**Annotated Bibliography on Police Labor Relations**

As of October 14, 2020

**Tyler Adams, *Factors in Police Misconduct Arbitration Outcomes: What Does It Take to Fire a Bad Cop?* 32 A.B.A. J. Lab. & Emp. L. 133 (2016).**

What factors are determinative for arbitrators in police discipline cases especially in overturning discharges (significance in officers’ good character in decisions).

**Katherine J. Bies, Student Note, *Let the Sunshine in: Illuminating the Powerful Role Police Unions Play in Shielding Officer Misconduct*, 28 Stan. L. & Pol'y Rev. 109 (2017).**

Through analyzing the rise of police unions in the 1970, this Note reflects on the arguments in support for and against officer misconduct confidentiality laws. The Note criticizes the democracy-distorting effect of police unions on the political process and offers recommendations on how to successfully advocate for the public disclosure of disciplinary files and other progressive criminal justice reforms that may be unpopular with police unions.

**George W. Bohlander & Donna Blanchero, *A Study of Reversal Determinants in Discipline and Discharge Arbitration Awards: The Impact of Just Cause Standards*, 21 Lab. Stud. J. 3 (1996).**

Surveys 269 private sector arbitration cases to discover common determinants in reversals. Helpful description of just cause discipline/application.

**Dhammika Dharmapala, Richard H. McAdams & John Rappaport, *Collective Bargaining and Police Misconduct: Evidence from Florida* 38 Journal of Law, Economics, and Organization \_\_ (2020),** [**https://academic.oup.com/jleo/advance-article/doi/10.1093/jleo/ewaa025/6054285**](https://academic.oup.com/jleo/advance-article/doi/10.1093/jleo/ewaa025/6054285)

This Article analyzes a Florida state administrative database of “moral character” violations reported by local agencies between 1996 and 2015 to argue that an increase in collective bargaining rights led to a substantial increase in violent incidents of misconduct among law enforcement.

**Owen Doherty, Student Note, *A Reform to Police Department Hiring: Preventing the Tragedy of Police Misconduct*, 68 Case W. Res. L. Rev. 1259 (2018).**

This Note examines the deficiencies in police department hiring that allow problem officers to continue working in law enforcement. The note proposes federal legislation that would require the Department of Justice to promulgate minimum standards for police officers and create a federal database that would store employment data provided by the states of officers who have had their certificates revoked or suspended.

**Catherine Fisk, et al., *Reforming Law Enforcement Labor Relations*, Calif. L. Rev. Online (Aug. 2020),** [**http://www.californialawreview.org/reforming-law-enforcement-labor-relations/**](http://www.californialawreview.org/reforming-law-enforcement-labor-relations/)**.**

**Michael German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement*, Brennan Center for Justice, Aug. 27, 2020,** [**https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law#.X1JsMjxZVQ4.gmail**](https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law#.X1JsMjxZVQ4.gmail)**.**

**Ayesha Bell Hardaway, *Time Is Not on Our Side: Why Specious Claims of Collective Bargaining Rights Should Not Be Allowed to Delay Police Reform Efforts*, 15 Stan. J. C.R. & C.L. 137 (2019).**

This Article discusses the ways police unions have asserted their collective bargaining rights to disrupt reform efforts. The Article argues that in order to increase accountability through disciplinary processes the right of intervention standard in structural reform litigation should be more detailed and that legislation should expressly remove policies related to use of force and accountability from the purview of collective bargaining.

**Ann C. Hodges, *The Interplay of Civil Service Law and Collective Bargaining Law in Public Sector Employee Discipline Cases*, 32 B.C. L. Rev. 95 (1990).**

Analyzes collective bargaining around public sector employee discipline and how states have statutorily approached negotiability and enforceability of CBAs. California prioritizes laws and rules regarding merit and civil service systems, but court have construed these laws to be compatible with the bargaining law in most cases and have required negotiations over topics like discharge (p. 133). The author supports collective bargaining around discipline because it does not substantially affect outcomes in contracts and is consistent with the public sector’s merit system. Discussion on how arbitration is more consistent with the merit principle than increased judicial review would be is found on pp. 150-154.

