# *Torrance Professionals & Supervisors Association*

# *September 2019 News*

## HAPPY LABOR DAY!!!

Labor Day is for celebrating the history of the American labor movement, which of course, is how we got the holiday to begin with. It's also a good time to check in to see how the movement is doing now. A U.S. Department of Labor, Bureau of Labor Statistics report from earlier this year looked at union participation data from 2018. Here's what it found.

The percent of workers who are members of unions – known as the "union membership rate" – fell slightly. It was 10.5% in 2018, down by 0.2% from 2017. This means roughly 10% of U.S. workers belonged to a union in 2018, or 14.7 million people.

The first year that comparable data exists is 1983, when the union membership rate was almost twice what it is today, with 20.1% of workers belonging to a union. But the overall number of union workers was only 3 million higher, at 17.7 million people. The total workforce was smaller in 1983 than in 2018.

Today, the union membership rate for public sector workers continues to be much higher than for private sector workers. Five times higher, in fact. Roughly 34% of public sector workers were union members, compared to only 6.4% of private sector workers. Within the public sector, union membership rates were the highest in local government (40.3%). The total number of public sector workers belonging to a union in 2018 was 7.2 million.

As you might expect, workers without unions earned significantly less. Nonunion workers had median weekly earnings that were 82% of what union members earned. Median weekly earnings for union members was $1,051, versus only $860 for nonunion workers.

Looking at both the private and public sectors, Hawaii and New York had the highest union membership rates at around 23% each. The Carolinas had the lowest, at 2.7% each. The largest number of union members overall was here in California, with 2.4 million union members living in the state. Roughly 15% of California workers are represented by a union. Over half of the 14.7 million union members in the U.S. lived in just seven states – California, New York, Illinois, Pennsylvania, Michigan, Ohio, and Washington.

The rate continues to be higher for men than it is for women, but according to the report, that gap is narrowing considerably. For 2018, the rate was 11.1% for men and 9.9% for women. In 1983, the rate was 24.7% for men and 14.6% for women. Other demographic information includes older workers having a higher percentage of union membership than younger workers, and full-time workers having about twice the rate of union membership as part-time workers. African Americans continued to have the highest rate (12.5%) of membership, compared to Caucasian (10.4%), Hispanic (9.1%), or Asian (8.4%). Although there are slight differences, these numbers show that, for the most part, there aren't any statistically significant differences when looking at gender, age, or race. In short, unions today are extraordinarily diverse, and reflect the demographics of the entire U.S. workforce. The biggest indicator of union membership seems to be if the person works full time for local government in one of the seven states mentioned above.

Although union membership rates have slowly declined, Americans' view of labor unions, at least in the abstract, has been improving. According to a Pew Research study from last year, 55% of those polled hold a favorable view of unions, versus only 33% who hold an unfavorable view. Over the past 30 years that Pew has asked the question, they found that Americans have viewed unions at least somewhat more favorably than unfavorably. The Associated Press found that 50% of working Americans in 2018 said they believe workers need strong unions, a 10% increase from 2006. Younger workers favor strong unions by an even greater margin – 60% of those under the age of 35 favor strong unions.

Pew also found that the U.S. ranks 29$^{th}$ in its overall unionization rate among the 36 nations it studied, most of which are developed democracies. But those other countries have also seen their unionization rate fall in recent years. Most people see the stagnant growth rates as a negative trend. According to Pew, about 51% of Americans say the large

reduction in union representation in recent decades has been mostly bad for working people. Pew found that minorities, young adults, and those with advanced degrees are most likely to view declining union membership rates negatively.

In sum, the data shows that the labor movement is still very strong in the public sector, especially in California. What makes this result even more remarkable is the fact that unions have been under attack legally and politically, and at a time when growth rates have been declining or stagnant both nationally and worldwide. Increasingly, Americans are demanding a greater voice in the workplace, and believe workers need strong unions to accomplish this. Support is now universal across demographic groups and is becoming even stronger with younger workers. The strong showing amongst public sector workers in California provides a beacon of hope. That's certainly something to celebrate this year!

## ***News Release - CPI Increases!***

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.

