

OVERVIEW OF RESEARCH ON COLLECTIVE BARGAINING RIGHTS AND LAW ENFORCEMENT OFFICER'S BILLS OF RIGHTS

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Abstract

Recent events involving police killings of unarmed civilians have brought police reform to the forefront of the political arena. The crux of the debate centers around police oversight and intransigent union leadership thwarting reform. This essay will provide an overview of literature on the impact that collective bargaining agreements and state provisions adopted in the Law Enforcement Officers Bill of Rights had on police misconduct. Additionally, historical background on police protections and oversight will be highlighted in an effort to make a series of research-driven policy recommendations. Future research inquiries concerning protective provisions in Law Enforcement Officers' Bills of Rights are outline in the hopes to guide the discussion on police reform.

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Recent killings of unarmed Black civilians have called into question the police use of lethal force and provisions that protect police from prosecution. Minority civilians often find themselves at the mercy of the criminal justice system due to the lack of resources to adequately provide a defense—regardless of perceived guilt or innocence. However, even with video evidence, it is particularly difficult to hold officers accountable for gross misconduct. Moreover, in the event of a civilian death in which local law enforcement actions are culpable, the police officers involved are not fiscally responsible for any settlement reached between the victim’s family and the local municipality where the officers work.

Citizens and activists view the lack of accountability as systemic and rooted in police culture. Police unions and state legislation that protect police officers from disciplinary action for violent misconduct contribute to the public perception of limited oversight. The lack of accountability erodes public trust in the police, especially for Black Americans, who often view themselves as victimized by law enforcement.¹ Statistics revealed Black men are 2.5 times more likely to be killed by the police than white men (Buelher, 2017; Edwards 2018). Also, Black civilians are more likely to have the police draw a gun during an encounter and employ aggressive non-lethal tactics (Fryer, 2019). Moreover, social scientists have linked racial disparities in police killings of civilians to black protest movements, economic inequality, political empowerment, and the race of the responding police officer (Jacobs and O’Brien, 1998; Cunningham and Gillezeau, 2019; Hoekstra and Sloan, 2020).

There is growing support for understanding police use of force more broadly. Research has shown police are more likely to use force when the perceived risk of danger is higher (Holz et al., 2019). There has been mixed evidence on the influence of technology, such as smartphones or body cameras, on police complaints and use of force (Pang and Pavlou, 2016; Ariel et al., 2015; Yokum et al., 2017). However, research indicates police militarization through the 1033 program, a Department of Defense program which orchestrates the supply of military weapons to law enforcement, increased the use of lethal force (Maser, 2019). This result is significant as protests often evolve into violent demonstrations in response to the police militarization. The equipment transferred to local police through the 1033 program promoted advances in public safety and provided new protective gear to decrease the risk of injury on the job, both of which should lower police killings of civilians. However, the moral hazard of police militarization brought into question the need for proper police training and rethinking of organizational structure within law enforcement departments. Where proper police training is concerned, recent research has shown procedural justice training emphasizing empathy and compassion is associated with lower levels of lethal force (Owens et al., 2018; Wood et al., 2020). As it relates to organizational structure, third party involvement in administrative work around police-involved death cases is associated with lower levels of force (Alpert and MacDonald, 2001; Terrill and Paoline III, 2017; Jennings and Rubado,

¹Both Desmond et al. (2016) and Cheng and Long (2018) find evidence of reduced civic engagement in response to police killings of civilians, however, Cohen et al. (2019) is unable to uncover a similar effect. Additionally, Ang (2020) found a causal relationship between police shooting and educational performance of inner-city youth.

2017).

More recently, researchers who study police misconduct and accountability have made strides in the examination of the relationship between police protections established in union contracts and legislative acts (Rad, 2018; Dharmapala et al., 2019; Gonclaves, 2020; Cunningham et al., 2020). Within the disciplines of law, criminology, and economics, this essay seeks to further prevailing literature on the impact that collective bargaining agreements and state provisions adopted in the Law Enforcement Officers Bill of Rights (LEOBR) has had on police misconduct and police killings of civilians. We start with an overview of the history of collective bargaining rights for law enforcement. Then we summarize the literature on the impact of police unions on wages, productivity, and police misconduct. We will then cover the literature on LEOBRs. The essay will conclude with policy recommendations provided by the literature and outline future research.

