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# Collective Bargaining during Times of Crisis: COVID-19 Viewpoint Recommendations from the COVID-19 Pandemic

**Abstract:** *The COVID-19 pandemic dramatically changed employment across sectors in 2020. This Viewpoint essay examines public sector labor relations during the pandemic and describes the impact bargaining process that is used to protect public employees. The authors draw on their own experience with impact bargaining negotiations and the public labor relations, conflict management, and civil service reform literatures to develop recommendations for public union labor leaders during times of crisis. They suggest that public unions have an important role in crisis management but must act strategically to develop good working relationships with leadership and successfully negotiate employee protections in uncertain times.*

The global coronavirus disease (COVID-19) pandemic has disrupted many aspects of normal life, including the work processes and responsibilities of public employees. Many in the public sector workforce have been on the front lines as first responders, directly dealing with those infected with COVID-19 and enforcing government protective orders. Others have been forced to rethink how to effectively accomplish their job responsibilities virtually while adhering to protective orders. Every public employee has faced challenges, uncertainty, and anxiety as a result of the COVID-19 pandemic affecting their day-to-day and long-term employment.

The U.S. Bureau of Labor Statistics estimates that 37.2 percent of public sector employees, including police officers, firefighters, and teachers, are covered by union or employee association collective bargaining agreements (BLS 2020). Public sector unions use collective action to improve the working conditions of workers during normal operations, but emergencies that disrupt normal operations underscore the role of collective bargaining in protecting the public workforce and negotiating new impact agreements to protect employees during times of uncertainty. In March 2020, one of the authors participated in impact bargaining for a unit of a large state education union: UFF-FSU-GAU, a union of graduate assistants (GAs) that is a unit of the statewide United Faculty of Florida.<sup>1</sup> The union proposed beginning the impact bargaining process to the university leadership on March 13, 2020, and after negotiations, the university accepted a memorandum of understanding (MOU) on April 10, 2020.

Estimates suggest that 27 percent of faculty and graduate students are covered by collective bargaining agreements at more than 500 institutions across the United States. Representation for both groups, including part-time and adjunct faculty, has been growing since 2006 (Berry and Savarese 2012). Florida has a long history of legislative efforts to weaken public unions in the state, including the state House of Representatives passing HB 1 in early March, prior to public protective orders in response to COVID-19 (Dailey 2020). At the time of this writing, there has been no further action to diminish public unions by the state government.

In our roles as public management and policy scholars, and using our experience as practicing public labor relations leaders, we describe the challenges of collective bargaining during the COVID-19 pandemic and present five general recommendations for public sector unions engaged in impact bargaining during times of crisis: (1) initiate negotiations with leadership early and often; (2) mobilize union members and the workforce represented by the collective bargaining agreement immediately; (3) prioritize issues for the workforce groups most affected by the crisis; (4) integrate government crisis response into negotiations; and (5) formalize impact bargaining agreements. While our negotiations occurred in a higher education setting, our recommendations apply to general public labor relations in times of crisis.

## Initiate Negotiations with Leadership Early and Often

As industries quickly adapted to the COVID-19 pandemic, employers made swift decisions that directly impacted collective bargaining agreements

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(CBAs) across the country in terms of working conditions, compensation, benefits, and workforce reductions. When circumstances arise during times of crisis that allow employers to make these sweeping changes, bargaining units are entitled to begin impact bargaining, also known as effect bargaining or implementation bargaining. The process allows the bargaining team to negotiate the impact of these crisis-time decisions on the terms and conditions of employment as outlined in the CBA. Impact bargaining, when successful, results in the creation of an MOU, which serves as an addendum to the CBA and can create additional protections for employees during the crisis that otherwise would not be covered under the CBA. This process was commonly used by European labor unions in response to the Great Recession of 2008 (Glassner, Keune, and Marginson 2011; Lehndorff 2011; Malo 2016).

