



A Shaky Foundation, A Potential Threat:

Analyzing Colorado State Union "Employee Partnerships"

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Executive Summary

Colorado Governor Bill Ritter's November 2007 executive order that introduced union representation to state government through employee "partnership agreements" is misguided. The contradictions, omissions, and other fallacies promoted by defenders of the order show that the change really was not necessary. By issuing the unilateral order, the Governor prevented a full public debate, which would have addressed important flaws regarding the order:

- The executive order clearly gave union leaders collective bargaining power: Since unions can act as "exclusive representatives" over state employees, the argument that "employee partnerships" are not "collective bargaining" is entirely inaccurate.
- A failed union "partnership" in California nursing homes has been mostly ignored.
- Union partnerships may bring improvements to workplaces embroiled in conflict-oriented collective bargaining, but these results are not transferable to Colorado state government, where collective bargaining did not exist before the order was issued.
- Claims that unionization will improve government performance and efficiency have no basis in academic research.
- The example of a successful "partnership" in Colorado state government shows that union representation is not needed to foster labor and management cooperation.

Despite Ritter's statements that his order was designed to solve alleged inefficiencies, unions leaders and others have advertised it as a means to improve employee health insurance benefits. However, careful analysis likewise shows these claims to be exaggerated and misleading:

- Colorado does not compare favorably to other states in employer HMO contributions, but most Colorado state employees choose the more generous PPO plan.
- Even with the smaller employer HMO contribution, total compensation for Colorado

state employees compares favorably with the private sector and other state governments.

- Contrary to some claims, Colorado state government retains employees better than most of its neighbors—including four state governments with collective bargaining.

While seeking to solve a non-existent problem, Ritter's order opens the door to other problems:

- "Exclusive representation" likely will lead to costly binding arbitration.
- Unions still have the opportunity to collect agency fees from non-member state workers.
- The remedy for preventing disruptive state employee strikes is weak.
- It provides momentum toward mandatory government union bargaining in Colorado.

The following measures would mitigate or prevent some problems created by Ritter's order:

- To ensure public accountability, enact a law that guarantees all negotiations—including actual meetings and their records—be open, accessible, and transparent to citizens.
- To fulfill Ritter's stated intention, enact a law that ensures a state employee cannot be forced to pay union fees without his or her consent.
- To preserve public order, amend the no-strike law for state employees to include real and meaningful consequences.

Revoking the order would be the ideal policy outcome. True partnerships do not require giving exclusive representative status to third-party union officials.

Introduction

Until very recently, collective bargaining was not a feature of Colorado state government. On November 2, 2007, Colorado Governor Bill Ritter issued an executive order “authorizing partnership agreements with state employees.”¹ In spite of the name, the order essentially empowers a third-party labor union that wins an employee election to act as “exclusive representative” for one of the state government’s eight occupational groups.² The order has given unions the power to bargain, though an arbitrator’s decision in a dispute is not legally binding.

Under the terms of the order, unions seeking “exclusive representative” status first must collect signatures from 30 percent of employees in an occupational group. Other organizations have 15 calendar days to demonstrate the same level of support in order to intervene as an alternative “exclusive representative” in the ballot election. In

all cases, employees have the option to vote for “no representation.” A majority of ballots cast, not a true majority of eligible employees, is needed to win an election.

The responsibility to supervise “employee partnership” elections is designated to the director of the Colorado Department of Labor and Employment.³

The executive order provoked highly critical editorials from the state’s two

largest daily newspapers, the *Denver Post* and *Rocky Mountain News*. In particular, the front-page editorial from the traditionally liberal *Post* labeled Ritter as “Jimmy Hoffa,” “a toady to labor bosses,” and “a bag man for unions.”⁴

No pressing public need has been demonstrated for expanding union representation powers in state government. Ritter and various groups have made public statements to defend the executive order, but their arguments are filled with misleading statements, highly selective data, and even internal

contradictions. Closer scrutiny reveals the case for Ritter’s order stands on shaky ground, while research suggests it likely will increase the cost of government services.

“Employee Partnerships” vs. “Collective Bargaining”

On March 19, 2008, the first “partnership agreement” election was held. By virtue of receiving a majority of the votes cast, the Association of Colorado State Patrol Professionals (ACSPP) won the right to serve as “exclusive representative” of Colorado’s 700 uniformed state troopers. ACSPP chief Lonnie Westphal stated one of his group’s chief aims is to obtain larger salary increases for experienced officers, but conceded the order gave his group no new power to force state officials “to agree to our list of priorities.”⁵

The most active organizing group has been the Colorado WINS union coalition, which was established four days after Ritter issued his order.⁶ Elections to certify Colorado WINS as the “exclusive representative” for five of the seven remaining occupational groups, comprising more than 70 percent of classified state employees, are currently pending.

Overcoming Contradictions

Ritter’s executive order consistently uses the euphemism “employee partnerships” rather than “collective bargaining” to describe the new relationship created between state government and certified labor organizations. In an opinion piece in the *Rocky Mountain News*, the governor insisted: “What we have crafted for Colorado is not collective bargaining.”⁷

The leader of the Colorado Federation of Public Employees also declared that Ritter’s order is “not collective bargaining.” However, Mitch Ackerman, president of Service Employees International Union (SEIU) Local 105, forthrightly

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called it a “21st century model of collective bargaining.”⁸ SEIU is one of the three partners in the Colorado WINS coalition.

No Binding Arbitration

Ritter’s order indeed does not provide unions with every advantage that often accompanies collective bargaining power. Most notably, the order does not provide for binding arbitration. If while negotiating a “partnership agreement” government and union leaders are unable to reach a settlement, a third-party arbitrator can propose a compromise. However, neither party is legally bound to accept the proposal. The binding arbitration process itself be expensive and time-consuming. In addition, it will increase the power of an unelected mediator who gives equal weight to the proposed offers from both sides. Union negotiators thus are emboldened to raise the requests for more costly compensation.⁹

The order rightly excludes binding arbitration, but it does expose government to greater political leverage from third-party labor officials. By granting union leaders representative power that enables them to create conflict at the bargaining table, the order could make binding arbitration seem like a reasonable solution.