2 Historical Background

Researchers have traced public sector bargaining back to the early 1800s with federal shipyard workers. The first federal employee organization was established in 1863 by postal workers in New York (Kearney and Carnevale, 2001). Police began to organize in the late 1800s with the primary goal of securing pensions and insurance programs (Walker, 2014). The first American Federation of Labor (AFL) charter for police occurred in Cleveland in 1897, and by 1919 nearly 40 police unions were certified across the country (Kearney and Carnevale, 2001). Police unions were able to successfully organize in large cities to improve working conditions and increase compensation. Police officers rarely got raises, typically had to purchase their uniforms, and were subjected to long work hours (Kearney and Carnevale, 2001; Fisk and Richardson, 2017). For example, police officers in Boston worked between 73 to 91 hours per week and were required to spend one night per week at the station.²

As part of a broader post-WWI labor movement, police strikes occurred in several large cities (Walker, 2008; Kearney and Carnevale, 2001). The 1919 Boston police strike resulted in over 1,100 officers leaving their post after several officers were dismissed for organizing an AFL affiliated charter. Over several days, the city of Boston was overwhelmed with looting and lawlessness. Public officials did not quell the unrest until the Governor of Massachusetts called the state guard. The aftermath of the police strike resulted in the firing of the officers involved. It also ushered in an era of hostility towards public sector bargaining. President Woodrow Wilson called the strike a “crime against civilization,” and Governor Coolidge stated that there is “no right to strike against the public safety by anybody, anywhere, any time” (Russell, 1975; Kearney and Carnevale, 2001). However, the strike led to substantial improvements in employment conditions. The newly hired police officers in Boston received higher pay, free uniforms, a pension plan, and an overall improved working environment (Kearney and Carnevale, 2001). Across the county, police departments adopted similar improvements in employment conditions. However, the backlash to

²In addition to long work hours, station houses were deemed unsanitary, and officers off-duty movement was restricted.

the 1919 Boston strike resulted in the death of 37 AFL affiliated police charters.

Despite this setback, law enforcement remained highly organized through fraternal orders and benevolent associations that survived the post-war crack-down on police unions. These organizations continued to fill the social insurance and collegial roles that defined early trade unionism in the United States. Local police organizations acted independently to obtain better employment conditions through legislative lobbying at the local and state level (Levine and Hagburg, 1979; Levine, 1988). However, the 1919 strike in Boston had long-lasting effects and resulted in the exclusion of public sector workers from the Wagner Act of 1935 (Walker, 2014). The consolidation of labor laws at the federal level led to the rapid growth of union membership in the private sector. At the same time, the government subjected police officers to local labor laws that were hostile to public-sector organizing. The thought of police unions was considered inherently dangerous given the fear of losing essential services during a union strike.

Police made further attempts to organize in the 1940s, as war-time inflation further deteriorated wages. Police officers establish local (Fisk and Richardson, 2017) and nationally affiliated unions, with the help of the American Federation of State, County, and Municipal Employees (AFSCME). Although membership grew through AFSCME, there was little effort to collectively bargain as the federation took a conservative approach to improve employment conditions (Kearney and Carnevale, 2001).

Law enforcement officers eventually obtained bargaining rights as part of a broader collective bargaining movement in the public sector. Since the Wagner Act excluded federal guidelines for public-sector bargaining, big cities with strong private sector labor movements first enacted collective bargaining rights, which prompted states to legislate the terms and conditions related to public sector bargaining. However, President Kennedy's Executive Order 10988 in 1962 guaranteed collective bargaining rights to federal employees and made public-sector bargaining a foregone conclusion at the state level. Shortly afterwards, states began to enact collective bargaining laws throughout the 1960s and 1970s. Thereafter, states began to enact collective bargaining laws throughout the 1960s and 1970s.