It is imperative that bargaining units react as soon as possible to begin these impact negotiations. Doing so helps manage conflict by establishing a sense of shared mission between management and labor in addressing the challenges presented by the crisis. The labor challenges of COVID-19 are far different from those presented by the global financial crisis of 2008, but regardless, timing is critical: the best defense is a good offense to protect public employees. Units that delay negotiations may be perceived as self-interested and reactionary, which could generate hostility, win-or-lose situations, and long-term resentments (Yates 1985).

Given the state of the COVID-19 pandemic, unions must consider that these new conditions have an undetermined end date. Units may have to develop several MOUs throughout the duration of the crisis. Establishing an open communication channel early allows management and labor to provide contemporaneous information, which is an effective strategy to manage conflict (Yates 1985). Research has identified several other strategies and tactics to constructively manage conflict, including using an incremental approach focused on winning concrete issues (Rainey 2009). Unions that begin negotiations early can request protections and resources before other competing groups or agencies, thereby increasing the likelihood of success. As conflict endures, barriers to communication (e.g., aggressive language, biased interpretations, selective information, and dissolved collaborations) decrease the likelihood of agreement (Rainey 2009). Early success can prevent prolonged conflict and may help future negotiations in a prolonged crisis. Delaying fervent and frequent negotiations and communications with administration can lead to unilateral decision-making by the administration without consulting the union, leaving unions retroactively trying to combat issues that could have been circumvented.

Our own experience with the COVID-19 bargaining process demonstrated that when early success is achieved in the MOU, it is advantageous for the bargaining team to recognize the uncertain duration of the crisis and to include a clause providing open-ended language allowing for agreed-upon protections to remain the status quo throughout the duration of the crisis. The longer the crisis lasts, the more dire circumstances will become, and once agreed-upon protections and gains are implemented, this open-ended language will provide a baseline of worker protections that will not have to be renegotiated every few months, with potentially increased hostility.

## **Mobilize Union Members and Workforce Immediately**

The necessity of physical distancing for the duration of the COVID-19 crisis has significantly impacted the typical means by which unions mobilize members and their workforce. During “normal” working conditions, it is beneficial to mobilize and engage members of a bargaining unit to urge negotiations forward during collective bargaining. Often, staging a public show of support, organizing a demonstration, or simply packing a bargaining session full of bodies can lead to increased cooperation from leadership, add social pressure to avoid enmity during negotiations, and increase the likelihood of success (Flavin and Hartney 2015).

A specific example of the value of physical mobilization can be seen in the calls to action made by UFF-FSU-GAU. During its 10-year tenure, mobilizing members in large numbers to occupy a physical presence during bargaining created a noticeable shift in the tone and conversation with leadership, which was dramatically different than if the room had been equitably represented with about a dozen individuals on both sides of the bargaining table. Prior to the pandemic, this union has packed the room at Board of Trustees meetings (Graduate Assistants United Florida State University 2020), utilizing the public comment section at the front end of these public, livestreamed meetings to have several speakers attest to the harmful deficiencies and unsavory working conditions of GAs. During times when physical presence is impossible, such as during mandatory social distancing orders adopted in response to COVID-19, alternative modes of group mobilization can be effective and raise the profile of bargaining efforts. Building a social media presence that incorporates as many people as possible and mobilizing massive contact campaigns to reach out to key administrative offices on a set issue are also effective and important. The need for this group involvement and additional visibility and applied pressure is even more critical during the COVID-19 crisis.