1.8% - CPI for All Urban Consumers (CPI-U) Nationally

2.7% - CPI-U for the West Region

3.3% - CPI-U for the Los Angeles Area

2.6% - CPI-U for the Riverside Area

1.4% - CPI-U for San Diego Area

3.2% - CPI-U for San Francisco Bay Area (from June)

## Medical Insurance Premiums on the Rise!

CalPERS recently announced health care premiums for the new year. The new premiums will take effect January 1, 2020. Detailed information on the 2020 rates for HMO and PPO plans are available on the CalPERS website. The overall average premium increase is 4.65%. But the headline number is a bit misleading. Some plans, including those popular with a lot of public sector workers, are going up by double digits. This includes Blue Shield Access+, which, depending on your region, is going up anywhere from 15% to 28%. Kaiser is largely holding steady, though it's going up 7.40% in the Los Angeles area. The most

popular PPO (PERS Choice) will go up on average about 3%. CalPERS members can change health plans during open enrollment later this month.

CalPERS says that health care costs are rising due to several factors, including increases in admissions, outpatient surgical procedures, and pharmacy costs. Chair of the Pension and Health Benefits Committee Rob Feckner said "[w]e negotiate aggressively because we know that many of our members must pay the entire cost of any premium increase entirely out of their own pocket. While these rates reflect the current state of the health care market, we expect the health plans that do business with us to also take strong actions to keep costs down. We'll continue to hold them accountable and to be more transparent as we work on behalf of our 1.5 million members in our program."

According to an article from the Sacramento Bee, insurers who contract with CalPERS had submitted requests for increases that would have raised rates by an average of 7.2%. CalPERS negotiated those proposed rates down to an average of 4.65%. The article said that "premium increases generally stem from the costs of medical care exceeding premium revenue."

A recent study from Price Waterhouse Cooper's Health Research Institute found that the medical cost trend is expected to increase by 6% heading into 2020. This is up over the "flat" trend seen in 2018 and 2019. They claim that "[p]rices continue to be the primary driver of healthcare spending, growing at a faster rate than utilization." They note that, despite everyone's efforts to control costs, the cost trend still outpaces general inflation.

## Recent Developments from the Public Employment Relations Board

*Year-End Fiscal Report*: The California Public Employment Relations Board (PERB) recently issued a "Fiscal Year in Review 2018-19" report on their website. There are some interesting conclusions to draw from the report. PERB is more active in issuing decisions and resolving open cases. They produced 92 decisions last year, compared to 61 decisions the year before. They have only 45 cases pending as of the date of the report. This is a huge improvement over prior years. Since employees or labor organizations file most claims, the longer a case sits on the docket, the longer it takes to enforce violations of state bargaining law. Even if the cases aren't all going in the union's favor, the speedier review and resolution is generally seen as a positive for labor organizations.

Other interesting findings include (1) most cases involve either the EERA (educational sector) or the MMBA (local public agencies), (2) most decisions are precedential (meaning they affect future cases, not just the parties at issue), (3) most decisions are appeals from a ruling from an Administrative Law Judge (ALJ), (4) about 28% of the appeals from an ALJ are overturned or partially overturned, and (5) of the 28% that were overturned, 85% had originally gone in favor of the employer. In short, PERB is looking closely at whether employers are violating state bargaining laws. This undoubtedly improves the odds that labor disputes can be resolved without having to seek relief from PERB in the first place.

*Expanded Jurisdiction to Cover Police Officers*: The Meyers-Milias Brown Act was signed into law in 1968 and gave employees from cities, counties, and other local public agencies (including special districts) the right to collectively bargain. It was a truly groundbreaking law. It was the first California law that gave public sector employees the right to collective bargaining. At the same time, it made California only the second state in the nation to allow public sector collective bargaining. The first was Wisconsin in 1959. At the time, there was no Public Employment Relations Board to enforce violations of the law.

PERB took jurisdiction over the MMBA on July 1, 2001. Section 3511 was added to the MMBA, which states that certain changes made to the law "by legislation enacted during the 1999-2000 Regular Session of the Legislature *shall not apply to persons who are peace officers* as defined in Section 830.1 of the Penal Code." (emphasis added)

From 2001 until 2015, no one thought that there was a difference between peace officers as "individuals" and peace officer "unions" under the MMBA. But in 2015, PERB issued a decision holding that it has jurisdiction over "mixed" units containing both peace officers and non-peace officers. *County of Santa Clara* (2015) PERB Decision No. 2431-M.