Successful attempts at organizing began in the 1960s for law enforcement officers. Rather than being driven by organizing from unions in the AFL-CIO, several other factors contributed to unionization. First was the growth in public sector employment. Crime began to rise in the 1960s, driving public officials' desire to increase the size of local police departments. The federal government financially supported the expansion of local police services by providing grants from the Office of Law Enforcement Assistance to local municipalities. This rise in employment coincides with the public sector's growth at the local level that started in the 1950s.

Moreover, the racial composition in urban areas changed drastically due to war-time migration of southern blacks to urban areas. An all-white law enforcement often found themselves in hostile environments as police-community relations rose to the forefront of the civil rights movement. Uprisings in Black communities in response to aggressive police actions lead to calls for police oversight and accountability. The American Civil Liberties Union (ACLU) lead a charge for police

accountability and the adoption of civilian review boards to handle complaints against the police. Police also found themselves losing ground in their ability to effectively provide police services due to court rulings, such as *Miranda v Arizona*, that restricted law enforcement behavior and discretionary decision-making. Police officers viewed their working environment as more volatile and dangerous, which drove union membership. Rank-in-file police officers sought to use unions to improve their work environment and assure protections in employment from police leadership and outside influences (Levine, 1988; Kearney and Carnevale, 2001; Keenan and Walker, 2004; Fisk and Richardson, 2017).

Today, police, along with teachers and core public sector workers, have the highest union membership levels in the United States, with roughly 75 percent of law enforcement officers being union members. The Fraternal Order of Police represents over 300,000 members, although not all individuals are certified members of a bargaining agent. Relatively few officers are members of AFL-CIO affiliated unions with the largest being the International Union of Police Associations (IUPA) and the International Brotherhood of Police Officers (IBPO/IBCO).

3 Police Unions and Accountability

Police unions engage in all of the activities of a traditional labor union. As such, their work is primarily grounded in bargaining and enforcing collective agreements that govern the employment relationship. In practice, this means bargaining contracts that typically cover wages and benefits. In general, research has shown that unionization results in higher pay and lower levels of employment. However, public-sector unions differ from private-sector unions among many dimensions, but first and foremost, governments are not profit-maximizing entities but are cost-minimizing agents. Meaning, the government's goal is to maximize social welfare, given various financial and political constraints. Therefore, the police's collective bargaining process is more of a political process than an economic one (McCormick, 2015).

Research on public-sector unions has shown that police unionization increased compensation and improved fringe benefits, but the evidence on police employment is mixed. This work mostly focused on the strongest provision related to collective bargaining - when states are required to bargain (Zax, 1989; Feuille et al., 1985; Ichniowski et al., 1989). Both Bartel and Lewin (1981) and Trejo (1991) were the first to use causal methods to find higher wages and more generous contributions to pension plans for unionized police departments.³ More recently, Brunner and Ju (2019) implemented a border discontinuity research design to estimate the wage differential for public sector workers. Brunner and Ju (2019) found that collective bargaining increased police officers' wages by approximately 13 percent. Relatedly, Trejo (1991) found no evidence that police unions increased employment. Trejo (1991) argued that simultaneity bias led to positive estimates for police unions' impact on employment. Further analysis, accounting for endogeneity, produced negative (but not statistically significant) estimates for the employment effect. Similarly, Frandsen

³Both use two-stage-least-squares to deal with endogeneity of unionization decision. For example, police departments with relatively low wages benefits the most from unionization and may drive the decision to unionize.

(2016) exploited the variation in the adoption of collective bargaining rights across the United States and found a positive effect on law enforcement wages but a negative relationship for hours worked.

In addition to negotiating over compensation and benefits, police unions also negotiate disciplinary practices, among other potential provisions. In particular, police officers often function in hostile environments and make quick decisions concerning civilians' safety and themselves. Unlike other professions, working conditions for police officers involve daily consideration of their safety. Police are more likely to be killed on the job and have higher rates of illness and nonfatal injuries than other occupations (McCormick, 2015). Central to accountability and disciplinary action is the belief that law enforcement officers should have the ability to exercise their authority with some discretion to achieve public safety goals. At times, that involves the ability to use fatal and non-fatal tactics and the ability to detain civilians temporarily. Limiting officers' ability to protect citizens and themselves could neutralize public safety measures and erode police morale.⁴

