

Public Sector Collective Bargaining During Municipal State Takeovers: Towards a  
Theory of Local Government Employees

By

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## **Abstract**

Local government employees in the United States share a multifaceted relationship with their state governments. This complex relationship between public employees at the local level and their state governments are heightened during state takeovers of a municipality. This study explores the outcomes of public sector collective bargaining during a state takeover of a municipality. Using the theoretical framework of the *Public Service Model*, this study employs a longitudinal case study strategy of Atlantic City, New Jersey. The study examines the context of Atlantic City Police Officers and Atlantic City Firefighter's, substantive rights and procedural due process rights during a state takeover. Using ethnographic data (via participative observation), primary data (via interviews) and secondary data (via documentary evidence), collected between the period 2016 to 2019, the study performs process tracing to understand local government employee rights and collective bargaining outcomes during the recent state takeover of Atlantic City, NJ.

Process tracing results indicate that when distressed municipalities in home rule states such as New Jersey are placed in state receivership the local government employee's labor contracts with the city are severely impaired. Further, local government employees also face infringements of substantive rights and procedural due process rights when placed in state receivership. The findings of this study have both practical and theoretical purpose. The study makes practical recommendations for labor unions in other distressed municipalities. On the theoretical front, the study introduces a 'quadruple legal framework' to study local government employee rights.

## **Acknowledgements**

This dissertation is dedicated to my seven-year-old daughter Zara; who has coped gracefully over the past five years, in accommodating my fervent academic aspirations. And, for my parents – my mother Professor Viji Viswanath, an inquisitive sociologist, and, my father B.N. Viswanath, a persevering technocrat. Thank you for presenting choices and creating prospects.

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with Dr. Marc Holzer, the founding Dean of SPAA, kind and determined, he was a champion of International students like myself pursuing research in American Public Administration. Dr. Frank Thompson, Dr. Hindy Schachter, Dr. Gregg Van Ryzin, Dr. Ariane Chebel d'Appollonia, Dr. Lindsey McDougale, Dr. Yahong Zhang, Dr. Rachel Emas, Dr. Jeffry Backstrand, Dr. Arthur Powell, Dr. Marc Weiner and, SPAA's new Dean, Dr. Charles Menifield were some of the most inspiring and thoughtful professors I had the opportunity to interact with, during my doctoral studies.

The idea for this thesis was inspired by a yearlong fellowship I did at the Center for Law in Metropolitan Equity (CLiME) at Rutgers Law School. It was here that Dr. David D. Troutt, professor of law and founding director of CLiME introduced me to the present crisis shaping up in Atlantic City beginning in 2016. He urged me to question the constitutionality of municipal state takeovers and home rule erosion in New Jersey and, encouraged me to visit Atlantic City for the first time in early 2016. I also owe my research to Dr. Ashley E Nickles, whose work on municipal takeovers laid the foundation for my own research questions.

The Rutgers SPAA scholarly network, consisting of my doctoral peers, alumni, academics and the administrative staff, has given me the most valuable human connections, fostered intellectual collaborations, and, deepened my love for the institution and for America. Thank you, Rutgers.

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## **I. Introduction**

Recently, some state and local governments in the United States have sharply reduced or eliminated public employee unionism and bargaining rights in the belief that their fiscal adversity stems mainly from overcompensation of public employees caused by collective bargaining (Lewin, Keefe and Kochan, 2012). Even as labor unions throughout the country face an increasingly hostile political climate and the notion of annulment of collective bargaining rights, they continue to advocate for their members and provide them a voice at the state and local levels (Hodges and Warwick, 2012). The purpose of this study is to draw attention to public sector collective bargaining at the local level and to understand the circumstances of unions and their collective bargaining power during state takeover of municipalities. The research questions that guide this study are: 1) How do state takeovers of municipalities impair the obligation of local government employees' labor contracts with Atlantic City? And 2) what is the impact of takeovers on public sector collective bargaining?

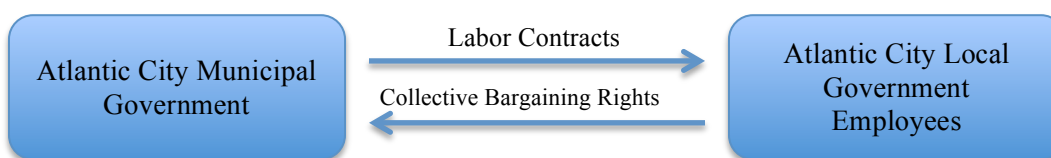
In highlighting the negotiation processes and collective bargaining practices during state takeovers, this study reflects upon the struggles of public sector unions when placed in state receivership. Often in literature, public sector union members are too easily portrayed as insiders, a privileged segment of the workforce more likely to benefit from superior working conditions and from, which many groups are or feel excluded (Le'vesque and Murray, 2010). In reality, however, public sector unions at the state and local levels face decentralization of bargaining structures, the disarticulation of pattern bargaining, and the weakening of links to political parties and policy processes (Le'vesque and Murray, 2010). This study reiterates the arguments in favor of labor

unions, thereby, justifying the need to theorize collective bargaining outcomes of local employee unions when local governments are placed in state receivership.

Drawing from the theoretical framework of the Public Service Model (Rosenbloom, 2014, pp. 129), and a combination of qualitative research methods, this study will examine the circumstances of unionism at the local level of municipal administration during state takeovers of municipalities. A case study of Atlantic City state takeover in New Jersey will be performed. The choice of New Jersey as the setting for the case study is crucial for two reasons: 1) New Jersey is a Home Rule State, implying that current state constitution, adopted in 1947, outlines limits on legislative interference, textually promotes local autonomy, and enumerates the specific rights of local governments additionally, 2) New Jersey is a non-work to right state implying that in New Jersey state laws do not prohibit any form of union security agreements or union representation, and, labor unions are allowed to negotiate contracts with the government.

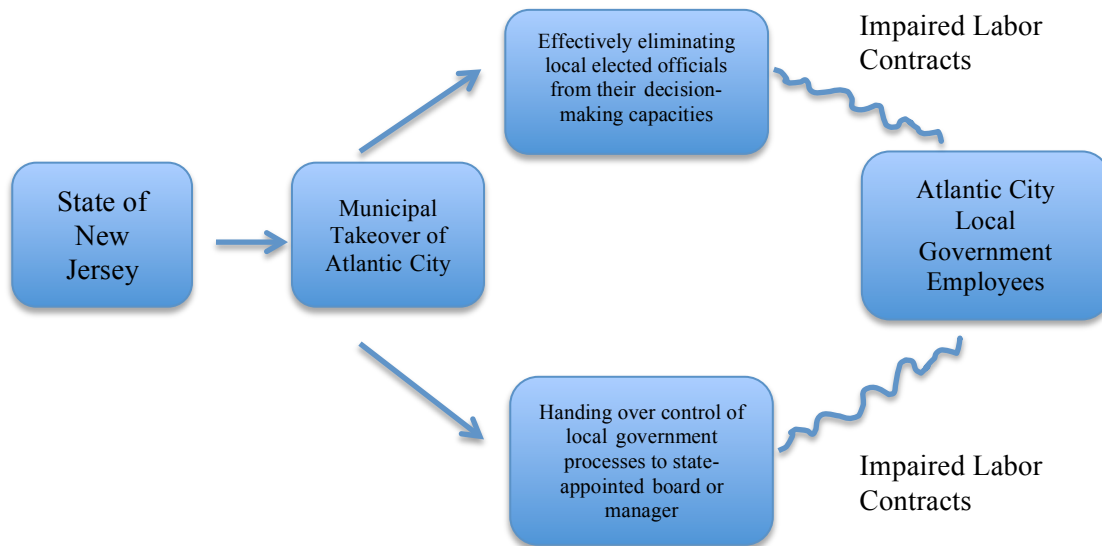
<sup>1</sup> Despite local governments being fairly autonomous and public sector employees having the right to unionize and collectively bargain, a state takeover of a municipality results in disenfranchisement of local government employee rights. Below is the path diagram conceptualizing the circumstances of local government employee rights before and after the state takeover in Atlantic City.

**Figure 1:** Pre-municipal takeover circumstance of local government employees



<sup>1</sup> <https://www.nlr.gov/rights-we-protect/rights/employer-union-rights-and-obligations>

**Figure 2:** Conceptualizing post-municipal takeover circumstances of local government employees



In-depth interviews with labor union management and diagnostic evidence such as municipal takeover legislations, labor union contracts, New Jersey statutes, city council meeting minutes, budgetary documents and local news articles will be process-traced to draw causal inferences between the takeover and collective bargaining outcomes. The aim of this case study is to determine how state takeover affects local public sector unions and to document the on-going struggles of labor contract negotiations.

This study holds practical and theoretical significance. The significance of this research will be two-fold. First, advocacy groups and public sector labor unions in municipalities facing fiscal distress can utilize the findings of this study directly. The case study will provide recommendations regarding how the state of New Jersey renegotiated the Atlantic City labor contracts. Second, this study will inform public administration scholars on the state of public sector unionism and collective bargaining, in addition to

building a theoretical framework to analyze local government employee relationship with the state.

The study is divided into seven chapters. The preliminary chapter provides a literature review of municipal takeovers; local government employees and public sector unions in United States. The second chapter dwells into the legal framework that governs local employee/local government relationship with the state. This chapter introduces the legal concepts of ‘home rule’, ‘Dillon’s rule’, ‘substantive rights’ and ‘procedural due process rights and, the organic genesis of the ‘quadruple legal framework’. The third chapter lays out the theoretical framework of the ‘public service model’ and presents the detailed research questions and possible hypotheses. The fourth chapter talks about the research design of this study including the case study strategy, the process tracing method and, the case selection of Atlantic City. Chapter five describes the data collection. Chapter six depicts in detail data analysis via process tracing, hypothesis testing and results. Finally, chapter seven concludes this study with a discussion, limitations and recommendations.