Creating multiple opportunities for stakeholder involvement with the bargaining unit is critical during a regular bargaining period, but embracing public employees at all levels and providing complete information to members as part of the negotiation process empowers the unit. This does not change during impact bargaining. One effective strategy for conflict management is to include all affected parties in negotiations (Yates 1985). This will make a critical difference in impact bargaining during times of crises, particularly if most negotiations take place on online platforms. While technology can be seen as a challenge for successful negotiations during an emergency, it also offers an opportunity to engage more members of the represented group and involve them in the negotiation process. Most unions have never had to engage in virtual bargaining, and adjusting to the changing format requires some intentionality. Leadership is responsible for setting up the virtual forum for formal impact bargaining, which is a public meeting open to anyone. However, during caucus,<sup>2</sup> unions will want to operate their own virtual platform not tied to the administration and switch between the two with attending members to keep them engaged and visible. This is quite different from bargaining at a physical table, in person, with administration on one side and the bargaining team and unit members on the other, presenting and discussing proposals face to face, and then separating into two physical spaces for caucus periods. One of the largest opportunities for unions to come from this is to increase member turnout and

engagement; unions should take every opportunity to increase email communications during this emergency period to ensure that members are informed, included, and empowered to participate in a larger way in these virtual spaces.

### **Prioritize Issues for the Workforce Groups Most Affected by the Crisis**

While the essence of collective bargaining stems from the desire to achieve the best outcomes for the bargaining unit as a whole, advocating for those most affected and least advantaged during times of crisis must be prioritized in a search for just conditions (Rawls 2001). During crises such as the COVID-19 pandemic, this may not inherently default to those who are the lowest paid in the bargaining unit, as one might assume. Certainly low-wage workers are deeply affected by crises that generate financial instability, because they may not have amassed enough savings to weather the storm, but even high-wage public sector employees may be on the front lines of emergency management and therefore disproportionately exposed to risk.

In the higher education system, GAs are easily categorized as one of the most marginalized and vulnerable employment groups within a university system, despite the critical role they play in organizational operations. In the example of UFF-FSU-GAU, GAs across departments are compensated very differently. In response to COVID-19, UFF-FSU-GAU quickly prioritized protecting two of the most vulnerable groups of employees—on one end of the spectrum, vulnerable employees typically paid the least—GAs in the music, theater, and dance departments, because immediately many of their summer appointments were eliminated in an effort to defer mounting university deficits. Moreover, university departments have, in the past, manipulated these employees' appointment start and end dates to the point that these workers actually earn less than the minimum stipend outlined in the CBA. While summer appointments are not guaranteed because regular appointments are made on a nine-month time line covering the fall and spring semesters, many GAs are approved to take on teaching duties during the summer for additional income. Many were going to be conducting one-on-one instruction, and in a term when assistantships are not guaranteed, the university decided to offer fewer positions that could not easily accommodate multitudes of students in online sections. While these GAs did not yet have their summer offer letters in hand, experiencing this unit loss early in the COVID-19 response helped guide the process of building in added protections for subsequent semesters, to help those most vulnerable. This solidified the need to advocate that part of the MOU that flushed out reappointment protections.

However, another marginalized group was identified on the opposite side of the spectrum. GAs in the STEM fields, who are typically paid among the highest rates within the university, were still required to go to work during the initial few weeks of closures, when virtually everyone else was working from home. Their own full-time faculty who oversee their work were no longer coming into the labs but deemed their GAs essential employees and required them to show up to campus in person, often in smaller groups, to complete lab research. This created a great deal of anxiety and frustration because of the fear of running out of essential supplies such as personal protective equipment (PPE).

UFF-FSU-GAU elevated this as a need to start impact bargaining with administration to address this issue, and while it was resolved and administrative review procedures for who would be considered "essential" were put into place, perhaps those three weeks of anxiety-inducing work could have been avoided if impact bargaining had started even sooner.

While a very small handful of GAs are still classified as essential, it is now a much smaller number, and they have safeguards and guarantees that they will receive what they need to complete their jobs safely. The context of this example can be transferred to nearly any other bargaining unit: a large bargaining unit with vastly different job duties and associated compensation, some portion of the employees being deemed essential frontline workers and therefore facing significant personal risk, shortages of adequate and necessary supplies, and disproportionate changes in their day-to-day ability to perform job duties. This reinforces the need for a comprehensive evaluation of who is most affected within a unit and the necessity of ensuring that the ways they need to be supported and protected are clearly delineated in impact bargaining strategies.