Growth in police unionization was in direct response to public demands for external oversight and Supreme Court decisions limiting police discretion (Keenan and Walker, 2004; Walker, 2008). The tactics that advance the public perception of police misconduct and aggressive policing are often viewed by police leadership as appropriate behavior in high-stake situations where the police often interact with dangerous suspects (Fisk and Richardson, 2017). Collective bargaining and union contracts provide protections to the rank-in-file that limits disciplinary action from police leadership or public officials, even in the event of an unjustified fatal shooting of a civilian (Walker, 2008). While the particular circumstances will differ from bargaining unit to bargaining unit, several broad approaches tend to be common.⁵ In the event of a death (justifiable or unjustifiable), the union will typically pay for and facilitate legal representation, meet with their member in advance of making a report if possible, potentially facilitate a "huddling" of officers, and implement procedural protections during interrogations if permitted under the collective agreement. Further, police unions will frequently come to officers' public defense to prevent or delay charges (Walker, 2008; Fisk and Richardson, 2017). Under the Duty of Fair Representation, police unions, as with other unions, must offer the best possible protections of the bargaining unit to all members (regardless of perceived guilt). Therefore, even when officers are disciplined, the severity of the punishment is often reduced due to arbitration and provisions adopted in collective bargaining agreements (Iris, 1998; Stoughton, 2013).

Despite the abundance of research on police union, there is a lack of empirical research on police unionization and accountability (Walker, 2008). Legal scholars have argued that police unions limit disciplinary action against police officers and restrain accountability efforts (Walker, 2008; Stoughton, 2013; Rushin, 2016; Fisk and Richardson, 2017). However, police — rank-in-file or leadership — do not hold the same view. Kadleck (2003) surveyed 648 police employee organi-

⁴Both, Ba and Rivera (2019) and Devi and Fryer (2018) found that federal intervention into local police negatively impacted police productivity, leading to higher crime rates.

⁵There is not one central federation for police departments, although there are a few large federation in which most police unions belong to (Walker, 2008).

zations to examine the relationship between police employee organizations and law enforcement agencies. Eighty-eight percent of police employee organization leaders believed that their police employee organization or union were held accountable to the public. Moreover, organization leaders believed that police organizations do not limit police leadership power or have power over local policy. However, union leadership's opinion runs counter to the wide-spread belief that police unions limit police accountability. For instance, the Chicago Police Department negotiated the removal of decades of police records of alleged misconduct through collective bargaining. In Baltimore, the collective bargaining agreement prohibits the disclosure of disciplinary action taken against police officers. Similar provisions exist in collective bargaining agreements across the country. Moreover, [Hickman and Piquero \(2009\)](#) found that the percentage of complaints sustained against police officers was lower in departments where officers could collectively bargain compared to non-bargaining agencies. The authors hypothesize that specific provisions in collective bargaining agreements limit police administration's ability to discipline officers.⁶

To gain a deeper understanding of police unions' influence on disciplinary actions, [Rushin \(2016\)](#) examined collective bargaining agreements for police departments in cities with a population greater than 100,000 residents. Through public record requests and online searches, [Rushin \(2016\)](#) obtained police union contracts from 178 municipalities and identified seven categories associated with provisions in police contracts that limit accountability. The categories are the following:

- Delay interrogation or interview of officers suspected of misconduct.
- Provides access to evidence of alleged misconduct prior to interrogation.
- Limits consideration of disciplinary records by excluding records for future employments or destroying disciplinary records from files after a set period.
- Limits the length of time of which an investigation concludes, or disciplinary action can occur.
- Limits anonymous complaints.
- Limits civilian oversight.
- Permits or require arbitration of disputes related to disciplinary actions.

Of the 178 union contracts, 156 contained at least one of the provisions limiting disciplinary action against police officers. Fifty contracts included language that delay interrogations, 87 included provisions that destroy disciplinary records after a period of time, 42 limited civilian oversight, 32 limited anonymous complaints, 46 established a time-length for complaints of misconduct, and 115 contained arbitration provisions related to disciplinary actions.