Then, in *County of Orange*, issued on July 15, 2019, PERB held that it has jurisdiction under the MMBA over "employee organizations" comprised entirely of Penal Code 830.1 peace officers, not just "mixed units." *County of Orange* (2019) PERB Decision No. 2657-M. The County prevailed on the merits of the case, so it likely won't appeal this part to state court.

This represents a big change in the nearly 20 years that PERB has been enforcing the MMBA. Under the *County of Orange* decision, Police Officer Associations may now file unfair bargaining practice charges at PERB against their cities, including allegations that a city engaged in "bad faith" bargaining. PERB will likely issue decisions, at least until this legal ruling is overturned in the courts. The new change should mean a greater

development of the law under the MMBA, which may, in turn, benefit civilian employees and their unions too.

*Greater Enforcement of Employer Bad-Faith Bargaining Practices*: Speaking of "bad faith" bargaining, PERB recently issued another decision on June 12, 2019 in a case brought by a police civilian employees association. *City of Arcadia* (2019) PERB Decision No. 2648-M. The City and the Union were parties to an MOU that expired on June 30, 2014. In September 2013, the City notified the Union that it wanted to begin negotiations for a new MOU and finish by the end of November 2013. The stated reason was that the city council elections were in April 2014 and at least two incumbents could not run for re-election. By November, the City had reached tentative agreements with other labor groups, but not the Union. The City said it would close negotiations if no deal was reached by the end of the month and would not re-open them until the spring. The Union objected to the urgency to close. The City offered "signing bonuses" but said the bonus was only on the table if agreement is reached by the end of November. The City said they would negotiate in the spring, but the signing bonuses would likely not be on the table at that time. The Union objected and filed an unfair practice charge with PERB.

The ALJ dismissed the charge but the Board reversed. The Board characterized this management tactic as a form of regressive bargaining since subsequent offers become less generous. However, the Board recognized that a party may have an adequate justification for this type of offer. It, therefore, placed great weight on the City's purported justification for why the bonus could not be offered in the spring. The Board said that if the City makes such an offer, it "must be in a position to prove its rationale if requested to do so." The City argued that the council elections could result in a new majority with different goals, but the Board found that explanation unconvincing. In particular, the Board noted there were several months between the City's artificial deadline (November 2013) and the council elections (April 2014). The Board also believed the "new council – new goals" argument was too speculative to justify the City's position. As a result, the Board determined that this tactic was evidence of bad faith bargaining.

The result could have been different if the facts were slightly different. If the City had left the signing bonus on the table until April, or until a new council was elected, or until their actual bargaining authority had changed, the Board probably would have found the City's justification adequate. In any event, the impact of the case is important. It signals that PERB is going to scrutinize the employer's justification for these types of regressive "exploding" offers more closely. In turn, public agencies may stop using them as frequently. When they are used, the employer had better have a good justification for it.

# Questions & Answers about Your Job

*Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to your professional staff.*

**Question: I'm under 50 years old and I believe my Agency is going to terminate my employment for alleged misconduct. I believe I'm still entitled to the pension contributions that I made. But does the Agency or the pension system have to give me the contributions that the Agency made on my behalf? It was always my understanding that I could elect to keep the contributions in the system in the event I get other local government work. But now that this is happening to me, I'm inclined to cash out the contributions and I want to know what I'm entitled to.**

**Answer:** If you leave your employment before you're eligible to retire, you can either leave your contributions with PERS or cash out your individual contributions. If you leave your contributions, you can apply for a retirement benefit as soon as you meet the minimum retirement eligibility requirements. If you leave your contributions with PERS until you reach 70 ½, at that time you must either retire or get a refund of your contributions. If you don't want to leave your money with PERS and elect to take a refund, you will get paid for your contributions plus interest. Unfortunately, employer contributions are not refundable.