### **Consider Government Crisis Response in Negotiated Protections**

State policy can dramatically influence union membership, mobilization efforts, and civic participation of members, but public employee unions also influence policy making at every level of government, and union commitment can directly and indirectly increase employee job satisfaction (Davis 2013; Flavin and Hartney 2015; Riccucci 2011). Public employee unions should be mindful of the interconnectedness of public policy and public labor relations during impact bargaining and integrate the government response to the crisis into negotiations. In Florida, labor relations and collective bargaining processes are outlined by the Florida Statute on Labor Organizations of 2019. The process varies from state to state, but generally the impact bargaining process begins with labor organizations initiating negotiations with leadership until an agreement is reached and an MOU is finalized in writing and ratification.

State protective orders in response to COVID-19 changed the fundamental operations of nearly all public organizations. Teachers across the globe had to quickly retool for mandatory online instruction with little time for training or evaluation (Goldstein and Shapiro 2020; Hodges, Moore, Lockee, Trust, & Bond 2020; Wang, Zhang, Jin, Jun, & Fan 2020). Police across the globe enforced state-mandated social distancing measures in addition to their regular duties, which both require officers to interact with the public, thereby increasing the likelihood of exposure to COVID-19 (Cohen and Kupferschmidt 2020; Eligon and MacFarquhar 2020). Other public employees were also deemed essential to ensure that government operations and revenue generation continued during the crisis, forcing them to show up to work despite the dangers and the lack of PPE (Mays and Goodman 2020). In each of these cases, public sector unions intervened in certain jurisdictions to provide public employees with protections and conditions that policy makers had overlooked in the protective orders.

Labor relations leaders must be keenly aware of the public policy responses to crises and the disproportionate impacts on certain

employee groups, both contemporaneously and after the crisis has ended. In our own experience, we understood that operational disruptions would disproportionately harm GAs, who require scientific lab workstations, archival materials, travel, or other fieldwork to make progress in their degree program, a necessary employment condition. All covered employees benefited from the guaranteed protections that targeted these unique circumstances resulting from state policy response to COVID-19. Public policy change may necessitate impact bargaining across sectors, such as when food workers' unions challenged working conditions in meat processing plants, which were mandated to stay operational through an executive order (Swanson and Yaffe-Bellany 2020). Public unions must therefore remain hypervigilant of policy change during crises to protect members in a rapidly changing policy landscape.

When formulating impact bargaining negotiation plans, union leaders should be strategic and intentional about securing agreements that are achievable in the current crisis and provide the best employment protections for their members. This can be best achieved by focusing on non-resource-based protections, since leadership may be unable to provide financial commitments during financial catastrophes. In our own experience, we initially proposed a refund of graduate student fees, since campus operations ceased on March 13, 2020, as one resource-based request of university leadership. This was a particular sticking point, which the union dropped to focus on other non-resource-based priorities. Union leadership should therefore consider the fiscal environment and policy changes addressing the causes of financial crises.

During the far-reaching COVID-19 crisis, financial impacts remain unknown and unpredictable across sectors and industries, but the effects will likely last for years. As a result, rather than trying to impact bargain for 100 percent salary guarantees, for example, it is more advantageous to focus on general job security, protection of health insurance coverage, and working conditions for public employees. Putting guarantees on the longevity of job security and health insurance over direct salary benefits enables unions to protect the largest number of people possible. This also allows leaders to use tools such as furloughs to solve budget crises. Aggregate public employee groups view furloughs as reasonable during troubled times, and they have little influence on employee turnover (Grissom, Viano, and Selin 2016; Lee and Sanders 2013). A furloughed employee is better off than a terminated employee. At the time of this writing, cities and states have already signaled that, without federal intervention, hundreds of thousands of public employees could be terminated in response to the COVID-19 fiscal crisis (Romm 2020). Limiting the flexible tools available to leadership during financial crises through an impact bargaining MOU is not in the best interest employees. Labor relations leaders should acknowledge that workforce reduction tools are inevitable, but they should embrace the least harmful and temporary options such as furloughs and work-sharing arrangements, which may reduce pay but maintain long-term employment (Skuterud 2007; Wright, Christensen, and Isett 2013).