**Aziz Z. Huq & Richard H. McAdams, *Litigating the Blue Wall of Silence: How to Challenge the Police Privilege to Delay Investigation*, 2016 U. Chi. L. Forum 213 (2016).**

Examines delay procedures in disciplinary investigations and proposes using § 1983 and state contract law to challenge this privilege.

**Mark Iris, *Unbinding Binding Arbitration of Police Discipline: The Public Exception*, 1 Va. J. Crim. L. 540 (2013).**

Examines the common law public policy exception some states have for “binding” arbitration decisions (when the decisions “appear to contravene a clearly defined public policy” (e.g., corruption, evident partiality, etc.).

**Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers’ Bills of Rights*, 14 B.U. PUB. INT. L.J. 185 (2005).**

LEOBRs as a limitation – examines typical provisions in 14 states’ LEOBRs (including California) and briefly comments on how each provision may affect disciplinary investigations. The article primarily examines the provisions regarding investigative procedures including notice of investigation, waiting periods, type of investigators allowed, composition of the hearing board, and rules of evidence and discovery. California LEOBR seems to include protections for informal investigations (provision ambiguous and open for interpretation).

**Benjamin Levin, *What's Wrong with Police Unions?*, 120 Colum. L. Rev. 1333 (2020).**

This Article examines police unions and asks how they are (and are not) representative of U.S. unionism by describing the dominant critiques of police unions within the context of other public sector unions. The Article argues that what makes police unions objectionable is their views and the conduct of police, the problems with the unions are only issues by extension.

**Kate Levine, *Discipline and Policing*, 68 Duke L.J. 839 (2019).**

This Article is critical of police reform advocates uncritical emphasis on transparency. The Article aims to complicate the transparency-cure narrative by arguing that we should place the harms of surveillance and exposure side by side with the benefits.

**Kate Levine, *Police Suspects*, 115 Colum. L. Rev. 1197 (2016).**

Surveys the protections LEOBRs provide in police misconduct interrogations. Argues that, rather than remove these protections, one should consider extending some of these protections to criminal suspects. Helpful exposition of how police unions influenced the widespread use of LEOBRs.

**Abdul N. Rad, Police Institutions and Police Abuse: Evidence from the U.S. (M.A. Phil. Thesis, University of Oxford),** [**https://mcusercontent.com/927bfa58351e50b8d600e59ad/files/1c021b8b-599f-487a-baf8-467fca1d4fce/1\_Oxford\_article.pdf**](https://mcusercontent.com/927bfa58351e50b8d600e59ad/files/1c021b8b-599f-487a-baf8-467fca1d4fce/1_Oxford_article.pdf)**.**

**Stephen Rushin, *Police Disciplinary Appeals*, 167 U. Pa. L. Rev. 545, 547 (2019)**

This Article draws on a dataset of 656 police union contracts to analyze disciplinary appeals procedures across a large number of American police departments. The Article argues that the multiple levels of appellate review and the ability to appeal disciplinary sanctions to an arbitrator, often selected in part by the local police union create a barrier to accountability.

**Stephen Rushin, *Police Union Contracts*, 66 Duke L.J. 1191 (2017).**

This Article analyzes an original dataset of 178 law enforcement collective bargaining agreements, arguing that a substantial number of these contracts unreasonably interfere or limit the effectiveness of mechanisms designed to hold police officers accountable for their actions. The Article goes on to argue that states should amend labor laws to increase transparency and community participation in the development of police disciplinary procedures.

**Stephen Rushin & Allison Garnett, *State Labor Law and Federal Police Reform*, 51 Ga. L. Rev. 1209 (2017).**

This Article argues state labor law and police union contracts impede the implementation of police reform efforts through consent decrees by the Department of Justice.

**Edward Swanson, Report of the Court-Appointed Investigator in *Delphine Allen v. City of Oakland* (2015) (**[**https://www.cand.uscourts.gov/filelibrary/1585/Swanson%20report.pdf**](https://www.cand.uscourts.gov/filelibrary/1585/Swanson%20report.pdf)**)**

**News Articles**

Matthew Artz, Judge Orders Investigation into Oakland’s Police Arbitration Losses, Mercury News (Aug. 14, 2014, 1:38 PM),<http://www.mercurynews.com/2014/08/14/judge-orders-investigation-into-oaklands-police-arbitration-losses> [https://perma.cc/UHB8-UHG2]

Stephen F. Befort, Counterpoint: In defense of arbitration, Star Tribune (June 19, 2020),<https://www.startribune.com/counterpoint-in-defense-of-arbitration/571378012/>.