⁶[Hickman and Piquero \(2009\)](#) examine over 450 police departments using data from the Law Enforcement Management and Administrative Statistics (LEMAS) to find correlates between complaints of use of force and police organization structure. It is important to note that they did not find a relationship between collective bargaining rights and use of force complaints.

Collective bargaining and the protections negotiated in police contracts protect the individual rights of police officers. However, bargaining over police protections and compensation may shift officers' incentives or disincentivize for improper behavior due to a high-pressure political environment that pushes for lower crime rates. For instance, [Mas \(2006\)](#) examined police unions' role in setting compensation, the dynamics of the bargaining process, and police productivity. When bargaining units in New Jersey between 1978 and 1996 were investigated, [Mas \(2006\)](#) found that after police officers lost in arbitration, arrest rates and average sentence length declined, and crime reports rose relative to when they win. Similarly, [Chandrasekher \(2016\)](#) examined the 1997 NYPD labor slowdown in response to a bargaining dispute which resulted in the New York State Court of Appeals ruling against the police union. Chandrasekher showed that NYPD officers decreased ticket-writing and provided empirical evidence that the slow down led to an increase in misdemeanors, violations, assaults, and larcenies. These studies provided evidence that police changed behavior in response to outcomes related to the collective bargaining process.

Moreover, the provisions adopted through the bargaining process may adversely affect the civilians the police are intended to serve and protect. To link the adoption of collective bargaining rights to police misconduct, [Dharmapala et al. \(2019\)](#) took advantage of a 2003 Florida Supreme Court decision that extended collective bargaining rights to sheriff's deputies. The authors exploited the fact that patrol officers obtained bargaining rights in the 1960s and therefore were unaffected by the Florida Supreme Court decision. [Dharmapala et al. \(2019\)](#) implemented a difference-in-difference research design to analyze police behavior before and after the expansion of collective bargaining rights in Florida. Data on officer misconduct were provided by the Florida Department of Law Enforcement, which recorded police activities in the Automated Training Management Systems. The authors found a 40 percent increase in reports of violent misconduct after the adoption of collective bargaining rights. The study was unable to uncover such an effect on nonviolent acts of misconduct. Yet, the authors do not argue that nonviolent incidents actually decreased, but police leadership may have prioritized identifying and reporting violent incidents due to changes in oversight. Moreover, [Dharmapala et al. \(2019\)](#) tested for the impact of forming a union on police misconduct for both patrol officers and sheriff deputies. Event-study results provided suggestive evidence that unionization led to an increase in violent misconduct. However, the estimate should be interpreted with caution as there are concerns about pre-trends in violent misconduct.

[Cunningham et al. \(2020\)](#) considered the introduction of collective bargaining across the United States in the 1960s and 1970 more broadly. The authors obtained data on collective bargaining provisions in the public sector from [Valletta and Freeman \(1988\)](#), publicly available at the National Bureau of Economic Research (NBER). [Cunningham et al. \(2020\)](#) focused on police killings of civilians by race to examine if police officers shifted the marginal decision to shoot in response to added protections obtained through the bargaining process. Information on civilian deaths by law enforcement came from the Vital Statistics Multiple Cause of Death, which was publicly available at the Inter-university Consortium for Political and Social Research. Moreover, [Cunningham et al. \(2020\)](#) took advantage of variation in the location and timing of when law enforcement officers

obtained bargaining rights to determine the impact of exposure to collective bargaining rights on police killings of civilians. Their event-study results showed that in the immediate one to three years after the adoption of collective bargaining rights, there was no change in police violence against civilians. This result is consistent with the time it takes to form a union and negotiate the first contract. However, over the medium and long-run, they found an increase in non-white civilians killed by law enforcement but were unable to uncover such an effect for white civilians. Their result medium-to-long-run result is also consistent with [Dharmapala et al. \(2019\)](#), which found a statistically significant increase in violent misconduct four years after adopting collective bargaining rights for sheriff deputies in Florida. Additionally, [Cunningham et al. \(2020\)](#) found that the change in police behavior after adopting collective bargaining rights accounted for more than 10 percent of non-white civilian deaths due to police between 1960 and 1988.