**Chapter 1**  
**Review of Literature**

## 1.1 Municipal Takeovers

Municipalities in the United States are prone to extreme forms of fiscal stress. American municipalities face two conflicting circumstances as opposed to the suburbs: first, they must provide a array of public services to its residents; second, and more importantly, states govern municipalities through their respective constitutions, thereby restricting a municipality's taxation and appropriation power (Briffault, 1990). Also, wages and salaries of government employees constitute about one-third of state and local governments' general spending, on average, according to Census Bureau data<sup>2</sup>. States spend a considerably smaller share (about 15 percent) than local governments (41 percent)<sup>3</sup> on salaries of their employees. Spending on benefits such as health insurance and retirement of employees are not reported in the Census data but can be estimated using data from the Bureau of Labor Statistics. Adding these costs brings the total costs of compensation for state and local workers to about 44 percent of state and local spending. Some 20 percent of state spending is for employee compensation, compared to about 55 percent of local government spending<sup>4</sup>. According to the Bureau of Labor Statistics, by far the largest share of local government workers are the nearly 7 million teachers, aides, and support staff working in the nation's elementary, middle, and high schools<sup>5</sup>. Other prominent categories of local employment are protective services (including police officers, fire fighters, and correctional officers), higher education, health care (including nurses and other workers at public hospitals and clinics), and

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<sup>2</sup> United States Census Bureau

<sup>3</sup> United States Census Bureau

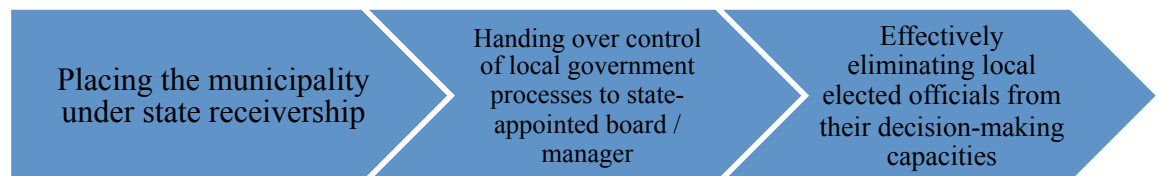
<sup>4</sup> United States Bureau of Labor Statistics

<sup>5</sup> United States Bureau of Labor Statistics

transportation (including road maintenance workers and bus drivers)<sup>6</sup>. Because providing services is the primary business of states as well as school districts, cities, counties, and other local governments, labor costs — i.e., wages and benefits — make up a significant share of their annual spending.

Atlantic City, New Jersey has been in the news most recently (following Flint, Michigan and Camden, New Jersey) for arriving at a state of near bankruptcy and being placed in state receivership. The idea of municipal takeovers in the United States dates back to the late nineteenth century (Nickels, 2016). The very first instance of a controversial state-imposed takeover of a municipality was experienced in Memphis, Tennessee in 1880 (Kossis, 2012). Between 1854 and 1929, there were 941 municipal bond defaults in the United States and by 1935 there were 3,251 American municipalities that had defaulted (Monkkonen, 1995). Municipal defaults in the United States had become a major national issue by the mid – 1930s, thereby, requiring the federal government to pass the Municipal Bankruptcy Act of 1934 in order to provide a legal mechanism for orderly debt adjustments for municipal governments (Lehman, 1950).

**Figure 3:** Processes involved in a municipal takeover (Nickels, 2016)



Takeovers of municipal governments have often raised normative and empirical questions about local democracy, local autonomy, and the legality of strong state interventions (Anderson, 2011).

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<sup>6</sup> United States Bureau of Labor Statistics



Literature about municipal takeovers that can be categorized into two factions: scholars who have drawn primarily on the fields of economics, public budgeting, and public finance, to examine the fiscal and economic dimensions of state responses to local government failure (Cahill & James, 1992; Coe, 2008; Kloha, Weissert, & Kleine, 2005) and political science scholars who have perceived takeovers as democratically destructive due to the suspension of duly elected officials and elimination of citizen participation and community engagement (Mahler, 2011; Anderson, 2011; Kossis, 2012). Beyond the focus on municipal takeover, there is an extensive literature on the fiscal and economic dimension of state responses to local government failure. However, public administration literature has paid little meaningful attention to the “administrative” impact or consequences of state takeover policies in general and specifically from the perspective of local government employees. This study will contribute to public administration literature by looking into how municipal takeovers impact local government employees. More specifically, this study will aim to measure how the state takeover of Atlantic City, New Jersey affected the City’s Police and Fire Departments.

“New Jersey is one of the most highly regulated states in the nation when it comes to the oversight of municipal fiscal operations, and that’s a good thing,” said William G. Dressel Jr. former executive director of the New Jersey State League of Municipalities.<sup>7</sup> Since establishing its first fiscal oversight program in 1931, New Jersey has managed local government financial affairs (under both Republican and Democratic governors) to ensure that cities, towns, counties, authorities, and special districts—such as those

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<sup>7</sup> The Pew Charitable Trusts, interview with William G. Dressel Jr., March 2015

responsible for fire and utilities—can avoid defaults and bankruptcy.<sup>8</sup> The state of New Jersey is also unique for its administration of what is called a ‘dual oversight’: one the state intervenes to oversee municipal finances and two the New Jersey Department of Education intervenes to supervise troubled school districts.<sup>9</sup> This expansive fiscal involvement of the New Jersey state government in its municipalities and the very current circumstances in Atlantic City makes this case study a perfect venue to study state receivership.

## **1.2 Local Government Employees**

This study is primarily one that revolves around local government employees. Therefore, before going any further, it is helpful to establish the legal and administrative parameters that define ‘local government employees’ in the United States. According to the United States Social Security Administration (SSA), whether an individual is an "employee" under the common law rules or federal statutory definition is determined in accordance with the provisions of the Social Security Act and the applicable regulations. Under the Act, the term "employee" includes: a) an officer of a state or political subdivision. (Section 218(b)(3)); b) any officer of a corporation; c) any individual, who, under the common law rules applicable in determining an employer-employee relationship, has the status of an employee, (Section 210(j)(2)); and, d) any individual who performs services for remuneration for any person, (Section 210(j)(2). For purposes of coverage under the SSA’s Section 218 Agreements and the mandatory coverage

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<sup>8</sup> “Atlantic City’s Watchdogs How strong state oversight helps New Jersey municipalities avoid bankruptcy” (2015). A brief from Pew Charitable Trust

<sup>9</sup> The Pew Charitable Trusts, interview with Timothy Cunningham, April 2015.

provisions, the individual performing services must be an employee of the state or local government entity<sup>10</sup>

According to the United States Department of Labor's Hour and Wage Division, state and local government employers consist of those entities that are defined as public agencies by the FLSA (Fair Labor Standards Act). "Public Agency" is defined to mean the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States, a state, or a political subdivision of a state; or any interstate governmental agency. The public agency definition does not extend to private companies that are engaged in work activities normally performed by public employees.

While the SSA and the U.S Department of Labor provide a general overview of local government employees, it is state law provisions, which are used to more specifically determine whether an individual is an officer of a state or political subdivision and, therefore, a public employee. Since, this study is specifically interested in local government employees in New Jersey State, it is useful to review the New Jersey state statutes to explore the parameters they establish for an individual to be classified as a local government employee.

According to the State of New Jersey's Department of Community Affairs' Division of Local Government Services, the Local Government Ethics Law<sup>11</sup> defines "local government officer" as any person whether compensated or not, whether part time

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<sup>10</sup> A Section 218 Agreement is a voluntary agreement between the State and the Social Security Administration (SSA) to provide Social Security and Medicare Hospital Insurance (HI) or Medicare HI-only coverage for State and local government employees. These agreements are called "Section 218" Agreements because they are authorized by [Section 218 of the Social Security Act](#). Section 218 Agreements are irrevocable.

<sup>11</sup> Local Government Ethics Law N.J.S.A. 40A:9-22.1 et seq.

or full-time: (1) elected to any office of a local government agency; (2) serving on a local government agency which has the authority to enact ordinances, approve development applications or grant zoning variances; (3) who is a member of an independent municipal, county or regional authority; or (4) who is a managerial executive employee of a local government agency, as defined in rules and regulations adopted by the Director of the Division of Local Government Services in the Department of Community Affairs pursuant to the Administrative Procedure Act of 1968<sup>12</sup> but shall not mean any employee of a school district or member of a school board.

The most important barrier to accessing local government employee data is the absence of a single uniform database that captures local government employee data in a degree of detail comparable to state government employees. The most comprehensive database on local government employees is the state government pensions database maintained by the Division of Pensions and Benefits. However, this database is not easily accessible by the public. The most useful database we have is the New Jersey Civil Service Commission's, County and Municipal Personnel System (CAMPS), which include data on local government jobs that fall under the purview of the Merit System. Since, 1996, the New Jersey Civil Service Commission has been including information on local government employment. However, because local data doesn't allow us the ability to view the local workforce as of a specific pay period the way state data does, the data (descriptive statistics) for this study reflects the local workforce in New Jersey as of March 1, 2017.

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<sup>12</sup> Administrative Procedures Act P.L.1968, c.410 C.52:14B-1 et seq.

The New Jersey Civil Service Commission administers a merit system of employment for both the State Government and the local jurisdictions that have, by referendum, adopted Title 11A of the Revised Statutes. These jurisdictions comprise 20 of the State's 21 counties and more than 350 other jurisdictions, including both municipalities and special-purpose authorities and districts. Approximately a third of the State's 566 municipalities belong to the system, including most of the larger, older, and more urban ones. In addition, a small number of school districts have adopted the Merit System legislation.

