bargaining Act” initiative for signatures to place it on the November 2012 election ballot (Elseth, 2011). According to the president of the California Center for Public Policy, Lanny Ebenstein, the purpose for ending public sector collective bargaining is to eliminate government agencies budget deficits. This measure failed to gain enough signatures to qualify for the ballot. It would have prohibited any state or local government entity from recognizing any public employee union for purposes of collectively bargaining and entering into any agreement relating to public employees or their employment. (Legislative Analyst’s Office, 2011) According to the Legislative Analyst’s Office, all current collective bargaining agreements would probably remain valid until they expired, but no new agreements would become effective.

While this initiative would not have created at will employment for California’s public employees, it would have been a substantial reduction in civil service protections now contained in collective bargaining agreements. For instance, provisions of the state Bargaining Unit 5 (California Association of Highway Patrolmen) collective bargaining agreement cover grievance and complaint procedures should an officer believe the department has violated terms of the collective bargaining agreement or written rule or policy. Specifically, it prohibits a strike, work slowdown, work stoppage, or any other interference with the work and statutory functions of the State. All of these provisions would have been eliminated if the End Public Sector Bargaining Act had passed.

While there are other states that currently have at will employment for law enforcement officers, this system would be a radical departure from the current level of employee protections afforded to California law enforcement officers.

While one may think of at will employment in terms discipline and termination without cause because of the limited property rights associated with at will positions, there other factors associated with this type of employment. The civil service rules also govern how agencies hire. For example, there are standardized tests, interviews, background checks and probationary periods under the merit system associated with civil service. In an at will employment situation, hiring can also be based solely on the executive manager's prerogative. Promotions and advancements would also not be subject to the rules currently within civil service. The at will employment atmosphere has the potential to be fraught with cronyism, political influence and low morale. In spite of these potential drawbacks, other states have moved away from civil service to at will employment in the government sector.

At will Employment in Other States

Two states, Texas and Arizona, have experience with at will public employment that can inform considerations to enact similar employment laws in California. In Texas, municipalities can opt into a civil service classification for its police officers. Police departments that fall into this classification are known as Chapter 143 (referencing the Texas Local Government Code) departments. Police officers that work for Chapter 143 departments enjoy full civil service protections including, standardized hiring and promotional examinations and disciplinary process. If a local city has not adopted the provisions of Chapter 143, the police officers are at will employees with no civil service protections. One might think being at will would create a workplace where employees feared the disciplinary process much more than their counterparts who had civil service or similar protections. The converse is actually true.

A study of Texas police officer attitudes toward disciplinary action in civil service versus at will agencies provides some valuable insight. Fifty percent of the officers surveyed in at will

departments believed that disciplinary matters are equally applied. That was nearly double compared to their counterparts in civil service departments. Regarding the swiftness and effectiveness of discipline, 52 percent of the at will officers agreed that discipline was swift and effective, compared to 14 percent of the civil service officers. The study also looked at employer-employee relationships as they relate to discipline. Forty-four percent of the at will officers agreed that the discipline procedures enhanced employer-employee relationships, compared to 29 percent in civil service positions. According to the study's author, Rick Castillo, "This supports the assertion that alternative discipline programs, as compared to measures under civil service, create a positive relationship between management and employees." (Castillo, 1993)

In 2012, Arizona enacted sweeping changes to public employment at the state level with the passage of House Bill (HB) 2571. This bill established an at will employment system for nearly all state employees hired after September 29, 2012 (Binford, 2012). The purpose of the reform was to make state government more accountable and cost effective. According to Arizona Governor Jan Brewer, "Our personnel system must empower supervisors to discipline and potentially end employment of the lowest performing state workers without excessive bureaucracy and levels of review." (Benson, 2012). Governor Brewer also believed it was time to end outdated policies that provide state workers with civil service protections that are not afforded to private sector workers. However, HB 2571 specifically exempted state peace officers from at will employment. According to the bill's author, Representative Justin Olson, sworn peace officers "do different jobs" than regular state workers. He believed state peace officers are often called upon to make split second decisions. As such, they should be afforded

civil service protections in situations where their actions are subject to second guessing. (Olson, 2012)

The question becomes which employment model is the best for California law enforcement? Judging from the experience of other states, both models have been successful.

How to Proceed into the Future

As an executive manager, the most critical function of the position is to ensure the public served by the agency receives the highest level of safety and service available within allocated resources. A piece of this larger puzzle is how the executive handles the relationship between management and labor. The United States Department of Justice, Office of Community Oriented Policing Services found that a positive, collaborative effort between management and labor creates the best platform for any successful change or reform (USDOJ, 2006). Carrying this positive, collaborative effort on in an at will employment environment when management has most, if not all of the power, will be a significant challenge for any manager.

Despite the recent public pension reforms, there is still movement calling for further reductions of pay, benefits and rights for public employees. A part of that movement is asking for changes to the law that would allow a public employee to opt out of a union and its collective bargaining agreement. (Ring, 2013).

A Step Into the Future

Should at will employment for California law enforcement officers become a reality, a proactive approach to maintaining a positive management-labor relationship is to give law enforcement employees some form of basic employment protections in a collective bargaining agreement or employment contract. These protections may not have the full force and effect of the current statutory protections, but it would be “better than nothing.” The better than nothing

would go a long way in maintaining a harmonious employer-employee relationship so that public trust and safety can be maintained. There are some basic employment protections that should be maintained.

Establishing a procedure and due process for disciplinary and termination matters should be a high priority. A part of these procedures should include conduct governing administrative interviews or interrogations, such as notice, representation, and maintaining a record of the interview. An officer facing any disciplinary action should be provided a written notice of the action and the opportunity for an administrative review prior to the implementation of the discipline.

These baseline employment rights will keep the employee from being terminated at the mere whim of the executive manager and ensure a level of fairness. This protection will allow employees to have a sense of job security. Granted, this concept lessens the executive manager's authority in a true at will employment system to terminate an employee without cause. However, it maintains the public policy that civil service rules exist to prevent political influence in public employment. This political neutrality is even more critical for law enforcement officers who are given authority to enforce society's rules should at will service emerge as a norm in tomorrow's employment.

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