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More Than A Different Focus

Binding arbitration is not a necessary feature of “collective bargaining.” Claims that the Governor’s order does not impose collective bargaining are contradicted by the dictionary. The American Heritage Dictionary defines “collective bargaining” as “negotiation between organized

workers and their employer or employers to determine wages, hours, rules, and working conditions.”¹⁰ Ritter’s order does not exempt any of these topics from “partnership agreement” negotiations.

A confidential SEIU talking points document details the need to distinguish between “traditional

collective bargaining” and “the labor-management partnership approach” (see Appendix):

- Both enable employees to have the same freedom to choose whether they want to form a union that employees who work for Colorado business already possess.
- Both identify bargaining units (or partnership groups) and both enable employees to negotiate a **binding agreement**. [emphasis added]

According to the document, “partnerships” have a strategic focus on outcomes rather than worker rights, and a rhetorical emphasis on collaboration rather than conflict. It’s a distinction with little or no practical difference. The SEIU document further acknowledges that “partnership agreements” may have binding power.

Denver Post editorialist Bob Ewegen, who has a masters degree in labor relations, succinctly wrote: “Ritter would have been on much sounder ground to simply admit the obvious: that he is indeed establishing collective bargaining procedures for state employees while, at least for now, sharply limiting the scope of such negotiations.” Ewegen also expressed his skepticism concerning the “partnership” rhetoric:

Ritter insists he only wants these “partnerships” to “bring managers and employees together to make government services more effective, efficient and reliable for the public.”

But you can search the annals of labor history and never find firebrands like Mother Jones exhorting workers to arise and “identify and implement efficiency measures and eliminate waste and redundancies,” as Ritter urges them to do.¹¹

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The Case of SEIU's Failed Partnership

In numerous articles and talking points, the labor-management “partnership” emphasis on collaboration and strategic outcomes is highlighted as having a wonderful track record. Proponents tout the results of partnerships in the health care organization Kaiser-Permanente, the Douglas County School District, and the federal government.¹²

But such partnerships have not always been successful. In 2003, the Service Employees International Union (SEIU) cut a deal with an alliance of California nursing homes that allowed them to set up a “partnership agreement” template in each workplace. SEIU boosted its membership, but a grassroots worker petition complained that the workers’ voices were suppressed. Among other problems, health care workers were unable to change the agreement, which “prohibited the union from reporting problems with organized nursing homes to state regulators or the media, except in cases mandated by law.”¹³

SEIU’s actual “partnership” performance in California led to terrible work rules, employees being ignored, and health care problems being concealed from the public. Under the weight of protest, the partnership agreement was terminated in May 2007.¹⁴ In at

least one major example, the practice of employee partnerships through exclusive representation has failed.

Less Government Efficiency in New Labor-Management Relations

A Leap of Faith

A December 2007 report from The Bell Policy Center concluded that “partnerships” of the sort Ritter imposed “have been found to improve labor-management relations and to increase worker

participation in decisions affecting their work. In some cases, the changes brought about by labor management partnerships have resulted in better performance outcomes, such as improved customer service, more efficient work processes and cost savings.”¹⁵

The authors of the Bell report concede these “labor management partnerships” all developed as changes to existing collective bargaining relationships. The partnerships often were seen as ways to lessen some of the problems generated through traditional, conflict-oriented collective bargaining. A leap of faith is required to presume that the same effects will be realized in Colorado state government, where no formal collective bargaining existed before Ritter’s order.

Local SEIU union leader Mitch Ackerman told the *Denver Post*: “Academic study after academic study shows that partnerships work. They produce cost savings, more reliable goods and services.”¹⁶ But all such academic studies that have been brought forward make comparisons based on a prior collective bargaining relationship. It may be that the partnerships improve work outcomes in places where the work environment had been seriously damaged by a rigid collective bargaining agreement. These examples do not prove that partnerships lead to improvement in totally different work environments, such as Colorado’s.

A Key Study Mischaracterized

In defense of Ritter’s order, the Progressive State Network (PSN) mischaracterized the findings of a 2003 North Carolina State University study, claiming that “researchers have shown that strong public employee unions strengthen government performance and efficiency.”¹⁷ However, the North Carolina study never said what PSN claims. Rather, the passage cited by PSN merely restated the opinions of “[a]dvocates for public sector

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unionization” regarding alleged “benefits that unions provide that may improve government productivity indirectly.”¹⁸

The North Carolina State report summarizes the actual consensus of research as follows:

- “[U]nions have no effect on productivity levels;”
- Unions lead to an increase in public sector employment;
- Unions in the public sector have lower strike activity than private sector unions;
- Unions moderately increase public sector employee wages;
- Unions raise public sector employee non-wage benefits more than wages;
- Union collective bargaining has shown no proof of reducing employee turnover; and
- Unions have tended to equalize earnings for women and minorities.¹⁹

The North Carolina State researchers advocate the adoption of public employee collective bargaining. Yet they acknowledge that the consensus of research does not support claims that unions “strengthen

government performance and efficiency”—at least if “performance and efficiency” mean something other than “higher union membership and compensation.”²⁰

Full-fledged unionization in Washington state government raised personnel costs by \$3 billion in the first four fiscal years.²¹ Though

Ritter’s order does not confer as much bargaining power as in

Washington state, it is still far more likely to increase the state’s financial burden than to reduce it.