Recent New Jersey Department of Labor and Workforce Development figures for local government employment in New Jersey excluding education (December 2016) indicate total employment of approximately 147,444 persons.<sup>13</sup> Thus, the employees in Merit System jurisdictions who do not work in school districts (the vast majority of the 95,173 identified in our records) represent about 65 percent of the local government employees in New Jersey who are employed outside the education sector.<sup>14</sup> While in State Government employees are not authorized to hold more than one job at a time, in local government it is not unusual for one employee to hold several part-time jobs concurrently. There are 1,900 employees who hold more than one job in local government. According to the New Jersey Department of Labor and Workforce Development –

“It is not unusual for these jobs to be relatively unrelated to one another, and to vary widely in terms of title and even in terms of occupational group. Data on local government employees do not address many of the characteristics and dimensions, which are available for state government

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<sup>13</sup> <https://www.nj.gov/csc/about/publications/workforce/>

<sup>14</sup> <https://www.nj.gov/csc/about/publications/workforce/>

employees, such as age, ethnic identity, gender, and salary. This is chiefly because the data the New Jersey Civil Service Commission compiles for local government is collected and put together from local jurisdictions, which differ from each other in the formats used for these types of information. Because data in CAMPS is supplied by the local jurisdictions, it is not always as current or complete as the State employee data. This is due to the fact that the State does not regulate the salaries of local government employees. Thus, there is less urgency in submitting updates to the records than there is in State Government service. With the implementation of new recording systems, we hope to be able to capture more data with greater accuracy. Approximately 87 percent of local jobs are in the Career Service. Reflecting both population distribution and the geographic spread of the merit system, most of the local government jobs are in North Jersey; about 47 percent of them are located in the five Northeast Jersey counties of Bergen, Essex, Hudson, Passaic, and Union. More than 27 percent of the local jobs are in the professional/technical/managerial occupations, while more than half of them are in clerical or service occupations. Approximately one out of six State Government jobs is in the Unclassified Service, compared with about one out of nine local government merit system jobs. The concentration of State Government jobs in Mercer County contrasts significantly with the wider geographic distribution of local government merit system jobs. Finally, the occupational breakdown of local government merit system jobs is significantly different from that of State Government jobs. While the professional/technical/managerial group is by far the largest in State government, in the local jurisdictions the service occupations, which consist largely of protective services like police, fire fighting, and corrections, are most heavily represented. The service group is the second largest occupational group in State Government, while the second largest in local government is the professional/technical/managerial group. Clerical jobs are proportionally similar at both the State and local levels, coming in third in number in both State and local government. Employees engaged in structural work are much more significant at the local level than at the State level.”<sup>15</sup>

The Great Recession of 2008-09 had unprecedented consequences on local government employees (e.g., Pollin and Thompson 2011; Dickens, M., & Neff, J 2010; Jacobs, Lucia and Lester 2010; Vestal 2009); including modified work schedules and furloughs and, pension and benefit reforms such as raising the retirement age and increasing employee contributions (Levine and Scorsone 2011). The emergence of

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<sup>15</sup><https://www.nj.gov/csc/about/publications/workforce/pdf/2017%20Workforce%20Profile.pdf>

financially strapped municipalities has reignited interest in public sector employee benefits and compensation.

Public sector workers especially local government employees, on an average, receive greater remuneration than observably similar private sector workers (Gittleman and Pierce 2012). On an average, public sector workers in state governments have compensation costs 3-10 percent greater than those for workers in the private sector, while in local government the gap is 10-19 percent (Gittleman and Pierce 2012). The new attack on public sector labor is based on the consensus that public sector union contracts have become too expensive, and that unsustainable and underfunded union won pension plans are undermining the finances of cities and states. The importance of the problem of public personnel in the local government in New Jersey is suggested by the fact that close to 150,000 civilians in the state are employed in various local governments. More importantly, in the local jurisdictions, the service occupations, which consist largely of protective services like police, fire fighting, and corrections, are most heavily represented. And, in times of financial stress, municipal governments aim cutbacks primarily at these protective services.

The case of Atlantic City is no exception to this rule. Due to a combination of legal and procedural circumstances (including the erosion of home rule protection), a careful analysis of the Municipal Stabilization and Recovery Act (Bill 1711), the Municipal Rehabilitation and Economic Recovery Act (Bill A4129), and the Atlantic City Plan for Implementing Economic Recovery Act (ACPIER) reveals local government employees and their rights are not explicitly included in municipal takeover legislation in New Jersey State (this is explained in detail in the section on data analysis). In order to

understand the violation of local government employee rights during a municipal takeover, this study uses local government employee unions as a unit of analysis and their collective bargaining rights as an outcome variable.

### 1.3 Public Sector Unions and Collective Bargaining

The United States congress enacted the National Labor Relations Act (NLRA) in 1935 under its power to regulate interstate commerce under the Commerce Clause in Article I, Section 8 of the U.S. Constitution.<sup>16</sup> It applies to most private non-agricultural employees and employers engaged in some aspect of interstate commerce. Congress enacted the National Labor Relations Act ("NLRA") in 1935 to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy.<sup>17</sup> The provisions of NLRA are significantly supplemented by the workings of the National Labor Relations Board (NLRB), which the NLRA established. Some of the primary facts pertaining to public sector collective bargaining in the United States are as follows:

**Table 1: Characteristics of Collective Bargaining in United States**

<ul style="list-style-type: none"> <li>• The NLRA establishes procedures for the selection of a labor organization to represent a unit of employees in collective bargaining.</li> </ul>
<ul style="list-style-type: none"> <li>• The NLRA prohibits employers from interfering with this selection.</li> </ul>
<ul style="list-style-type: none"> <li>• The NLRA requires the employer to bargain with the appointed representative of its employees. It does not require either side to agree to a proposal or make concessions but does establish procedural guidelines on good faith bargaining. Proposals, which would violate the NLRA or other laws, may not be subject to</li> </ul>

<sup>16</sup> <https://www.nlr.gov/how-we-work/national-labor-relations-act>

<sup>17</sup> National Labor Relations Act; 29 U.S.C. §§ 151-169



collective bargaining.
<ul style="list-style-type: none"> <li>• The NLRA also establishes regulations on what tactics (e.g. strikes, lock-outs, picketing) each side may employ to further their bargaining objectives.</li> </ul>
<ul style="list-style-type: none"> <li>• State laws further regulate collective bargaining and make collective agreements enforceable under state law. They may also provide guidelines for those employers and employees not covered by the NLRA, such as agricultural laborers.</li> </ul>

**Source:** <https://www.nlr.gov>

Disputes between labor and management are often over the terms of a contract and are usually very costly, especially in the public sector where the service provided may be essential and where the government is often the sole supplier of service (Currie and McConnell, 1991). Since, the public sector accounts for more than one-fifth of total employment in North America, there is considerable interest in the design of collective bargaining policy<sup>18</sup>. Some states give public-sector employees the right to bargain collectively. In other states, strikes by public-sector workers are illegal, and penalties are imposed on striking workers or on their unions. In an attempt to reduce strikes, some states have introduced compulsory – arbitration statutes in which strikes are illegal, a neutral third party decides the terms and conditions of the new contract, and the bargaining parties are legally bound by the third party’s decision.<sup>19</sup>

In the light of the recent Supreme Court ruling in *Janus v. American Federation of State, County and Municipal Employees Council*<sup>20</sup>, we find ourselves in the midst of widespread public policy debate about state and local government employee unionism and collective bargaining. This section looks at the scholarship surrounding public sector

<sup>18</sup> United States Bureau of Labor Statistics

<sup>19</sup> <https://www.nlr.gov/how-we-work/national-labor-relations-act>

<sup>20</sup> *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466, 585 U.S. (2018)

collective bargaining in the United States. While both sides of the argument regarding public sector unions are presented, this study is a strong advocate for the necessity and prevalence of public sector unions.

The opposition to public sector unionism and collective bargaining can be classified into three theoretical camps. The first camp argues that demand for public sector workers is inelastic because public employees cannot shut down or move operations; therefore, public sector unions exploit this source of power, and public employee wages (or total compensation) are inevitably pushed up beyond that available to private employees (Marshall 1920). The second camp bases its arguments on a political theory that collective bargaining is incompatible with democratic government, because it gives public employee unions special access to influence decisions of elected leaders, some of whom these unions help put in office through electoral support, resulting in excessively higher wages for public employees that would harm then public interest (Downs 1957; Wellington and Winter 1971). The third camp's argument reflects specific concerns about how collective bargaining works in the private sector, with the threat of a strike regarded as the primary force for motivating negotiated agreements in that sector, and, strikes by public sector employees, however, will not only inappropriately challenge democratic government but also they could disrupt the flow of essential services and thereby threaten public health and safety (Taylor, 1967). Given that there is little if any empirical evidence to assess these arguments against public sector collective bargaining, much of the debate surrounding collective bargaining occurs on ideological and partisan grounds (Lewin, Keefe and Kochan, 2012).

Public sector labor unions on the other hand, by carefully using resources to lobby and advocate at both local and state levels, can not only significantly influence macro decisions, but they can also influence local leaders who make decisions about wages and conditions of employment. The following section of the study provides empirical evidence and instances of positive impact of public sector collective bargaining in the United States. Wellington and Winter, Jr (1969) sum up the most vital functions of public sector unions -

“First, unions by periodically practicing collective bargaining, obtain clarity on the actual state of the industry, the circumstances, which confront both labor and management, and the motives, which influence it. Second, public sector collective bargaining can be perceived as a way of achieving public sector democracy through labor participation in their own governance and in many ways the counterpart of citizen participation. Third, public sector labor unions provide political representation through interest groups and this can be considered the most important type of representation provided to public sector employees. And, fourth, to ensure that terms and conditions of government employment for an individual employee or a group of employees at a given period of time is not unfair, unions substitute ‘individual’ level bargaining for collective bargaining.” (Pp.1111)

Along the same lines, public-sector labor unions work to elect and influence executive officials friendly towards the union’s interests. The North Carolina Fraternal Order of Police (FOP) recently did this with Governor Bev Perdue in 2010. The FOP worked with the Governor to develop an executive order that simultaneously grants public-sector unions more access to the workplace for recruiting and member education while limiting the power of the legislature to deny such access.<sup>21</sup> An additional way in which public sector unions advocate on behalf of their members is by providing critical expertise to state and local legislative and administrative bodies on various issues. For

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<sup>21</sup> <http://www.ncfop.org/ht/a/GetDocumentAction/i/1613>

instance, the Virginia Education Association (VEA) funds continuous studies regarding student test scores, student behavior, and curriculum effectiveness so it can have that information ready and available for its own lobbying purposes and so it can provide this information to state and local leaders free of charge.<sup>22</sup>

Another traditional way in which public sector labor unions advocate for workers is through legal and administrative representation. This can take many forms – from educating government employees on their federal and state legal rights, to providing access to attorneys when members are facing lawsuits, to representing or advising employees in administrative hearings. This is both the most valuable benefit for members and one of the most powerful organizing tools for the unions. Union members could receive liability insurance when accused of wrongdoing in their employment or a free attorney, both of which are virtually unaffordable for the average public-school teacher, police officer or fire fighter. Public sector unions also provide advice and counsel for members attempting to exercise their rights at the administrative level. While unions cannot file the grievance with the employer, they nevertheless work to ensure that the grievance is well drafted and the member is well represented (Hodges and Warwick, 2012).