**Question: What is the source for the requirement that all sick leave and vacation time must be used before we could qualify to receive SDI? It seems odd that an agency could make this demand before a claim can be made for state insurance. I've never experienced this in the private sector. I'm thinking if we in fact negotiate for SDI, this mandate must be repealed. Where can I find this requirement, is it lawful, and what can I do to change it?**

**Answer:** SDI is a state benefit administered by the Employment Development Department (EDD). EDD sets the rules for SDI eligibility, not the Agency. SDI is designed to replace part of your wages if you're out of work due to illness or injury. To qualify for SDI, you must have lost wages. Sick leave is considered wages. EDD does not require that you exhaust your sick leave in order to receive benefits, but if you are receiving your *full* salary from sick leave, you do not have lost wages and therefore aren't eligible to collect benefits while you're collecting full pay from your sick leave. EDD does not consider vacation as wages, though, so you can collect your full SDI benefit plus any vacation pay.

You can also negotiate a policy with the Agency for them to coordinate your sick leave and SDI benefits. This policy would allow you to use your sick leave to cover the difference between SDI and your regular full wage. SDI pays 2/3 of your average weekly wage up to a maximum of $1,269. By coordinating benefits, you could still take home your normal salary, but your sick leave would last longer because SDI would be supplementing two-thirds of it. Contact professional staff if you need help negotiating for this.

**Question: Is it legal for our Agency to have a policy to reimburse for college education but have a stipulation that the employee must remain working for the Agency for 5 years before leaving or the reimbursement must be repaid? I'm looking at applying for school and taking courses and we have a generous contribution from our Agency, but I saw this language in our tuition reimbursement policy, and it sounds harsh. Can they enforce this? If I accept the money and pass my classes, but later take a higher paying job somewhere else, can they recoup the reimbursement years after it was paid?**

**Answer:** Yes, it is legal. In essence, the policy creates a contract between you and the Agency. If you choose to leave before the 5 years are up, the Agency can sue you to recover the money. But they can't withhold your final wages to satisfy the debt, absent your agreement.

Keep in mind that the subject is negotiable. Your Association can bargain to revise the tuition reimbursement benefit as part of your next MOU. This includes any repayment obligation. Your Association could propose to reduce or eliminate the obligation altogether.

**Question: Management investigated possible misconduct and had employees write a memo about what took place. The result is that another employee in our department got a reprimand. Can they give that employee who was disciplined copies of the other employees' memos? Seems like there are confidentiality issues with this, and it could cause a tense environment if the employee who was disciplined received all the comments that co-workers wrote when everyone thought that this would never be shared with the person. Please advise?**

**Answer:** Management rarely tells employees that their statements will be shared with the person who is under investigation, so employees are frequently surprised to find out that statements they thought were confidential are not. You are correct, this can cause some tense relations among co-workers, at least initially. But, hopefully, this awkward situation with your coworker will evaporate over time.

But imagine if you were the person being disciplined and how unfair it would be if management withheld the evidence that

it was using as a basis for your discipline. You can't meaningfully respond to the evidence against you if you aren't allowed to see it. Also, know that most employees who are under investigation should understand that their coworkers have no choice but to cooperate with management. The Agency can terminate their employment if they refuse to answer questions if directed to do so.

**Question: Is my union allowed to get a copy of my personnel file? I was always told California law requires management to let me see my personnel file and to make copies, and that this extends to my "representative." Is my union my "representative" for purposes of getting my file? My question is two-fold. (1) Must management give my union my personnel file if I authorize it, and (2) Can management provide my union a copy even if I don't authorize it. Please provide clarity on what the law says.**

**Answer:** California Labor Code Section 1198.5 requires your employer to provide you or your representative with a copy of your personnel file within 30 days of receiving your written request. You can designate your union to be your representative and, if you do, your employer must honor that designation.

If you don't specifically authorize the union as your "representative," the Agency may still have to turn over the file, or parts of it. For example, the union may be entitled to know certain information in your file if it relates to a bargaining proposal. They can make a lawful information request during bargaining. Likewise, they may be entitled to certain information in your file if relates to the processing of a grievance, or if they are representing you or co-workers in the disciplinary process.

But the union can't go on a fishing expedition through your file without your permission unless they have a legitimate justification. Even then, the Agency should take reasonable steps to keep certain information private. For example, with limited exceptions, California Civil Code Section 56.20 prohibits employers from disclosing employee medical records without a signed authorization from the employee.

But absolute privacy isn't guaranteed. The California Public Records Act exempts personnel files from disclosure if it constitutes "an unwarranted invasion of personal privacy." But courts have held that records of any investigation into misconduct, including discipline, must be disclosed. Even if the charges are not sustained, the records may still be subject to disclosure.