A Solution in Search of a Problem

Ritter has cited three examples in state government to insist why his executive order is needed, First, he has said his “partnerships” would fix costly problems with state computers: “Indeed, if state government had been stronger partners with employees in the

past, perhaps the state would not be facing \$300 million in wasted information technology systems.”²² Second, Ritter has championed the cost-saving ideas collected in 12,000 survey responses from state employees, a survey conducted before the order was issued or any “partnership” formed.²³ Third, he has touted Colorado Department of Transportation director Russell George’s “partnerships” with employees as a successful model.²⁴

The truth is that good managers and employees already can create partnerships. That Mr. George already was able to create successful “employee partnerships” without collective bargaining shows that Ritter’s order was unneeded. Nor were the “exclusive representative” services of a labor union middleman needed to conduct the state employee survey.

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No Defense for Backroom Procedures to Create Order

Progressive States Network has defended the executive order from charges of backroom policymaking by contending that the governor campaigned in support of unionizing state employees.²⁵ Yet no evidence has been introduced to support the claim. A search of articles from all major Colorado newspapers in 2006 reveals nothing. If Ritter campaigned in support of unionizing state employees, he managed to do so in a way that Colorado journalists never heard of it.²⁶

As the editors of the *Fort Collins Coloradoan* wrote:

This is a problematic approach from a governor who often speaks about his dedication to transparency. If this executive order is such a good idea, why were the public and lawmakers left out in the cold to openly discuss its merits? Issuing a press release about the order on Friday afternoon, considered to be black-hole time for media scrutiny, is equally questionable.²⁷

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That so much *ex post facto* misinformation has been deployed in defense of Ritter’s executive order provides more evidence that the policy change should have been preceded by public debate and legislative hearings, in which talking points and dubious statistics from unionization advocates could have been carefully examined. The continuing use of obfuscation and misinformation also highlights the need for greater public transparency regarding the policy’s implementation.

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Distortions Concerning State Employee Compensation and Retention

Cross Purposes

Governor Bill Ritter has insisted that his executive order is designed to foster employee-management cooperation to find efficiencies in government services. As previously shown, there is no sound reason to believe his order was needed to carry out the pro-efficiency programs. Ritter further has denied any purpose behind the order to boost employee compensation, but the following

evidence suggests the process will work to increase state personnel costs:

- The issues of employee compensation are not excluded from the scope of bargaining prescribed in Ritter’s order.²⁸
- The union organizing coalition known as Colorado WINS acknowledges on its Web site: “State employees will be able to directly negotiate job improvements with the Governor’s office before his budget goes to the legislature.”²⁹
- In numerous flyers to state employees, Colorado WINS officials have emphasized the union’s plan to negotiate better health care benefits.³⁰

Well-paid Workforce

Through existing legislation the Colorado General Assembly has established an official policy “to

provide prevailing total compensation” to state employees. “Total compensation” includes “salary, group benefit plans, retirement benefits, performance awards, incentives, premium pay practices, and leave.”³¹ The technical process for determining fair market value of salaries and employee contributions to group benefit plans is researched and updated annually, and includes the participation of employees and managers.³²

Results have been generally favorable for the state workforce. Critics of Ritter’s executive order have observed that Colorado state employees already rank ninth nationally in annual average salary. Adjusted for cost of living, Colorado state employees earn higher salaries than their counterparts in all seven neighboring states—and in five of those states, at least 10 percent higher.³³

Health Insurance Benefits in Context

Progressive States Network (PSN) nevertheless points to a National Conference on State Legislatures (NCSL) report that ranks Colorado state employees “49th in individual health insurance coverage, and 47th in family health insurance coverage.”³⁴ The dual claim is misleading for two basic reasons:

- **NCSL compares HMO premiums, but most Colorado state workers choose a more affordable PPO plan.** The NCSL figures are based on states’ standard Health Maintenance Organization (HMO) plans, but the most popular choice of Colorado state employees is a Preferred Provider Organization (PPO) plan.³⁵ On average, Colorado state employees pay a smaller share of the total PPO premium cost than the average of all workers in the western United States.³⁶
- **NCSL did not look at HMO premiums as part of total compensation.** The NCSL report looked at HMO premium rates in isolation from total compensation, in which Colorado

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state employees still compare favorably with neighboring states. After subtracting family rate health insurance premiums from average wages on a cost-of-living basis, Colorado state employees still are compensated better than their counterparts in six of seven neighboring states and virtually the same as in Nebraska.³⁷

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Earnings Outpace Private Sector PSN claims: “In many key sectors, Colorado pays workers far less than the same workers in the private sector,” but PSN fails to identify the alleged “key sectors.”³⁸ According to the federal government, Colorado

state employees earn 7.6 percent higher average salaries than Colorado private-sector employees: \$44,990 to \$41,593.³⁹ Colorado state employees also earn higher salaries than Colorado private-sector employees in specific job categories where data exist to provide comparison (see table 1).

Table 1. Average Annual Salaries by Job Category, Colorado State Government vs. Colorado Private Sector (2005)

Job Category	State Gov't	Private Sector	State Gov't, as share of Private Sector
Nursing and residential care facilities	\$35,528	\$25,439	139.7%
Educational services	\$42,404	\$31,578	134.3%
Hospitals	\$45,386	\$42,986	105.6%
Heavy and civil engineering construction	\$50,999	\$49,088	103.9%

Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Quarterly Census of Employment & Wages

State employees who choose a HMO pay higher premiums than private-sector Colorado workers. Yet state employee wages are so high that their net compensation, after subtracting HMO premiums, is still on average 3.8 percent greater than that of their counterparts in the private sector.⁴⁰

None of these calculations include the generous retirement benefits available to state workers through the Public Employees Retirement Association

(PERA). Under Ritter’s order, PERA benefits are off the negotiating table. In other words, management is forbidden to negotiate about the most lucrative and unusual element of employee compensation. Thus, negotiations amount to a one-way street for higher wages and greater health care payments, while the expensive, unsustainable retirement pensions are off the table.