An alternative method for advocating through litigation is for unions to bring their own legal actions. The United Electrical, Radio, and Machine Workers of America (UE), with the aid of the North Carolina AFL-CIO, filed a claim against the State of North

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<sup>22</sup> <http://www.veanea.org/home/legal-services.htm>

Carolina alleging that it had violated international law by prohibiting collective bargaining, a right deemed fundamental by the International Labor Organization (ILO).<sup>23</sup>

Unions do more than just advocate for their members in the political, legislative, and administrative arenas; they also provide tools and resources that help their members become better employees (Hodges and Warwick, 2012). The VEA, North Carolina Association of Educators, and American Federation of Teachers-affiliated local unions provide periodic seminars and workshops on various skills that are designed not only for new teachers, but also experienced and veteran teachers looking to sharpen or refresh their skills.<sup>24</sup> The NCPSO provides highly discounted or free classes to members who want to hone their self-defense and conflict resolution skills. The Virginia State Firefighters Association (VSFA) provides product reviews and recommendations, as well as workplace safety advice, to make sure its members are not only the best employees in the market, but that they are also protecting themselves and those they serve.<sup>25</sup> The North Carolina State Firemen's Association provides an advanced firefighter certificate based on education and training.<sup>26</sup> All of these services do more than just encourage membership in the union; they also provide critical services to the state at no cost, saving taxpayer money.

As Hodges and Warwick, (2012) note –

“Public-sector unions throughout the state also use their numbers and influence to provide group discounts and benefits that their members can use both professionally and personally. In addition to the benefits public-sector unions offer to members in the political, legal, and

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<sup>23</sup> Union Files Complaint with ILO Alleging State Violates International Labor Law, Daily Lab. Rep. (BNA) No. 238, at A-3 (Dec. 13, 2005).

<sup>24</sup> <http://www.veanea.org/home/training-and-workshops.htm>

<sup>25</sup> <http://www.vfsa.org/aboutthe-vfsa>

<sup>26</sup> <http://www.ncsfa.com/index.php/about-ncsfa/advanced-certificate>

professional realms, the unions remain very active in their communities; however, because of the anti-union legal and political climate, unions have to work hard to counter their generally negative public perception” (pp. 283).

The tables below provide an overview of the present state of unions in the United States. The data on union membership (presented below) are collected as part of the Current Population Survey (CPS), a monthly sample survey of about 60,000 eligible households that obtains information on employment and unemployment among the nation's civilian non-institutional population age 16 and over. According to the Bureau of Labor Statistics (BLS), union membership rate in the United States (the percent of wage and salary workers who were members of unions) was 10.5 percent in 2018, down by 0.2 percentage point from 2017.<sup>27</sup>

**Table 2:** Trends in Public Sector Unions (2018)

<ul style="list-style-type: none"> <li>• The union membership rate of public-sector workers (33.9 percent) continued to be more than five times higher than that of private-sector workers (6.4 percent).</li> </ul>
<ul style="list-style-type: none"> <li>• The highest unionization rates were among workers in protective service occupations (33.9 percent) and in education, training, and library occupations (33.8 percent).</li> </ul>
<ul style="list-style-type: none"> <li>• Men continued to have a higher union membership rate (11.1 percent) than women (9.9 percent).</li> </ul>
<ul style="list-style-type: none"> <li>• Black workers remained more likely to be union members than White, Asian, or Hispanic workers.</li> </ul>
<ul style="list-style-type: none"> <li>• 7.2 million employees in the public sector belonged to a union, compared with 7.6 million workers in the private sector.</li> </ul>
<ul style="list-style-type: none"> <li>• Union membership rates for both public-sector and private-sector workers edged down in 2018.</li> </ul>
<ul style="list-style-type: none"> <li>• The unionization rate in the private sector (6.4 percent) remained substantially below that for public-sector workers (33.9 percent).</li> </ul>
<ul style="list-style-type: none"> <li>• Within the public sector, the union membership rate was highest in local government (40.3 percent), which employs many workers in heavily unionized occupations, such as police officers, firefighters, and teachers.</li> </ul>
<ul style="list-style-type: none"> <li>• Among occupational groups, the highest unionization rates were in protective service occupations (33.9 percent) and in education, training, and library occupations (33.8 percent).</li> </ul>

<sup>27</sup> <https://www.bls.gov/news.release/union2.htm>

Source: <https://www.bls.gov/news.release/union2.htm>

Despite the strong positive benefits of union membership, public sector unionism and collective bargaining are once again under attack due to the fiscal crisis local governments are facing since the advent of the great recession and the election of Republican governors who have introduced legislative reform to reduce unionism (Lewin, Keefe and Kochan, 2012).

**Table 3:** Selected Characteristics of Union Members

<ul style="list-style-type: none"> <li>• <b>Gender:</b> Union membership rate continued to be higher for men (11.1 percent) than for women (9.9percent).</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Ethnicity:</b> Black workers continued to have a higher union membership rate in 2018 (12.5 percent) than workers who were White (10.4 percent), Asian (8.4 percent), or Hispanic (9.1 percent).</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Age:</b> Union membership rates continued to be highest among workers ages 45 to 64. In 2018, 12.8 percent of workers ages 45 to 54 and 13.3 percent of those ages 55 to 64 were union members.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Earnings:</b> Among full-time wage and salary workers, union members had median usual weekly earnings of \$1,051, while those who were not union members had median weekly earnings of \$860. In addition to coverage by a collective bargaining agreement, this earnings difference reflects a variety of influences, including variations in the distributions of union members and nonunion employees by occupation, industry, age, firm size, or geographic region. The union membership rate for full-time workers (11.6 percent) was about twice the rate for part-time workers (5.4 percent).</li> </ul>

Source: <https://www.bls.gov/news.release/union2.htm>

This study throws light on the nuances of collective bargaining when a municipality like Atlantic City that was on the verge of municipal bankruptcy is placed in state receivership. The next section of the study looks at the legal frameworks in the states that determine the extent and scope of local government autonomy in times of fiscal stress.

## **Chapter 2: Legal Framework**



## 2.1 Introducing the Legal Framework

While discussing state takeovers of municipalities, the legal framework at the local, state and federal levels are important to understand. In this section of the study, we look at two important legal theories known as the Dillon's Rule and Home Rule, which govern local government and state government relationships. New Jersey is a Home Rule state, which has experienced a steady erosion of Home Rule.

In simplified language, the Home Rule “provides local governments the authority to make legislative decisions that have not been addressed by the state; while, the Dillon's Rule creates a framework within which local governments can only legislate what the state government has decreed.”<sup>28</sup> Home rule on the other hand may be thought to refer to the actual grants of authority to local governments, generally found in local charters and state statutes, both initiated by the state legislature and the state constitution, thereby, allowing the courts limited control over local government autonomy (Richardson, Jr. 2011). The subsequent sections of this chapter discuss the erosion of this Home Rule in New Jersey and its consequences during a municipal takeover.

Table 4 provides an overview of the existing legal framework across the fifty states. It can be inferred from the table that 31 states have the Dillon's Rule in exclusivity or a combination of Dillon's Rule and Home Rule co-existing. 7 states apply the Dillon's Rule to specifically certain local jurisdictions only. While 32 states have the Home Rule provision within their state constitutions, only, 8 states have Home Rule provisions

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<sup>28</sup> American City County Exchange <https://www.alec.org/app/uploads/2016/01/2016-ACCE-White-Paper-Dillon-House-Rule-Final.pdf>

through legislative statute. New Jersey is one such state, which has Home Rule provision through a legislative statute.