Both [Dharmapala et al. \(2019\)](#) and [Cunningham et al. \(2020\)](#) provided evidence that the adoption of collective bargaining rights led to an increase in police violence. [Dharmapala et al. \(2019\)](#) provided suggestive evidence unionization drove the increase in police misconduct. However, the authors provided evidence that the increase in violent misconduct also occurred in non-unionized sheriff departments. [Gonclaves \(2020\)](#) further examined the effect of unionization on police misconduct. [Gonclaves \(2020\)](#) focused on police unionization in Florida between 1973 and 2017 and nationally from 1987 to 2013. Police violence is captured by police killings of civilians from Fatal Encounters and Vital Statistics, and Felons Killed by Police from the Supplemental Homicide Reports. In addition, [Gonclaves \(2020\)](#) captured misconduct that led to disciplinary action by collecting data on decertifications which are an alternative disciplinary action that goes beyond termination and prevents the disciplined officer from working in law enforcement in the state. In the national sample, results provided little evidence that unionization increased police misconduct. It is important to note, government sources drastically under-report police killings of civilians. [Gonclaves \(2020\)](#) used multiple sources on police killings to create an unbiased measure of police violence. The new measure provided evidence that police killings decreased after unionization. Similar to the national sample, the Florida sample found no changes in the number of investigations or the number of investigations sustained after unionization.

The three papers by [Dharmapala et al. \(2019\)](#), [Gonclaves \(2020\)](#), and [Cunningham et al. \(2020\)](#), provide evidence that the adoption of collective bargaining rights increase violent misconduct but provide mixed evidence on the impact of unionization. Why collective bargaining and not unionization? It is possible that the adoption of collective bargaining rights signals that local bureaucrats will be more lenient on police or at least are supportive of local law enforcement. Public support can change the behavior of police regardless of union status. Also, the threat of unionization always exists, which may change police behavior or disciplinary action of police leaderships. Police unions typically form in larger, more urban police departments due to economies of scale. It is possible that smaller departments adopt a larger unionized police department's disciplinary procedure for retention and recruitment purposes. In addition, non-unionized police officers in states that adopt collective bargaining rights obtain better benefits and higher pay relative to non-unionized police

in other states (Ichniowski et al., 1989). Therefore, it is reasonable to assume that smaller police departments benefit from new rules and procedures related to oversight established by unionized police departments in the same state.

In general, the contentious relationship between law enforcement and the Black community drove police unionization. It is likely that collective bargaining, alongside unions in urban police departments, made customary rules and procedures that existed prior to the adoption of collective bargaining rights explicit. However, it is not clear why misconduct would change when the cost associated with termination increased after unionization. Alternatively, it is unclear if and how police were disciplined for misconduct prior to the adoption of collective bargaining rights. Considering racial tensions and the call for police oversight in the 1960s - one would expect to see little difference in police behavior due to the adoption of bargaining rights. It is possible that Cunningham et al. (2020) results are driven by changes in police use of force in the non-collective bargaining states. However, this does not explain the increase in police misconduct found by Dharmapala et al. (2019). Lastly, neither Dharmapala et al. (2019) or Gonclaves (2020) accounts for the race of the victim of police violence. Although statistically insignificant, in the immediate three years after adopting collective bargaining rights, Cunningham et al. (2020) found an increase in non-white deaths and a decrease in white deaths due to legal intervention. Their results highlight the importance of studying police misconduct by the race of the victim.

4 Law Enforcement Officers Bill of Rights and Accountability

Police unions negotiate terms of employment locally but also operate as a political entity that lobbies local and state governments to further secure employment protections. Through state legislative acts, police acquire additional protections under Law Enforcement Officers Bills of Rights (LEOBRs). These are a set of rights related to disciplinary action that supersede police union contracts and is applied statewide.⁷ Many of the provisions are similar to protections highlighted by Rushin (2016). They comprise a list of details with regard to who can lead an investigation, the length of an investigation, access to evidence, the scope of disciplinary action, and restrictions on external oversight.