Retention Problems Overstated

In an attempt to paint a picture of a long-term trend of growing numbers of employees leaving the state workforce, the Progressive States Network (PSN) selectively draws statistics from the State of Colorado Workforce Report to state: “In the last 7 years, turnover rate among Colorado’s state personnel system employees has been increasing.” Yet most of the increase occurred between 1999 and 2001. Turnover rates generally have remained stable since then. When PSN made its claim, available data showed the turnover rate at 12.3 percent.⁴¹ The most recent report shows the 2007 turnover rate at 13.1 percent, slightly higher than the 12.7 percent recorded in 2002.⁴²

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Nevertheless, PSN also selectively quoted from the Pew Center’s Government Performance Project that “new hires are not sticking with Colorado government.” That quote did not come from an objective study, but is simply a claim by the Colorado Association of Public Employees. PSN failed to note the same report mentioned that “voluntary [employee] turnover is slightly below average in Colorado” and that “Colorado has a low number of employee grievances....”⁴³

In fact, compared to its neighbors, Colorado’s state government has a lower rate of voluntary turnover of classified employees. This includes both states that practice collective bargaining (New Mexico, Kansas, Nebraska, and Oklahoma) and states that do not (Arizona and Wyoming). Among neighboring

states, only non-bargaining Utah reports better state employee retention.⁴⁴

Opening the Door to Greater Harm

On one hand, the alleged need for Governor Bill Ritter's policy change is based on a very weak and shaky foundation. But the executive order also has opened the door to negative outcomes for individual workers and the broader public interest.

Union Coercion Allowed

In several instances, Ritter has stated publicly that he did not intend for the executive order to force any state employee to pay union fees.⁴⁵ However, he failed to include language in the order that could have ensured such a protection for dissenting workers. Labor expert Stanley Greer from the National Institute of Labor Relations Research observed that the executive order as written increases the likelihood of coercive unionism.

In January 2008 Greer told the *Denver Business Journal*: "...[I]f the governor was against union dues and agency fees, he would have explicitly put that in the order. ... He wants to leave the door open, but it's not convenient for him to talk about it at this time."⁴⁶

Two news reports in early 2008 indicate that the Colorado WINS union coalition used aggressive organizing tactics that, included mailers, phone calls and visits at home, as well as solicitations in and around workplaces.⁴⁷ In one of the news reports, a state treasury employee observed: "Without the forced collection of dues, the union's

excitement makes no sense. They're interested in the same things that all groups are interested in: making money."⁴⁸

As of April 9, 2008, the Department of Labor had certified that Colorado WINS had collected enough signatures to hold certification elections for five different classes of state employees. In each case,

Colorado WINS received the bare minimum signed support from 30 percent of employees eligible to be covered.⁴⁹

Only the Association of Colorado State Patrol Professionals (ACSPP) has held and won a "partnership" election. Of 709 eligible state troopers, 431 voted by mail, 324 in favor of representation. Though 75 percent of ballots were "Yes" votes, fewer than half of eligible employees approved the policy change.⁵⁰

Despite the fact that a majority of state troopers did not vote for representation, no legal obstacle remains for ACSPP to negotiate agency fee payments from all troopers. Written assurance from the governor's spokesman that "employees who do not choose to be represented by an employee organization will not have a parallel obligation [such as payment of agency fees]"⁵¹ cannot provide protection.

It will not be long before Ritter's public promises to oppose coercive union fees will face the private challenge of closed-door union negotiations.

Unresolved Concerns about State Employee Strikes

Ritter's public assurances have included not only a protection of dissenting workers from coercive union fees but also a prohibition on strikes by state employees. While the former received lip service, the latter was inscribed into the text of the order: "Partnership Agreements negotiated pursuant to this Executive Order shall contain an agreement not to strike."⁵²

However, a formal opinion issued by Attorney General John Suthers four weeks after the order's release declared: "The Executive Order may provide further limits on certain state employees' ability to strike, but cannot override the legislatively-created right to strike for all state employees."⁵³ The

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1992 Colorado Supreme Court decision *Martin v Montezuma-Cortez School District* gave full legal protection to public employee strikes.⁵⁴ The Attorney General Opinion explained that Ritter’s order could not overturn the court decision. Only the legislature could write a statute to remove the judicially-recognized power of government employees to strike.

The newly available status of exclusive representative will increase state employees’ collective capacity to strike. The probability of strike action increases with the growth of private collective representation. Though strikes occur less often in the public sector than in the private sector, public-sector strikes

have greater negative ramifications. Government agencies typically provide services, including public safety, not duplicated in the private sector. (Sometimes the government has created a monopoly for itself, and forbidden anyone else to provide the service.) Therefore, government employee strikes are much more likely to harm the public interest.

In an effort to implement the Governor’s asserted intention of preventing state employee walkouts, legislators introduced two competing strike-prohibition bills in the Colorado General Assembly in 2008. Republican-sponsored House Bill

1187, which sought to make all strikes of local and state government employees a felony crime, was narrowly defeated in the House Business Affairs and Labor Committee. The competing bill addressed only state employees and specified no penalties for an illegal strike. Governor Ritter signed Democrat-sponsored House Bill 1189 into law on April 3.⁵⁵ Thus, state employee strikes are in the same legal status as adultery in Colorado: technically illegal, but with not the slightest punishment for breaking the law.

It remains unclear how much of a deterrent effect the new law will have on potential future strikes. Other states provide for penalties for violating anti-strike injunctions, including forfeiture of employment for strike participants⁵⁶ or significant financial liability on government employee unions and their leaders.⁵⁷

Momentum Toward Mandatory Bargaining

As written, Ritter’s executive order applies only to state government. But it also should cause concern for officials and managers in cities, counties, and school districts. If unchallenged, the empowerment of unions to act as “exclusive representative” through “employee partnerships” may be touted as a “solution” for other governments.

The end result could be mandatory collective bargaining for all Colorado public employees. The more success achieved by Colorado WINS or other unions, the more revenue and clout they will acquire toward organizing other agencies. Other unions already have actively sought local government bargaining powers, such as the Teamsters’ efforts to organize county sheriff’s departments.⁵⁸ Another powerful government employee union, the Colorado Education Association (CEA), could seize the organizational momentum of state “employee partnerships” to lobby for mandated school district collective bargaining.