**Table 4:** Overview of State-wise Legal Provisions for Local Governments

<b>Name of the State</b>	<b>Dillon's Rule or a combination of Dillon's Rule and Home Rule</b>	<b>Dillon's Rule to certain local jurisdictions only</b>	<b>Home Rule provisions in their State Constitution</b>	<b>Home Rule provision through legislative statute</b>
Alabama - AL		Counties only		
Alaska - AK			First class cities and boroughs*	
Arizona - AZ			Cities of 3,500+**	
Arkansas - AR	X			Any municipality
California - CA		Except charter cities	Cities and SF city-county**	
Colorado - CO		Many cities and towns	Any municipality**	
Connecticut - CT	X		Any city, town or borough*	
Delaware - DE	X			Any municipality
Florida - FL				Any municipality
Georgia - GA	X			Any municipality
Hawaii - HI	X		All city sub-divisions**	
Idaho - ID	X			
Illinois - IL		Municipalities only	Cities of 25,000+**	
Indiana - IN		Townships only		
Iowa - IA			Any municipality*	
Kansas - KS		Not for cities and counties	Any municipality**	
Kentucky - KY	X			Cities only
Louisiana - LA		For pre-1974 charter municipalities	Any municipality**	
Maine - ME	X		Any municipality**	
Maryland - MD	X			
Massachusetts - MA				
Michigan - MI	X		Any city and village*	

Minnesota - MN	X	Any city and village*
Mississippi - MS	X	
Missouri - MO	X	Cities of 5,000+**
Montana - MT		Municipalities**
Nebraska - NE	X	Cities of 5,000+**
Nevada - NV	X	Any city or town*
New Hampshire - NH	X	Cities and towns
New Jersey - NJ		Optional charter system for municipalities
New Mexico - NM		Municipalities**
New York - NY	X	
North Carolina - NC	X	Any municipality
North Dakota - ND	X	All cities**
Ohio - OH		Any municipality**
Oklahoma - OK	X	Cities of 2,000+**
Oregon - OR		Every city and town**
Pennsylvania - PA	X	Optional for all local governments*
Rhode Island - RI	X	
South Carolina - SC		Municipalities*
South Dakota - SD	X	Any municipality**
Tennessee - TN		Only non-home rule municipalities Any municipality**
Texas - TX	X	Cities of 5,000+*
Utah - UT		Any incorporated city or town**
Vermont - VT	X	
Virginia - VA	X	
Washington - WA	X	Cities of 10,000 +**
West Virginia - WV	X	Cities of 2,000+*
Wisconsin - WI	X	Cities and villages*
Wyoming - WY	X	Municipalities**
*Implies that the state requires enabling legislations		
** Implies that it is self-executing		

**Source:** American City County Exchange

## **2.2 Dillon's Rule**

Dillon's Rule, a precedent set by John Forrest Dillon, a Supreme Court Justice. Justice Dillon stated "municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control."<sup>29</sup> Hence, Dillon's Rule is used by courts to interpret grants of local government autonomy, wherein the court becomes involved (in local government autonomy) only when a case is brought before them (Richardson, Jr. 2011). Michigan Supreme Court Justice John Cooley argues that –

“When the narrative says ‘This state is a Dillon’s Rule state,’ then, it means that the state does not allow county governments to take actions, which are not specifically laid out in the state code; and, when the narrative says, ‘This state is not a Dillon’s Rule state,’ it means that counties are allowed to take any action, which does not conflict with state law.”<sup>30</sup>

The state of New Jersey is not a Dillon's Rule state. What does that mean? According to the National County Association: New Jersey counties derive their authority from the New Jersey State Constitution and Titles 40 and 40A of New Jersey State Statute. The constitution demands that all laws made for counties be construed liberally in favor of local governing bodies. The New Jersey state legislature may, upon petition of the local governing board, make any law regulating internal county affairs specifically. The county board of freeholders has complete authority over all legislative and executive affairs, though it may appoint a county administrator to oversee departments and to administer to the county's day-to-day affairs. New Jersey statute

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<sup>29</sup> Clinton v. Cedar Rapids and the Missouri River Railroad 24 Iowa 455, 475 (1868)

<sup>30</sup> People v. Hurlbut 24 Mich. 44, 108 (1871)

requires liberal readings of the law to grant counties as much power as may be construed from the constitution and state statute, particularly over the government's authority to reorganize itself and to establish and abolish agencies. The county may also apportion duties among said agencies, as it perceives to be most efficient. The county also has the authority to call expert witnesses to inquire into matters about which the county has a legitimate legislative interest.

### **2.3 Home Rule and State Legislations**

Home rule, as Vanlandingham (1968) notes, is the “legal advice used by local governments to assert autonomy from the state; given their subordinate status and lack of federal ‘constitutional legitimacy’, American municipalities obtain their existence and authority from their state constitution and/or state legislature. And in the absence of state constitutional provisions, local governments are subject wholly to the state legislative control” (Pp: 269). The subordinate role of municipal governments was affirmed in *Hunter v. Pittsburg* 1907<sup>31</sup>, wherein Justice William Moody noted:

“Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as maybe entrusted on them.... The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute decision of the state.... The state, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation, All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest..... In all these respects, the state is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.”<sup>32</sup>

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<sup>31</sup> *Hunter v. Pittsburgh*, 207 US 161 (1907)

<sup>32</sup> *Hunter v. Pittsburgh*, 207 US 161 (1907)

Hence, it can be inferred that local government law (and autonomy) is situated within the state legal framework. While local governments may be creatures of the state, and not protected by the Constitution, most state constitutions do provide local government protections from legislative action. Therefore, state constitutions vary widely in terms of how power is allocated to sub-governments, and what restrictions are placed on state intervention in local affairs. According to AE Nickles (2016) –

“Home rule doctrine comes in various forms, but can be best understood as legislative or constitutional. There are number of limitations that state constitution place on legislatures, such as prohibition against drafting ‘special acts. This is an example of legislative home rule; protection of municipalities from various types of legislative interference. The state of New Jersey falls into this category. While most states have adopted some form of home rule protection, cities in America are free of state control under home rule only on matters purely local in nature, when it comes to economic matters, states have fiscal oversight responsibility over local and municipal governments. Therefore, municipal takeovers are a mechanism of state fiscal policy, allowing the state to supersede home rule protections, even in constitutional home rule states.”<sup>33</sup>

## **2.4 New Jersey: Constitutional and Statutory Home Rule Provisions**

New Jersey is a legislative home rule state. New Jersey’s current state constitution, adopted in 1947, outlines limits on legislative interference, textually promotes local autonomy, and enumerates the specific rights of local governments (Nickels, 2016). Two key state constitutional provisions provide the foundation for New Jersey’s legislative home rule protections: Article IV, Section VII, paragraph 9:

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<http://eprints.lse.ac.uk/75985/1/blogs.lse.ac.ukHow%20state%20takeovers%20undermine%20the%20principle%20of%20municipal%20home%20rule.pdf>

“The Legislature shall not pass any private, special or local laws: [such as]... (12) Appointing local officers or commissions to regulate municipal affairs; (13) Regulating the internal affairs of municipalities formed for local government and counties, except as otherwise in this Constitution provided. The Legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases, which, in its judgment, may be provided for, by general laws.”<sup>34</sup>

This provision was adopted by amendment originally in 1875 to establish the specific areas that the “legislature may not legislate by private, special, or local law;” reorganized in 1947, the provision remains in the current NJ state constitution (Williams, 1997). And, Article IV, Section VII, paragraph 11:

“The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted express terms but also those necessary of fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by the Constitution by law.”

Legal statutes support and supplement these constitutional clauses are. The Home Rule Act of 1917 explicitly grants broad authority, including police power, to local governments. The text of the act reads,

“Any municipality may make, amend, repeal and enforce ordinances... it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law.”<sup>35</sup>

In 1950 the state passed the Optional Municipal Charter Law, otherwise known as the Faulkner Act, which outlined the powers of municipalities and local government units and gave local governments and their electorate the option to choose their own form of

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<sup>34</sup> <https://www.njleg.state.nj.us/lawsconstitution/constitution.asp>

<sup>35</sup> Wagner v. Newark, 24 N.J. 467, (1957)

government.<sup>36</sup> The Act states, “All grants of municipal power to municipalities governed by an optional plan under this act, whether in the form of specific enumeration or general terms, shall be liberally construed, as required by the Constitution of this State, in favor of the municipality”.<sup>37</sup>

## **2.5 New Jersey: Restrictions and Erosion of Home Rule Powers**

Legislative restrictions on municipal power pre-dated the New Jersey Constitution. The Municipal Finance Commission was adopted in 1933 and the Local Government Supervision Act was adopted in 1947, the same year as the adoption of the State Constitution. Under this statute, the state is authorized to “make provisions for the imposition of special restraints upon municipalities in, or in danger of falling into, unsound financial condition and in this way to forestall serious defaults upon local obligations and demoralize finances that burden local taxpayers and destroy the efficiency of local services”<sup>38</sup>

The NJSLM suggests that further erosion of home rule started in the 1950s and continues; their list of contributing factors includes the New Jersey Municipal Budget Act of 1997<sup>39</sup>, New Jersey Local Bond Law of 1962<sup>40</sup> and the New Jersey Fiscal Affairs Law<sup>41</sup>, requiring all municipalities to report all aspects of their budget and bonding procedures; and the New Jersey Local Expenditure Law, which limits increases in local

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<sup>36</sup> NJ. Const. art. IV, § 7, 11; N.J. STAT. ANN. §§ 40:69A-29-30.

<sup>37</sup> Optional Municipal Charter Law 9 N.J.S.A. 40:69A-1 et seq.

<sup>38</sup> Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.)

<sup>39</sup> New Jersey Local Budget Law N.J.S.A. 40A:4-1 et seq.

<sup>40</sup> Local Bond Law & Municipal Qualified Bond Act N.J.S.A. 40A:2-1 et seq. & N.J.S.A. 40A:3-1 et seq

<sup>41</sup> Local Fiscal Affairs Law NJSA 40A:5-1 et seq



government budgets to 2.5% or the cost of living adjustment, with few exceptions, in an effort to control growth. While the NJSLM highlights other statutory factors, these two laws are particularly important in understanding how fiscal matters trump local autonomy in public policy.