Similar to police unions, the motivation from LEOBRs came in the 1960s. While the Supreme Court issued rulings limiting police officers' discretion, the court also reinforced officers' constitutional rights. In 1967, in *Garrity v. New Jersey*, the Supreme Court ruled that law enforcement officers and other public employees have the right to not self-incriminate themselves under the 5th amendment. In 1968, in *Gardner v. Broderick*, the U.S. Supreme Court further protected police officers ruling that police management cannot terminate officers for exercising their 5th Amendment right. Shortly afterward, Congress received a bill to introduce LEOBRs nationally, but officers would eventually obtain protections via state legislatures, starting in the mid-1970s. The first state to adopt LEOBRs was Florida and Maryland, followed by California and Rhode

⁷Unless otherwise stated in the bill. For instance, Texas LEOBR only applies to cities with a population greater than 1.5 million (Houston) (Rushin, 2016).

Island. Currently, there are 16 states with LEOBRs. For some states such as Maryland, LEOBRs precedes the adoption of collective bargaining rights. However, in Tennessee, collective bargaining in the public sector is prohibited, but the state LEOBRs protects police officers statewide.

Legal scholars have expressed independent concern about the impact of LEOBRs on police accountability (Keenan and Walker, 2004; Levine, 2016). However, similar to the research on police unions, there has been limited empirical evaluation of the impact of officers' bills of rights on police misconduct and oversight. Notably, Rad (2018) constructed a broad index of policy protections for America's largest police departments using union contracts and LEOBRs covering 100 cities in the United States.⁸ Rad documented categories of provisions that limit oversight, statutes of limitations on data retention and use, and requirements for cities to pay for legal costs or provide compensation during a suspension. Rad also documented the statutes of limitations on filing a complaint, limitations on the types of complaints, and formal waiting periods that delay investigations. From these data, he constructed an index of provisions that limited recourse in the case of misconduct and found a strong correlation between the index and the number of unarmed civilian deaths by police.⁹ However, Rad (2018) did not distinguish between LEOBRs and provisions in collective agreements.

Both Gonclaves (2020) and Cunningham et al. (2020) explored the effect of LEOBRs on police misconduct. Gonclaves (2020) tested for changes in police killings of civilians due to unionization while accounting for state statutes that influence police bargaining power. In particular, Gonclaves (2020) tested for the impact of police killings on civilians when that state had LEOBR and found no effect of unionization on police misconduct. However, the results did indicate a positive relationship between unionization and police killings existed when a state was a right-to-work state and had a LEOBR. Nonetheless, the results were not robust across various police misconduct measurements, and it reasonable to assume that LEOBR did not contribute to an increase in police killings of civilians. Relatedly, Cunningham et al. (2020) examined the introduction of LEOBRs across the 14 states between 1974 to 1988. Their results found that LEOBR was associated with an increase in non-white deaths in the long-run; however, the results disappeared after controlling for adopting collective bargaining rights. It is also important to note that Cunningham et al. (2020) LEOBRs' analysis used an unbalanced panel and therefore did not conclusively address the implications of LEOBRs on police misconduct. However, they were able to rule out the possibility that the increase in non-white deaths associated with adopting collective bargaining rights was driven by LEOBRs.

5 Policy Recommendations and Future Research

Research has established that collective bargaining and police unionization increase pay and benefits for law enforcement, and bargaining wins or losses can influence police behavior and crime rates. Changes in police productivity could result from work slowdown to affect future bargaining

⁸Rad does so using *Campaign Zero's* police contract database.

⁹The analysis controls for police force size, city population, a regional effect, violent crime rate, and measures of racial diversity.

or a decline in morale as a result of lower expected wages and benefits. Research has also shown that unionization may not influence police misconduct, but the adoption of collective bargaining rights more broadly changes police behavior—negatively impacting minority civilians.