The editors of the *Denver Post* best identified the primary beneficiaries of the governor’s policy change: “Unions have been thriving only in the public sector, and Ritter’s order ensured that they will continue to flourish there—at least until there’s a new governor to overturn the order.”⁵⁹

Conclusion

Governor Bill Ritter’s November 2007 executive order has moved Colorado into uncharted waters. In defending the action, various advocates have

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neglected the important distinction that Colorado’s “employee partnerships” have been introduced into a setting where collective bargaining did not previously exist. Research of “partnerships” in other settings find some improvements by changing the tone of adversarial collective bargaining. Ritter’s

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No compelling basis has been provided for Ritter’s policy change. The arguments used to justify the introduction of collective bargaining to state government through the vehicle of “employee partnerships” are implausible. Examples of

successful “partnerships” in Colorado state government before the executive order simply prove the help of third-party labor unions as “exclusive representative” is not needed to implement real partnerships.

The uncertainty surrounding the goals of Ritter’s executive order can be found in the tension between

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claims that it is needed to promote government efficiency and claims that it is needed to bolster state workers’ health care benefits. A full and open debate in the legislature may have helped to clarify or resolve the tension, but the backroom process that led to the executive order has left wide spaces for reasonable doubts to linger.

Given the weakness of the arguments introduced to justify the policy change, an executive order may have been the only way to ensure the enactment of union exclusive

representation in state government. While a repeal of the order would be the ideal policy outcome, the following halfway measures could be implemented to lessen its harmful effects:

- Because “partnership agreements” in one way or another will affect the public interest, enact a law that guarantees all negotiations—including actual meetings and their records—be open, accessible, and transparent to citizens.⁶⁰
- To fulfill Ritter’s stated intention, enact a law that ensures no state employee can be forced to pay union fees without his or her consent.
- To preserve public order, amend the no-strike law for state employees to include real and meaningful consequences.

The state should continue its annual survey to ensure employees receive “prevailing total compensation.” State managers should be provided with direction and instruction to form “employee partnerships” that promote true government efficiency. But there is no reasonable justification for the state to enter into expensive formal dealings with private labor leaders.

Appendix: Service Employees International Union (SEIU) "Partnership" Talking Points Document

Traditional Collective Bargaining vs. Labor-Management Partnership

Below is a short comparison of traditional collective bargaining and the labor-management partnership approach. Both approaches contain many of the same basic elements. Both enable employees to have the same freedom to choose whether they want to form a union that employees who work for Colorado business already possess. Both identify bargaining units (or partnership groups) and both enable employees to negotiate a binding agreement. There are some significant differences, however, that are outlined in the charts below.

Basic Philosophy	
Traditional Collective Bargaining	Partnership
<p><i>The focus and language is on worker rights and worker economics.</i></p> <p>The union is primarily the vehicle for workers to get their primary needs met (ex. safer workplace), gain a fairer share of the company's prosperity and have more control over their work life.</p>	<p><i>The focus is on outcomes – not just for workers but for customers and the company/public entity as a whole.</i></p> <p>For example, the goal of Kaiser Permanente (KP) partnership is "superior health care outcomes, market-leading competitive performance, and a superior workplace for Kaiser Permanente employees."</p> <p>Employee engagement is the key strategy to achieve superior outcomes, and <i>the union is the principle vehicle for that engagement.</i> Again Section 1A of the KP National Agreement opens "The essence of the Labor Management Partnership is involvement and influence, pursuit of excellence, and accountability by all... Employees throughout the organization must have the opportunity to make decisions and take actions to improve performance and better address patient needs... Engaged and involved employees will be highly committed to their work and contribute fully."</p> <p>The outcomes, in turn, are measured. In the first few years of the KP partnership, workplace injuries that cost millions in workers comp, disability, and lost productivity dropped by 20%; employee satisfaction rose from 65% to 80% from 2000 to 2003; member satisfaction increased; and the partnership produced \$100 million in cost savings (Business 2.0, June 2005).</p>

Bargaining	
Traditional Collective Bargaining	Partnership
<p><i>Negotiations are limited to wage, benefit and working conditions.</i></p> <p>Under traditional collective bargaining, the parties negotiate a binding agreement. However, the NLRA narrowly defines mandatory subjects of bargaining as wages, benefits and conditions of work. Subjects like staffing, performance management, outcomes and</p>	<p><i>Negotiations include wage, benefits and working conditions but also establish a way to address additional issues that affect outcomes.</i></p> <p>As with traditional collective bargaining, the parties negotiate a binding agreement. However, bargaining is generally conducted in a way that reduces conflict, often through "interest-based negotiations" (IBN). Instead of</p>

<p>service quality are generally off the table.</p> <p>The bargaining process is frequently adversarial and fosters conflict as a result, and the discussion tends to be focused on distribution (who gets how much of the pie.) The process often results in a power struggle with each side trying to exploit the weaknesses of the other.</p> <p>The agreement is often lengthy and detailed, covering many aspects of work. Implementation is black and white. As a result, it is often not a living document that anticipates changes in technology or changing organizational needs.</p>	<p>each side coming to the table with proposals and then fighting to get their proposal accepted, IBN has both sides identify issues to be resolved and everyone works together to find solutions acceptable to all. Final decisions are made by consensus. <i>This type of alternative bargaining format could be written into the law.</i></p> <p>Negotiations are not limited or even centered on compensation and employee rights, but again focus on outcomes. The first section of the KP agreement deals with issues like "Improving Organizational Performance" such as service quality, and "Problem Solving."</p> <p>It is assumed that employees must feel fairly compensated for their work to truly take ownership of the company's key business goals. However, information is shared freely and employees are often educated in the financial and business climate of the company so that they can be responsible partners in economic decisions about compensation, staffing, etc.</p> <p>Performance-based incentives are focused around measurable outcomes (not subjective supervisor evaluations), are often team-based, and are aligned to the company's key business goals and also aligned between managers and front-line workers. The model encourages accountability, reliability and effectiveness. In KP the incentives increase over the years as employees' role in decision-making increases to invest employees in decisions that drive outcomes. <i>This type of structure for performance incentives can also be written into the law.</i></p> <p>Partnership models stress ongoing collaborative processes to resolve problems as they arise, adjust to new organizational needs and create opportunities for joint problem solving and planning on key issues. For ex, KP employees in CO claims dept used a contractual "issue resolution" procedure to cut numerous steps out of the claims process, saving the company \$4 million/yr.</p>
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Grievances	
Traditional Collective Bargaining	Partnership
<p>In many instances, disputes are primarily resolved through a well-defined grievance process. Without an alternative problem solving mechanism, either or both parties tend to push all grievances to arbitration. Often</p>	<p>The goal of employee organization in a partnership is not to fight for or protect employees who can't or won't do the work and can't be trained to do so. Instead of promoting grievances as the mechanism for resolving</p>