Jennifer Bjorhus, Fired Minnesota officers have a proven career saver: arbitration, Star Tribune (June 21, 2020),<https://www.startribune.com/minnesota-cops-fired-then-rehired/571392702/#:~:text=It%20has%20also%20prompted%20renewed,for%20firing%20officers%20for%20misconduct.>

Steven Greenhouse, How Police-Union Power Helped Increase Abuses, The New Yorker (June 18, 2020), <https://mcusercontent.com/927bfa58351e50b8d600e59ad/files/6b333ddf-40d5-4808-bfd9-84883b89c8f2/2_Greenhouse_How_Police_Union_Power_Helped_Increase_Abuses___The_New_Yorker.pdf>.

Coulter Jones & Louise Radnofsky, Many Minnesota Police Officers Remain on the Force

Despite Misconduct, Wall Street Journal (June 25, 2020),<https://www.wsj.com/articles/many-minnesota-police-officers-remain-on-the-force-despite-misconduct-11593097308>.

Steve Karnowski, Minnesota lawmakers pass police accountability package, Post and Courier, https://mcusercontent.com/927bfa58351e50b8d600e59ad/files/2d4d28b6-bba8-4033-bacf-569275dfb84b/5\_Minnesota\_lawmakers\_pass\_police\_accountability\_package.pdf.

Kimbriell Kelly et al., *Fired/Rehired: Police Chiefs Are Often Forced to Put Officers Fired for Misconduct Back on the Streets*, Wash. Post (Aug. 3, 2017),<https://www.washingtonpost.com/graphics/2017/investigations/police-fired-rehired> [https://perma.cc/S4YE-4Y4Y]

o Primary reason for reversal is administrative

o Of the 8 cases examined, “The Eight-Year Firing,” “The Challenge to Fight,” “Fatal Force,” and “A Rush to Judgment” most relevant to our group’s focus.

Reade Levinson, Across the U.S., Police Contracts Shield Officers from Scrutiny and Discipline, Reuters (Jan. 13, 2017, 1:16 PM GMT),<http://www.reuters.com/investigates/special-report/usa-police-unions> [https://perma.cc/5DQB-J9XZ]

o Patterns of bargained-for protections (p. 3)

o Article examines file destruction, guiltiness requirement for disciplinary measures, and grievant’s access to investigatory file.

Julian Mark, Police reform: Has the moment passed us by?, Mission Local (Sept. 30, 2020), <https://missionlocal.org/2020/09/police-reform-has-the-moment-passed-us-by/>.

Nicole Nixon, *A Truncated Session, Gamesmanship And Police Opposition: Why So Many Police Reforms Failed in California’s Liberal Legislature*, CapRadio (Sept. 4, 2020), <https://www.capradio.org/155913>.

Miriam Pawel, *Reform the Police? Guess Who Funds My State’s Officials*, N.Y. Times (Sept. 9, 2020), <https://www.nytimes.com/2020/09/09/opinion/sunday/police-reform-defund-politicians.html>.

Tom Perkins, *It makes it very difficult to fire them’: police union contracts protect bad officers, critics warn*, The Guardian (June 30, 2020), <https://mcusercontent.com/927bfa58351e50b8d600e59ad/files/061dc656-7b71-41ff-a474-ed1e2a2ff713/3_Guardian_6_30_20_It_makes_it_very_difficult_to_fire_them.pdf>.

Dan Stamm, *Police Commish Angry That 90 Percent of Fired Officers Get Jobs Back*, NBC Phila. (Feb. 28, 2013),<http://www.nbcphiladelphia.com/news/local/Police-Officers-Get-Jobs-Back-194100131.html> [https://perma.cc/EGW2-RQUB].

Rebecca Tan, *There’s a reason it’s hard to discipline police. It starts with a bill of rights 47 years ago*, The Washington Post (Aug. 29, 2020), https://www.washingtonpost.com/history/2020/08/29/police-bill-of-rights-officers-discipline-maryland/.

Stephanie Francis Ward, *Do police union contracts inhibit reform?*, ABA Journal (July 1, 2020),<https://www.abajournal.com/authors/20/>.