Judicial opinion also varies in regards to the strength of home rule protection in New Jersey. In *Wagner v. Newark*<sup>42</sup> New Jersey Chief Justice Arthur Vanderbilt, questioned whether Newark had the authority, under home rule, to institute its own rent controls. The Court ruled against Newark, overturned the appeals court ruling and “declared [the Newark rent control ordinance] to be void and of no effect” In the opinion, Vanderbilt states:

“It is fundamental in our law that there is no inherent right of local self-government beyond the control of the State, and that municipalities are but creations of the State, limited in their powers and capable of exercising only those powers of government granted to them by the legislature. ...Provisions for home rule have not given omnipotence to local governments. Matters that because of their nature are inherently reserved for the State alone and among which have been the master and servant and landlord and tenant relationships, matters of descent, the administration of estates, creditors' rights, domestic relations, and many other matters of general and statewide significance, are not proper subjects for local treatment under the authority of the general statutes. The broad grant of power under R.S. 40:48-2 [Home Rule Act] N.J.S.A. 40:69A-29 and 30, supra [Faulkner] relates to matters of local concern which may be determined to be necessary and proper for the good and welfare of local inhabitants, and not to those matters involving state policy or in the realm of affairs of general public interest and applicability.”<sup>43</sup>

The case, *Inganamort v. Borough of Fort Lee*<sup>44</sup> revisited the issue of whether the State Constitution limits municipalities from setting rent control ordinances. In this case

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<sup>42</sup> *Wagner v. Newark*, 24 N.J. 467, (1957)

<sup>43</sup> *Wagner v. Newark*, 24 N.J. 467, (1957)

<sup>44</sup> *Inganamort v. Borough of Fort Lee* 62 N.J. 521 (1973)

the New Jersey Supreme Court affirmed the rent control ordinance in favor of local government autonomy, noting that the local government had the authority under both Home Rule and Faulkner Act. However, in the case's judicial opinion New Jersey Chief Justice Weintraub does highlight the importance of legislative discretion in determining home rule applicability:

“Home rule is basic in our government. It embodies the principle that the police power of the State may be invested in local government to enable local government to discharge its role as an arm or agency of the State and to meet other needs in the community... whether the State alone should act or should leave the initiative and the solution to local government, rests in legislative discretion.”<sup>45</sup>

These court cases support the NJSLM's contention that both statutory and judicial opinions, which support increased legislative discretion, have eroded or further refined the strength of home rule protection in New Jersey. The eroding of home rule protection has implications for municipal takeover, a form of state fiscal policy.

In New Jersey, the legal apparatus for municipal takeover is The Municipal Rehabilitation and Economic Recovery Act (MRERA). Adopted in 2002, the New Jersey Legislature designed MRERA to address the structural deficit, as well as culture of governance, in Camden, NJ. And the Atlantic City Plan for Implementing Economic Recovery Act (ACPIER) proposed in 2016 addressed the structural deficit of Atlantic City, NJ.

The roots of these municipal takeover statutes in New Jersey, however, began earlier. As highlighted above, the legal apparatus for state intervention in local financial affairs was enacted in 1933 and later amended in 1947, with the creation of the

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<sup>45</sup> *Inganamort v. Borough of Fort Lee* 62 N.J. 521 (1973)

“Municipal Finance Commission”. The Commission was created to address the increasing fiscal distress facing cities throughout the state by providing a mechanism for local governments to petition for state intervention. The strength of state intervention grew with the adoption of the Local Government Supervision Act of 1947.<sup>46</sup> This law established the State Department of Community Affairs, has the authority to oversee municipal finances, audit, intervene in local affairs and place distressed locales under the oversight of the Municipal Finance Commission and/or a Local Finance Board.

While deconstructing the legal relationship between the states and local governments, this study is very specifically interested in how the ‘rights’ and ‘privileges’ of local government employees are affected during a state takeover of the municipality. And, in searching for answers to the issue of local government employee rights, the need arises to look into the substantive due process rights and the procedural due process rights of government employees in the United States. The next section of this study pushes the scope of the legal framework to include Supreme Court rulings and interpretations, in order to better understand the theoretical model used and the research questions raised in the forthcoming chapters.

## **2.6 Substantive Due Process Rights and Procedural Due Processes Rights**

This section deconstructs two important legal philosophies; these two legal philosophies include the substantive due process rights of government employees and the procedural due process rights of government employees. Using the outcomes of a number

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<sup>46</sup> Local Government Supervision Act, P.L.1947, c.151 C.52:27 BB-54 et seq.

of Supreme Court rulings, this study reengages in legal literature to provide perspective on local government employee bargaining rights during state takeovers of municipalities.

The difference between substantive and procedural due process as, Aram and Salipante.Jr (1981) describe –

“Is a long-standing distinction of jurisprudence. Substantive due process treats of the rationale or purpose of laws, ensuring that a person's life, liberty, or property is not arbitrarily taken away. Procedural due process concerns the fairness of procedures in applying the law, rather than the fairness of the substance of the law itself. Procedural standards are not fixed, but are often relatively well defined and are pertinent to any institutional judgment” (Pp. 198).

This perspective allows for a public sector organization to follow and define the purpose, objectives, and values to be served by the organizational due process system while ensuring organizational standards of internal justice. Yet, and important to this study is the fact that the absence of fixed definitions and procedures for due process puts a premium on distinct formulations of intent and procedures by organizational policy makers (Aram and Salipante.Jr, 1981). Alexander (1998) classifies substantive rights by the interests those rights secure, such as bodily integrity, possession and use of resources and artifacts, autonomy, and reputation, or as the remedies available to prevent employee violation or to respond to employee violation (Pp. 20). Procedural rights on the other hand refer to constitutional and non-constitutional (statutory or common law) legal rights (regarding assistance of counsel, evidentiary rules and privileges, burdens of proof and production, juries) that govern official adjudications (Alexander, 1998).

Of primary importance to this study is the due process clause of the fourteenth amendment, through which the Bill of Rights has been incorporated and made applicable

to state and local governments across the United States.<sup>47</sup> The Supreme Court achieved this incorporation by finding that individual rights such as freedom of expression and religion are substantive values included within the term “liberty”.<sup>48</sup> The U.S. Supreme Court first used substantive due process to invalidate state economic measures it found to be unduly restrictive of individual liberty, the court identified three types of protection encompassed by the fourteenth amendment’s due process clause. i.e., incorporation of the specific guarantees in the Bill of Rights; the guarantee of procedural fairness; and substantive due process which is the bar against arbitrary government action.<sup>49</sup>

The touchstone of due process is protection of the individual against arbitrary action of government.<sup>50</sup> The substantive rights clause is embedded in the due process clause and thereby making their distinction from one another blurry (Levinson, 1990). While the due process clause appears to assure exclusive procedural protection, the United States Supreme Court has always recognized that the due process clause encompasses a substantive component in it.<sup>51</sup> Farina (1998) points out that –

“Substantive due process claims (constitutional limits on what government can take from a citizen) weave round claims for procedural due process (constitutional limits on how government can take from a citizen). Interests that can insist upon the status of constitutional limitations on government action wholly apart from the Due Process Clause 85 - e.g., First Amendment rights of religion, expression, and association; Fourth Amendment rights of privacy; Fifth Amendment rights against self-incrimination - become caught up in the tangled doctrine of “unconstitutional conditions.” Strained statutory interpretation temporarily veils constitutional unease and determinedly (if disingenuously) creates some growing space for still-embryonic ways of reshaping constitutional understandings.”

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<sup>47</sup> *Zinerman v. Burch*, 110 S. Ct. 975, 983 (1990)

<sup>48</sup> *Gitlow v. New York*, 268 U.S. 652 (1925)

<sup>49</sup> *Daniels v. Williams*, 474 U.S. 327, 337 (1986)

<sup>50</sup> *Dent v. West Virginia*, 129 U.S. 114, 123 (1889).

<sup>51</sup> *Lochner v. New York*, 198 U.S. 45 (1905)

(Pp. 603)

Rubin (2003) goes a step further to claim that –

“Substantive due process plays a critical role both in enforcing the post-Civil War balance between federal and state power-in which the federal government provides the ultimate protection against state infringements of individual rights and equality<sup>52</sup> and as a safety net protecting individuals against oppressive acts by the majority”.<sup>53</sup> (Pp.835)

While the government on one hand, wishes to ensure efficient, non-disrupted service to the public, and it needs the power to dismiss an employee who is lazy, inefficient, insubordinate, or incompetent; the individual employee, on the other hand, has both a liberty interest<sup>54</sup> and a property interest<sup>55</sup> in keeping his or her employment, and an interest in exercising other rights protected by the Constitution.<sup>56</sup> In support of its decision to dismiss an employee’s claims (within the context of substantive rights and procedural due process rights), the state can assert a variety of interests, which it hopes to promote, and a substantial number of adverse effects on the public service, which it hopes to avert. Beyond the state's obvious interest in avoiding demonstrable interference by the employee with satisfactory performance of the government's functions, there are three categories of state interests, which have been forwarded in justification of employee dismissals: the first concerns the need to maintain the morale of fellow employees; the second, the need for low-risk employees of good character; and the third, the public image of the agency.<sup>57</sup>

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<sup>52</sup> *Mitchum v. Foster*, 407 U.S. 225, 238-39 (1972).

<sup>53</sup> *The Federalist* No. 10, at 78 (James Madison) (Clinton Rossiter ed., 1961).

<sup>54</sup> *Board of Regents v. Roth*, 408 U.S. 564 (1972)

<sup>55</sup> *Bell v. Burson*, 402 U.S. 535, 539 (1971)

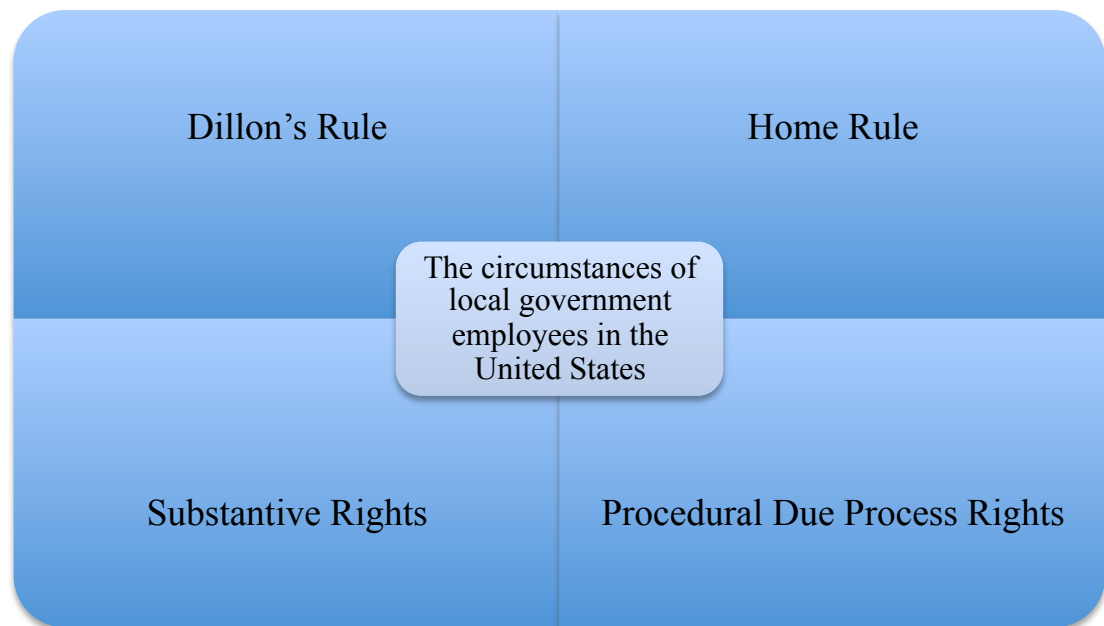
<sup>56</sup> *Pickering v. Board of Education*, 391 U.S. 563 (1968)

<sup>57</sup> Comment, S. D. P. (1974). *The Extent of Public Employees' Protection from Arbitrary Dismissal*, 122U. Pa. L. Rev, 1647(10.2307), 3311508.