first line supervisors don't have the authority or willingness to resolve grievances immediately and often union stewards file and push grievances up the chain because they never get any results at the first level. This can lead to ongoing conflict and distrust and can take a lot of time and money on issues that could easily be resolved or dismissed.

disputes, the partnership approach seek to create the climate and format to resolve problems informally and quickly at the earliest moment. It cuts down on unnecessary grievances and eliminates incentives to push unworthy grievances up the chain because it is not in either party's interest to waste time, energy or money.

Relationship	
Traditional Collective Bargaining	Partnership
<p>Although relationships always depend on the parties involved, the post-bargaining relationship under traditional collective bargaining can frequently be adversarial and legalistic due to the nature of adversarial bargaining and the reliance on a detailed and lengthy legal document.</p> <p>The relationship is focused on enforcing the written agreement (i.e. through grievances) and protecting individual rights.</p>	<p>The partnership model is set up to create incentives that facilitate cooperation and foster joint problem solving.</p> <p>Structures are built to train and engage employees in decisions that will not only improve the work environment but also the health of the company and results for its customers. The Kaiser Permanente Partnership, for example, aligns workers to help drive performance of the company's key business priorities of service, quality and affordability. In Arizona, firefighters and SEIU members in the public sector engage in a similar IQ process (Innovation and Quality) in which surveys identify important issues that management and employees tackle jointly. <i>Again, this type of ongoing problem solving process could be written directly into the law.</i></p> <p>The key to the ongoing relationship is the concept that the partnership must strengthen both (or all) partners involved. This means that the institutional needs of one partner are taken to be the needs of all. If the union is key to employee engagement, which is key to performance improvement, a stronger union with more member involvement is not seen as a threat to the company but an asset. Likewise poor customer service scores are not just the company's problem but the union's as well.</p>