Future research should focus first on establishing a causal link between LEOBRs and police misconduct. The one comprehensive empirical study on LEOBRs did not distinguish between collective bargaining provisions and LEOBRs; thus, we cannot determine if LEOBRs or collective bargaining drove the increase in police violence. This research agenda is relatively straightforward; one could follow [Dharmapala et al. \(2019\)](#), [Gonclaves \(2020\)](#), and [Cunningham et al. \(2020\)](#) and exploit the variation in location and timing of the adoption of LEOBRs. One may also include instrumental variables such as private-sector union membership or 1960s riots to deal with possible endogeneity in the adoption of LEOBRs across the country. In addition, LEOBRs are state statutes; researching the initial provisions and changes over time would be relatively straightforward. Documenting changes in provisions is vital for activists and policymakers to access which provisions influence police misconduct. Relatedly, the provisions related to police disciplinary action vary from bargaining unit to bargaining unit providing variation in oversight and accountability. [Rushin \(2016\)](#) generously made the contracts collected publicly available, allowing for an additional examination of union contracts to understand 1) what unions bargain for when LEOBRs exist, 2) which contract provisions influence police violence with or without the existence of LEOBRs, and 3) which provisions are associated police misconduct.

Having a better understanding of how provisions vary and influence police behavior is an essential piece of information in the police reform debate. Police officers have the right to fair terms of employment. Their societal standing does not dissolve their rights to protections provided by the 5th and 14th Amendments; however, the public trust in the police is of utmost importance, and police must be held accountable for misconduct. It is also important to note that police misconduct is a problem beyond unionization. Therefore, the parameters of the research agenda should address the possibility that unionization exacerbates the problem by limiting accountability. Lastly, this also brings into question police culture more broadly and police organizations' role in creating informal channels that limit discipline.

A series of recommendations related to LEOBRs and police union contracts is provided in the literature and has already been adopted by activists such as Campaign Zero.¹⁰ Both [Huq and McAdams \(2016\)](#) and [Levine \(2016\)](#) call for removing waiting periods before interrogations. The waiting period between incident and interview gives officers the time to "huddle" and corroborate stories, obstruct evidence, prepare a statement, and influence public opinion.¹¹ [Fisk and Richardson \(2017\)](#) call for the adoption of member-only unions, allowing police officers to join a minority union to address complicated issues related to reform, whistle-blowing, or personal polit-

¹⁰See [Campaign Zero – Fair Police Contracts](#). Many of the legal scholars referenced in this essay used data collected from Campaign Zero or worked directly with them to collect data on police contract.

¹¹[Levine \(2016\)](#) calls for the expansion of LEOBRs protections to civilians. In particular, provision that restrict the length of interrogations, protects against the threats of harsher punishments, and provide the ability to attend to basic necessities such as sleep, food, and access to restrooms during interrogations should be extended to civilians.

ical beliefs.¹² Keenan and Walker (2004) recommend implementing training programs for police leadership to deal with applications of LEOBRs that are ambiguous and open to misunderstanding. Moreover, Keenan and Walker (2004) recommend removing provisions related to (1) broad or ambiguous language in LEOBRs, (2) waiting times for investigations; (3) restrictions on non-sworn investigators, (4) pre-disciplinary hearings that include rank-and-file officers on the hearing board; and (5) limitations on the retention and use of disciplinary records of misconduct. Similar provisions exist in police contracts as well.

It is important to note, that law enforcement organizations spent a considerable amount of time, energy, and money to lobby for state statutes that grant collective bargaining rights and provide additional protections against wrongful disciplinary actions. It is highly unlikely that the police will voluntarily eliminate existing provisions that benefit them. Additionally, the political incentive to strike down provisions that protect police officers currently does not exist. It is possible to achieve reform locally, where LEOBRs do not supersede local jurisdictional policy. However, this will likely be contentious and politically risky, even for political reformers in progressive cities. Both Rad (2018) and McCormick (2015) suggest incorporating police unions to develop and implement police reform. Including the rank-in-file in the discussion of reform may uncover areas of improvement that activists and civilians are unaware of, as well as give police a personal stake in public safety reform. Although a lofty idea, serious reform in policing will involve, give and take on both sides. For police to relinquish protections related to accountability and oversight, local municipalities or state governments will likely have to improve police working conditions, increase compensation, and provide better benefits. Many of the urban areas with high crime rates and contentious police-community relations are also fiscally poor. Therefore, serious police reform that benefits all parties will only occur with federal intervention accompanied by federal dollars.

¹²Large cities often negotiate with multiple unions as police officers work in different law enforcement agencies that have different demands for employment conditions. Considering that multiple unions already bargain over finite resources, an additional minority union within an agency seems highly unlikely.

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