## 2.7. Introducing the Quadruple Legal Framework

This study introduces the idea of a quadruple legal framework to study local government employee rights in the United States. Figure 4 reflects the four fundamental legal concepts that aid in understanding local government employee rights. This basic comprehension of the legal framework consisting of the quadruple concepts of Dillon's Rule, Home Rule, substantive rights and procedural due process rights prove vital in choosing and employing the theoretical framework of the *public service model* to answer the two overarching research questions: 1) How do state takeovers of municipalities impair the obligation of local government employees' labor contracts with Atlantic City? And 2) what is the impact of state takeovers on public sector collective bargaining in Atlantic City?

**Figure 4: The Quadruple Legal Framework**



This legal framework also sets the foundation for the theoretical framework discussed in the next chapter of the study.



### **Chapter 3: Theoretical Framework**

### 3.1 Theorizing a Legal Approach to Public Administration

This section of the thesis discusses the theoretical framework employed by this study to answer the two principal research questions: **1)** How do state takeovers of municipalities impair the obligation of local government employees' labor contracts with Atlantic City? And **2)** what is the impact of state takeovers on public sector collective bargaining in Atlantic City? As Rosenbloom (1983) points out

“The central problem of contemporary public administrative theory is that it is derived from three disparate approaches to the basic question of what public administration is” (Pp.432-443).

These three approaches embrace the managerial perspective of administrative theory, the political perspective of administrative theory and the legal perspective of administrative theory (Rosenbloom, 1983). This study is particularly interested in applying the legal perspective of administrative theory to understand the collective bargaining rights of local government employees during state takeovers. The following tables provide an overview of the three approaches.

**Table 5:** The Managerial Approach

	<b>Origin and Values</b>	<b>Organizational Structure</b>	<b>View of the individual</b>
<b>Managerial Approach</b>	<u>The Civil service reform movement</u> • Wilson; Taylor; White; Gulick • The goodness or badness of a particular organizational pattern is a mathematical relationship of “inputs” to “outputs”. Where the latter is maximized and the	<u>Max Weber's ideal-type bureaucracy</u> • Specialization for efficiency; • Hierarchy for coordination; • Positions and pay scales • Selections based on merit • Political neutral • Formalized relationship	<u>Impersonal view of employees</u> • Dehumanization • Cog in an organizational machine <u>Impersonal view of clients'</u> • Individual personalities are converted into cases. Only if a person can qualify as a case, is he or

	former minimized, a moral “good” resulted.		she allowed treatment by the bureaucracy.
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**Source:** Rosenbloom (1983)

**Table 6:** The Political Approach

	<b>Origin and Values</b>	<b>Organizational Structure</b>	<b>View of the individual</b>
<b>Political Approach</b>	<p>Wallace Sayre; Paul Appleby</p> <ul style="list-style-type: none"> <li>• Unlike the origin of the managerial approach, which stressed what public administration ought to be, the political approach developed from an analysis of apparent empirical reality.</li> <li>• Value of representativeness, political responsiveness, accountability</li> <li>• In tension with values of managerial approach</li> </ul>	<p>Stresses the extent and advantages of political pluralism within public administration.</p> <ul style="list-style-type: none"> <li>• Since the administrative branch is a policy-making center of government; it must be structured to enable faction to counteract faction.</li> <li>• The structure comes to resemble political party platform that promises something to almost everyone without establishing clear priorities for resolving conflicts among them.</li> <li>• Agency becomes adversary of agency.</li> <li>• The number of bureaus and agencies tends to grow over time, partly in response to the political demands of organized interests for representation.</li> </ul>	<p>Views the individuals as part of an aggregate group.</p> <ul style="list-style-type: none"> <li>• Does not depersonalize the individual by turning him into a “case”, but rather identifies the individual’s interests as being similar or identical to those of others considered to be within the same group or category.</li> <li>• Personalities exists, but it is conceptualized in collective terms.</li> <li>• Affirmative action</li> </ul>

**Source:** Rosenbloom (1983)

**Table 7:** The Legal Approach

	<b>Origin and Values</b>	<b>Organizational Structure</b>	<b>View of the individual</b>
<b>Legal Approach</b>	<ul style="list-style-type: none"> <li>• It is derived primarily from three inter-related sources.</li> </ul> <p>Administrative law That part of law, which fixes the organization and determines the competence of the authorities which execute the law, and indicates to the individual remedies for the violation of his rights.</p> <p>Movement toward the judicialization of public administration</p> <ul style="list-style-type: none"> <li>• Establish procedures designed to safeguard individual rights.</li> <li>• Administrative Procedure Act</li> </ul> <p>Constitutional law</p> <ul style="list-style-type: none"> <li>• Expansion of constitutional rights of individuals' vis-à-vis public administration.</li> </ul> <p>Qualified immunity Administrative competence is expanded to include reasonable knowledge of constitutional law.</p>	<ul style="list-style-type: none"> <li>• Focus on individual substantive rights and due processes</li> <li>• Equity</li> <li>• Downgrading the cost/benefit reasoning associated with the managerial approach.</li> <li>• Its central focus tends to be on the nature of the individual's rights, rather than on the costs to society of securing those rights.</li> </ul>	<p>One that maximize the use of adversary procedure</p> <ul style="list-style-type: none"> <li>• Full-fledged judicial trial</li> <li>• Hearing examiners (independence and impartiality)</li> </ul> <p>– Public personnel management, esp. adverse actions.</p> <p>– Governmental benefits Undermines the managerial approach's reliance on hierarchy.</p> <ul style="list-style-type: none"> <li>• It militates against efficiency, economy, managerial effectiveness, representativeness, responsiveness, and political accountability.</li> <li>• It is intended to afford maximum protection of the rights of private parties against illegal, unconstitutional, or invidious administrative action.</li> </ul>

**Source:** Rosenbloom (1983)

The legal approach helps re-conceptualize the public employment relationship at the local level of federalism. Of particular interest to this study are the values of the legal approach (as can be inferred from the table above), which focus on the nature of the local

government employee rights (consisting of procedural rights and substantive rights). Historically, the “relationship between public sector employees and their governmental employers in the United States has posed nettlesome political, administrative, and constitutional issues” (Rosenbloom, 2014, Pp.1). The circumstances of a municipal state takeover present the near-perfect setting to study and test the legal approach to administrative theory building.

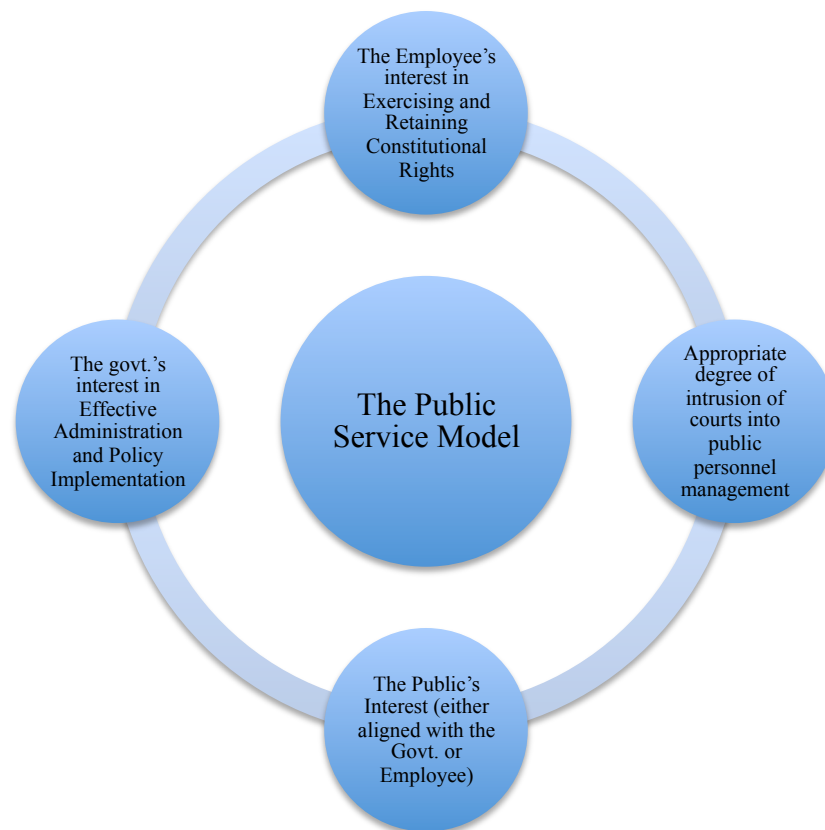
### **3.2 Public Service Model**

The public service model, which encompasses all aspects of public personnel relationships with the government employer is envisioned to have four dimensions including **1)** the scope of individual constitutional rights, **2)** the roles of public employees in the political system, **3)** the quality of public management, and **4)** the extent of the judiciary’s involvement in the public administration (Rosenbloom, 2014, pp.17-21). Figure 5 provides a visualization of the public service model and Table 4 briefly deconstructs each of the four dimensions of the public service model.