Endnotes

- ¹ State of Colorado, Office of the Governor, Executive Order D 028 07, "Authorizing Partnership Agreements with State Employees."
- ² *Ibid.* The eight occupational groups are listed as follows: Administrative Support and Related Services; Enforcement and Protective Services; Financial Services; Health Care and Medical Services; Labor, Trades, and Crafts; Physical Sciences and Engineering; Professional Services and Teachers; and Troopers.
- ³ *Ibid.*
- ⁴ *Denver Post*, "A Colorado Promise Broken," 4 November 2007, http://www.denverpost.com/ci_7354651; *Rocky Mountain News*, "'Partnership' to the Past," 3 November 2007.
- ⁵ Colorado Department of Labor and Employment, Election Results, 20 March 2008, <http://www.coworkforce.com/lab/electionresultsstatetroopers.pdf>; David Montero, "State troopers first to register as a union," *Rocky Mountain News*, 28 March 2008, <http://www.rockymountainnews.com/news/2008/mar/29/state-troopers-first-to-register-as-a-union/>
- ⁶ *Colorado Partnership Agreement By and Between Service Employees International Union (SEIU), American Federation of Teachers (AFT), and American Federation of State, County, and Municipal Employees, AFL-CIO (AFSCME) For the Purpose of Undertaking a Joint Venture to Organize Colorado State Employees and For the Purpose of Establishing Colorado WINS (A state employee labor organization jointly affiliated with SEIU, AFT, and AFSCME)*, 6 November 2007, <http://facethestate.com/downloads/coloradowins.pdf> - The participating unions actively lobbied for the change. AFSCME gave a presentation on "Collective Bargaining Legislation" to Democrat leaders in the statehouse and governor's office in the spring of 2007. Emails also were exchanged soliciting advice between the governor's policy staff and AFSCME leaders. See "E-Mail: Ritter May Institute Collective Bargaining by Executive Order," *Face The State*, 8 October 2007, <http://facethestate.com/node/3170>
- ⁷ Gov. Bill Ritter, Jr., "Speakout: Exec order will serve Coloradans," *Rocky Mountain News*, 6 November 2007, http://www.rockymountainnews.com/drmn/opinion/article/0,1299,DR_MN_38_5740024,00.html
- ⁸ Colorado Federation of Public Employees Press Release, "Union Leader Says Partnership is Not Collective Bargaining," 6 November 2007, <http://www.cfpe.org/nov2007exorpartnerships.pdf>; Steve Raabe and Karen Rouse, "Business Leaders Say Order is a Threat to State Economy," *Denver Post*, 4 November 2007, http://www.denverpost.com/business/ci_7363319
- ⁹ See David Denholm, Public Service Research Foundation, "Ten Reasons Why Binding Arbitration of Public Sector Labor Disputes is Not in the Public Interest," <http://www.psr.org/issues/bind.jsp>
- ¹⁰ <http://dictionary.reference.com/browse/collective%20bargaining>
- ¹¹ Bob Ewegen, "March of the Ducks: Ritter's Order on 'Collective Bargaining' Sounds Like a Union, Despite His Denial," *Denver Post*, 12 November 2007, http://www.denverpost.com/perspective/ci_7410071
- ¹² Raabe and Rouse, "Business Leaders Say Order is a Threat to State Economy," *Denver Post*; Marija Weeden and Rich Jones, *Labor Management Partnerships: Research from the Public and Private Sectors*, Bell Policy Center Issue Brief No. 9 (Dec 13, 2007), pg. 1, <http://www.thebell.org/PUBS/IssBrf/2007/12-LMPs.pdf>
- ¹³ Mark Brenner, "SEIU Ends Nursing Home Partnership," *Labor Notes*, 25 June 2007, <http://www.labornotes.org/node/989>
- ¹⁴ *Ibid.*
- ¹⁵ Weeden and Jones, *Labor Management Partnerships*.
- ¹⁶ Michael Booth, "Unions look to next leap," *Denver Post*, 7 January 2008, http://www.denverpost.com/news/ci_7898386
- ¹⁷ Progressive States Network, "The Colorado Hybrid: Employee Partnerships," <http://www.progressivestates.org/files/co-fact-sheet.pdf>
- ¹⁸ Susan Twiddy and Jeffrey Leiter, *The Impact of Public Sector Unions on Government Operations and Worker Welfare*, North Carolina State University (Raleigh, NC): February 2003, pg. 3, <http://www.nchope.org/adobe/unionsimpact.pdf> - The passage reads: "Advocates for public sector unionization point to benefits that unions provide that may improve government productivity indirectly. These include an increased sense of satisfaction at work, a greater sharing of responsibility on the job, and inclusion in decision-making processes."
- ¹⁹ Twiddy and Leiter, *The Impact of Public Sector Unions*.
- ²⁰ *Ibid.*, pg. 8.
- ²¹ Andy Vuong, "Learning Wash. unions' lessons," *Denver Post*, 6 January 2008, http://www.denverpost.com/business/ci_7887041
- ²² Office of Bill Ritter, Jr., Governor, Press Release, "Gov. Ritter Issues Employee Partnership Executive Order," 2 November 2007, <http://www.colorado.gov/cs/Satellite?c=Page&cid=1193995951106&pagename=GovRitter%2FGOVRLayout>
- ²³ *Ibid.*
- ²⁴ Mark Couch, "Labor-Boss Meetings a Hot Topic," *Denver Post*, 10 September 2007, [http://www.politicwest.com/local_western_politics/8431/labor_boss_meetings_hot_topic; Charles Ashby, "Partnership Works, CDOT Chief Says," *Pueblo Chieftain*, 13 November 2007, <http://www.chieftain.com/metro/1194937200/3>](http://www.politicwest.com/local_western_politics/8431/labor_boss_meetings_hot_topic; Charles Ashby, 'Partnership Works, CDOT Chief Says,' Pueblo Chieftain, 13 November 2007, http://www.chieftain.com/metro/1194937200/3)
- ²⁵ Progressive States Network, "The Colorado Hybrid."
- ²⁶ It is quite implausible that a Colorado political reporter would have failed to report something as major as candidate Ritter promising to unionize the state workforce. Such a report would have been not only the top election story of the day, but one of the most important of the entire campaign.
- ²⁷ *Fort Collins Coloradoan*, "Ritter move undermines process," 7 November 2007, <http://www.coloradoan.com/apps/pbcs.dll/article?AID=/20071106/OPINION01/711060310/1014/CUSTOMERSERVICE02>
- ²⁸ Colorado WINS website, "State Employee Partnership Breakthrough," Frequently Asked Questions, [http://www.statepartnership.org/?page_id=3; Executive Order D 028 07. \[http://coloradowins.org/?page_id=23\]\(http://coloradowins.org/?page_id=23\)](http://www.statepartnership.org/?page_id=3; Executive Order D 028 07. http://coloradowins.org/?page_id=23)
- ²⁹ http://coloradowins.org/?page_id=23
- ³⁰ One excerpt repeated in several flyers states: "There's only one way to improve health care benefits and prevent cost increases from cutting into pay raises—and that's to form our own employee organization with Colorado WINS to directly negotiate better health care benefits."
- ³¹ Colorado Revised Statutes § 24-50-104.
- ³² Colorado Department of Personnel and Administration, *Annual Compensation Survey Process for FY08-09*, <http://www.colorado.gov/dpa/dhr/comp/docs/0809surveyprocess.pdf>
- ³³ An example of a use of the 9th ranking can be found in *Colorado Springs Gazette*, "Union made: Ritter throws bone to political backers," 15 November 2007, http://www.gazette.com/opinion/ritter_29741__article.html/union_city.html; U.S. Department of Labor, Bureau of Labor Statistics, Quarterly Census of Employment and Wages (2005), Table 8, "State government by State and selected industries: Establishments, employment, and wages, 2005 annual averages," <http://www>.

bls.gov/cew/ew05table8.pdf; All cost of living calculations based on data from the Missouri Economic Research and Information Center, Missouri Department of Economic Development, <http://ded.mo.gov/researchandplanning/index.stm>

³⁴ Progressive States Network, "Employee Partnerships: Fixing Colorado After A Decade of Conservative Mismanagement," <http://www.progressivestates.org/files/co-factsheet.pdf>; National Conference on State Legislatures, Workplace Economics, 2006 State Employee Benefits Survey, <http://64.82.65.67/health/StateEmpl-healthpremiums.pdf>

³⁵ Colorado Department of Personnel and Administration, *Annual Compensation Survey Report for FY 2008-09*, pg. 5, <http://www.colorado.gov/DPA/DHR/comp/docs/surveyreport0809.pdf>; Colorado state employees are responsible to pay 27.7 percent of the family PPO premium or 10.4 percent of the individual PPO premium, or 26 percent of the less-popular individual HMO premium. Colorado DPA *HealthLine*, June 2007.