### Formalize Impact Bargaining Agreements

It is crucial that public unions take the extra steps needed to ratify their MOUs from impact bargaining. During normal conditions, at the conclusion of bargaining, the union would disseminate the

agreed-upon and signed contract to the bargaining unit for review, giving two weeks' notice to review the new contract and providing several dates and locations where dues-paying members can appear in person to submit a secret ballot. At the conclusion of the vote collection, the ballots are counted, numbers are reported, and the contract is considered certified in accordance with the state-level Public Employment Relations Commission (PERC) (Public Employees Relations Commission 2020). Without ratification, the MOU is an unenforceable agreement with leadership based on a goodwill commitment. The CBA is what is enforceable and applicable for grievance procedures as needed, and without ratifying a newly established MOU, negotiated protections may lack legal force. For example, if the administration takes action that causes direct harm to members of a unit in violation of the MOU, the union will not be able to follow grievance procedures or file an unfair labor practice. While some states allow for online ratification, a 2008 case in Florida set precedent (*United Teachers of Dade v. The School District of Miami-Dade County*), and Florida's PERC has not allowed online ratification because of issues tied to voter custody and transparency, factors that at that time it deemed difficult to uphold in an online format.

At the time of this writing, Florida's PERC was working with unions to approve ratification procedures virtually during the COVID-19 emergency period. Currently, these procedures vary by state PERC offices, so units should contact their statewide office to complete the forms required to apply for a variance to conduct ratification of COVID-19 MOUs online. Once the variance is granted, unions can utilize a host of online vendors through which to case their online ratification vote. To uphold validity, it is best to use a platform that provides a tracking number for each case vote, allowing the caster of the vote to see that their vote was in fact counted correctly, and answers the transparency issue of concern to the union. Once the vote is ratified, as in normal times, the union can communicate the outcome to administration and have now established solid legal protection for the MOU. Completing this virtual ratification also connects back to the first recommendation, because this step gives people in the bargaining unit power and ownership in this process.

Importantly, we are not suggesting that MOUs should attempt to finalize the labor relations response to the crisis. The end date of the crisis may be unknown, as in the case of COVID-19. This uncertainty reinforces the importance of flexibility in the MOU's language to ensure that the agreed-upon guarantees will be in effect for the duration of the crisis. The MOU is not something that should be time-bound by a specific date, but rather kept in effect for as long as normal operations are disrupted as a result of the crisis.

### Conclusion

A crisis such as COVID-19 is a pressure cooker, decreasing the time but increasing the pressure on both administrative leadership and employees in the negotiation process (Venn 2009). Public labor relations leaders must respond quickly and strategically to protect employees. Impact bargaining is infrequent, but it can dramatically affect the lives of public employees for years after the end of the crisis. We have identified several strategies to increase the likelihood of successful negotiations during times of crises such as COVID-19 or the Great Recession. Of utmost importance is for union leaders to identify how the crisis will affect public workers and to negotiate

accordingly. In these uncertain times, impact bargaining should be a dynamic communication process between public leaders and public sector unions.

## Notes

1. UFF-FSU-GAU is the legal union representing all teaching assistants, graduate assistants, and research assistants employed by Florida State University. UFF-FSU-GAU represents a total bargaining unit of 2,700–3,000 GAs, with more than 600 dues-paying members. UFF-FSU-GAU is one of 32 chapters of United Faculty of Florida, which includes more than 9,000 dues-paying members across the state.
2. When active bargaining negotiations are taking place, after both parties have discussed the proposals in front of members, they will often caucus to plan each side's next steps. Typically, one party leaves the main room in which the meeting is taking place and going to another private space before the parties agree to reconvene and resume discussions.

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