³⁶ The Kaiser Family Foundation and Health Research and Education Trust, *Employer Health Benefits 2007 Survey*, Exhibit 6.16: Average Percentage of Premium Paid by Covered Workers for Single and Family Coverage, by Plan Type and Region, 2007, pg. 83, <http://www.kff.org/insurance/7672/upload/EHBS-2007-Full-Report-PDF.pdf> – On average, employees in the Western states are responsible to pay 30 percent of the family PPO premium.

³⁷ BLS, 2005 Quarterly Census, Table 8, <http://www.bls.gov/cew/ew05table8.pdf>; NCSL, Workplace Economics;

³⁸ Progressive States Network, "Employee Partnerships."

³⁹ BLS, 2005 Quarterly Census, Table 8, <http://www.bls.gov/cew/ew05table8.pdf>; Table 10, "Private industry by State and six-digit NAICS industry: Establishments, employment, and wages, 2005 annual averages," <http://www.bls.gov/cew/ew05table10.pdf>

⁴⁰ Calculation made with The Kaiser Family Foundation and Health Research and Education Trust, *Employer Health Benefits 2005 Survey*, Exhibit 6.14: Average Percentage of Premium Paid by Firm for Covered Workers, by Plan Type and Region, 2005, pg. 71, <http://www.kff.org/insurance/7315/upload/7315.pdf>

⁴¹ Colorado Department of Personnel Administration, *State of Colorado Workforce Report 2005-2006*, <http://www.colorado.gov/dpa/dhr/workforce/docs/workforcereportFY06.pdf>

⁴² Colorado Department of Personnel Administration, *State of Colorado Workforce Report 2006-2007*, <http://www.colorado.gov/dpa/dhr/workforce/docs/workforcereportFY07.pdf>

⁴³ Pew Center on the States, Government Performance Project, <http://www.gpponline.org>

⁴⁴ Arizona Department of Administration, "Strategic Plan: Fiscal Years 2008-2012," pg. 4, <http://www.azdoa.gov/publications-1/2008-2012-adoa-strategic-plan.pdf>

⁴⁵ David Milstead, "Owens assails Ritter's order on unions," *Rocky Mountain News*, 7 November 2007, http://www.rockymountainnews.com/drmn/local/article/0,1299,DRMN_15_5_741044,00.html – "Ritter spokesman Evan Dreyer responded that the governor's order did not institute collective bargaining, instead calling it a 'partnership' that did not give workers the rights to strikes or arbitration and does not force employees to pay fees similar to union dues. [emphasis added]"; Andy Vuong, "Learning Wash. unions' lessons," *Denver Post*, "Evan Dreyer, Ritter's spokesman...said, Ritter would not be supportive of a move that requires workers to pay union dues or any other fees to unions."

⁴⁶ Bob Mook, "Labor experts make case against Ritter's union order," *Denver Business Journal*, 11 January 2008, <http://www.bizjournals.com/denver/stories/2008/01/07/daily58.html>

⁴⁷ Marianne Goodland, "Some questioning tactics used by union organizers," *Silver and Gold Record*, 31 January 2008, <https://www.cu.edu/sg/messages/5987.html>; "Ritter-backed union bars media from state offices, accused of intimidating state employees," *Face The State*, 24 March 2008, <http://facethestate.com/articles/ritter-backed-union-bars-media-state-offices-accused-intimidating-state-employees>

⁴⁸ *Face The State*, 24 March 2008.

⁴⁹ Colorado Department of Labor and Employment, <http://www.coworkforce.com/lab/union.asp> – The five groups are as follows: Enforcement and Protective Services (1,624 signatures, 5,411 eligible employees); Physical Sciences and Engineering (574 signatures, 1,911 eligible employees); Labor, Trades and Crafts (1,614 signatures, 5,380 eligible employees); Health Care Services (1,069 signatures, 3,562 eligible employees); and Administrative Support and Related Services (1,428 signatures, 4,759 eligible employees).

⁵⁰ Department of Labor Election Results, 20 March 2008. In an electronic mail message to Independence Institute President Jon Caldara, 6 November 2007, Evan Dreyer, Press Office of Colorado Governor Bill Ritter, recognized this possibility: "But, yes, it is possible for an employee organization to be certified without receiving the affirmative vote of a majority of all affected workers."

⁵¹ Email message, Dreyer to Caldara.

⁵² Executive Order D 028 07.

⁵³ State of Colorado, Office of Attorney General, Formal Opinion of John W. Suthers, Attorney General, No. 07-06, 29 November 2007, http://www.ago.state.co.us/agopinions/AGO_PDFs/AGO07-6.pdf

⁵⁴ *Martin v. Montezuma-Cortez School District RE-1*, 841 P.2d 237, 239-41, 79 Ed. Law Rep. 256 (Colo. 1992).

⁵⁵ "Bill barring strikes by state workers signed," *Rocky Mountain News*, 4 April 2008, <http://www.rockymountainnews.com/news/2008/apr/04/bill-barring-strikes-by-state-workers-signed/>

⁵⁶ Virginia Statutes § 40.1.55.

⁵⁷ Mississippi Code § 37-9-75, § 25-1-105.

⁵⁸ Examples of sheriff's departments that have seen Teamsters organizing activity include Larimer County and Douglas County. See Deborah Frazier, "Deputies turn to Teamsters," *Rocky Mountain News*, 5 December 2006, http://www.rockymountainnews.com/drmn/local/article/0,1299,DRMN_15_5191444,0_0.html; Jess Buskirk, "Sheriff's office talks to union," *Douglas County News*, 15 February 2007; Kiersten J. Mayer, "Sheriff against unionizing," *Douglas County News*, 22 February 2007.

⁵⁹ "Paying for the DNC for years," *Denver Post*, 30 March 2008, http://www.denverpost.com/opinion/ci_8733151

⁶⁰ For more information, see Ben DeGrow, "Ritter can restore trust with taxpayers by making 'partnerships' transparent," *Rocky Mountain News*, 24 November 2007, <http://www.rockymountainnews.com/news/2007/nov/24/ritter-can-restore-trust-taxpayers-making-partners/>

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