Each of these four dimensions is invariably portrayed by an assortment of competing values, including the conventional emphasis on efficiency, economy, and effectiveness; the political tenets of representativeness, responsiveness, responsibility, transparency, and public participation; and an increasing concern with constitutionality focusing on constitutional integrity, robust individual rights and liberties, and procedural due process – all of which require normative and subjective judgments and, to one extent or another, balancing competing concerns (Rosenbloom, 2014, Pp.17-21). The public service model provides a solid framework to assess the present situation and circumstances of the local government employees in Atlantic City. It can be argued that

the success or failure of local governments, and the kind of service it renders, will rest in the capacity and character of the public employees who constitute it. In that sense Rosenbloom's (2014) Public Service Model can also help us define the changing 'image' of public employees at the local level of governments.

**Figure 5:** The Four Dimensions that Define the Public Service Model



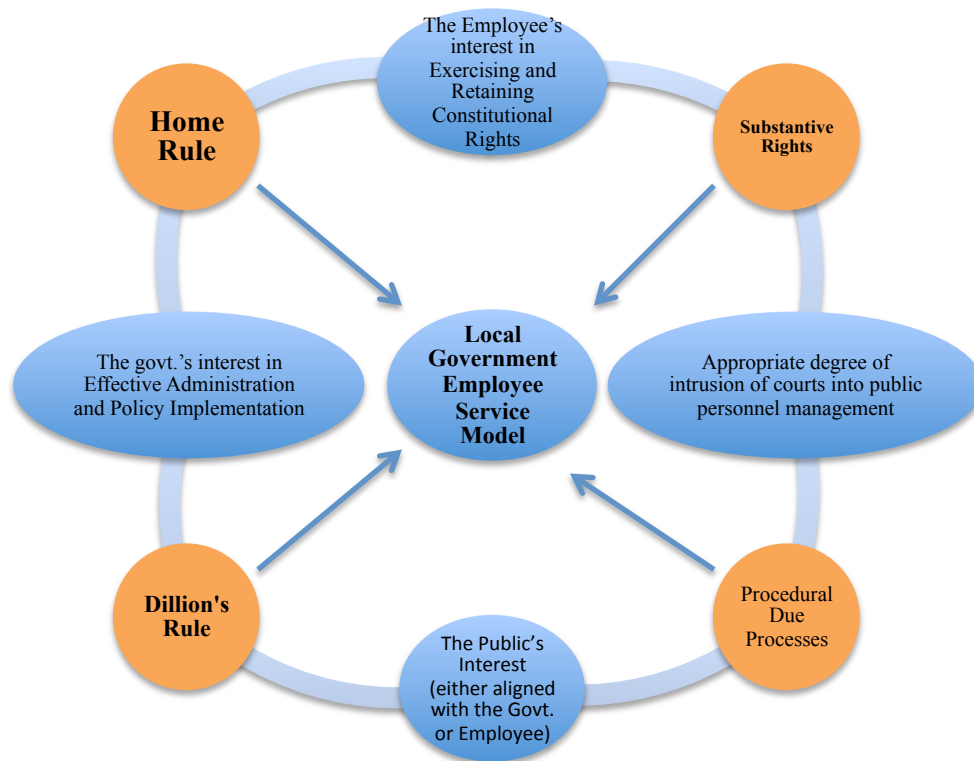
**Table 8:** Rationales of the Public Service Model

<b>Dimension</b>	<b>Chief Rationales</b>
Scope of Individual Rights	Restrictions on public employees constitutional rights must serve legitimate, important, or compelling government purposes. Gratuitous, arbitrary, or capricious restrictions on the exercise of individual constitutional rights are intolerable.
Role of Public Employee in Political System	The rationale for political neutrality and protection of public employees from political coercion are not restricted to partisan politics. They are also relevant to promotion of public policy objectives and promotion of public interest in the short and long term, which requires them to be shielded from political party mobilization.
Quality of Public Management	Public employee rights need to be adequately protected to not deter their willingness to whistleblow and inform public about how government programs are working and ought to be improved. In the absence of procedural due process, employees may be harassed by hierarchical authorities.
Judicial Involvement in Public Management	Given the fact that constitutional law of public employment is fashioned by federal judges, while, most public employees are at the state and local governments, the expansive role of the judiciary in public personnel administration should be discouraged. The rationale being that judges are experts of the law and have no managerial experience.

**Source:** Rosenbloom (2014, pp. 18-21)

This thesis furthers scholarship by juxtaposing the ‘quadruple legal framework’ (discussed in the previous chapter) and the public service model thereby, arriving at a hybrid model that extends the tenets of the public service model to local government employee rights and relationship (see figure 6). This model can be referred to as the Local Government Employee Rights Model.

**Figure 6:** Local Government Employee Rights Model



The next chapter of this study lays out the research design, which includes a longitudinal case study strategy and process tracing research methods. Chapter 4 discusses the various components of the methods employed and the parameters for data collection and data analysis.



## **Chapter 4: Research Design**

#### 4.1. Research Design

A research design is like the “blueprint” of research that addresses at least four problems: what questions to study, what data is relevant, what data to collect, and how to analyze the results (Philliber et al., 1980). The design has certain essential core components: 1) The study’s questions, 2) The study’s propositions, 3) The study’s unit of analysis, 4) The study’s logic linking the data to the propositions, and, 5) The study’s criteria for interpreting the findings (Yin, 1998). Table 9 (below) provides an overview of the five core research components of this study.

**Table 9:** Five core research components

The study’s questions	<p>a) Did the state takeover impair the obligation of the Atlantic City Police Union contracts with the city?  <b>H1:</b> The state takeover of Atlantic City impaired the substantive rights of Police union contracts  <b>H2:</b> The state takeover of Atlantic City impaired the procedural due process rights of police union contracts</p> <p>b) Did the state takeover impair the obligation of the Atlantic City Firefighter’s Union contracts with the city?  <b>H3:</b> The state takeover of Atlantic City impaired the substantive rights of firefighters union contracts  <b>H4:</b> The state takeover of Atlantic City impaired the procedural due process rights of firefighters union contracts</p> <p>c) What provisions of the Atlantic City Police Union contract were re-negotiated with the state during the municipal takeover?  <b>H5:</b> The substantive rights of Atlantic City Police Union contracts were re-negotiated.  <b>H6:</b> The procedural due process rights of Atlantic City Police Union contracts were re-negotiated.</p> <p>d) What provisions of the Atlantic City Firefighters Union contract were re-negotiated with the state during the municipal takeover?  <b>H7:</b> The substantive rights of Atlantic City Firefighters Union contracts were re-negotiated.  <b>H8:</b> The procedural due process rights of Atlantic City Firefighters Union contracts were re-negotiated.</p>
The study’s propositions	To measure the collective bargaining outcomes of local government employes in Atlantic City during the municipal takeover
The study’s unit of analysis	Atlantic City Firefighters Local and Atlantic City Police officers Local (Case Selection)
The study’s logic linking the data to the propositions; and	The Public Service Model (Theoretical Framework)
The study’s criteria for interpreting the findings	Process Tracing (Research Methods)

This chapter has three main modules. First, the research strategy of the study, which is a case study strategy, is discussed. Second, the case selection for this study, which is Atlantic City in New Jersey State, is discussed. And, third, the research methods used to test the hypothesis of the study, which is process tracing, is discussed. This chapter provides the background and motive for data collection and data analysis (explored in chapter 5).

#### **4.2. Research Strategy: Case Study**

The case study strategy is a research strategy that is applicable to seek explanations of causal links in real life situations that are too complex for survey research or experimental strategies (Yin, 1998). While the case study strategy has often been criticized for lack of generalizability (Waldo, 1962, 1963), the lack of quality control (McCurdy and Cleary 1984) and, lack of knowledge accumulation (Adams and White 1994); Jensen and Rodgers (2001) content that “public administration is well suited to case studies because they satisfy the recognized need for conditional findings and in-depth understanding of cause and effect relationships that other methodologies find difficult to achieve” (Pp. 235).

**Table 10:** Means of testing hypothesis in a case study

<b>Means of Testing Hypothesis in a Case Study (Qualitativley or Quantitatively)</b>
Test hypotheses by identifying variance between entities within a single unit. Example: comparing different programs or departments in an agency
Test hypothesis across an entity over time. Example: a longitudinal analysis of a program or programs in an agency
Test hypothesis across entities in a larger population. Example: comparing program effects in many agencies or across several entities in a larger population over time.

**Source:** Adapted from Jensen and Rodgers (2001)

**Table 11:** A typology of case studies

Type of Case Study	Chief Characteristics
<b>Snap-shot case study</b>	Description of a single organization (or other entity) at a single point in time.
<b>Longitudnal case study</b>	A time-ordered analysis of events that occur during a period of the entity's history
<b>Pre-post case study</b>	Provides evidence on the outcomes of implementing a particular program, policy, or decision. It is longitudinal in design, but it also includes an assessment before implementation of the program, policy, or decision and follow-up assessment after implementation.
<b>Patchwork case study</b>	Integrates several case studies that have evaluated a particular entity at different points in time as snapshot, longitudinal, or pre-post designs.
<b>Comparative case study</b>	Also integrates the findings of several case studies for the purpose of cross-unit comparison as opposed to within-unit synthesis. Comparisons are made in an attempt to tease out generalizations about an underlying commonality reflecting a policy, process, program, or decision.

**Source:** Adapted from Jensen and Rodgers (2001)

Table 10 provides an overview of the various ways in which hypothesis testing can be carried out within a case study strategy. It is important to take note that irrespective of the number of research questions a case study answers or the number of hypotheses which are tested within a case study, and, irrespective of the nature of case study being qualitative, quantitative or mixed methods, generalizability is always an underlining issue of case study research strategy (Jensen and Rodgers, 2001). Table 11 provides an overview of the different types of case studies than can be pursued in the academic field of public administration. Inferring from this typology, this study qualifies to be a longitudinal case study of Atlantic City.

The state takeover of Atlantic City beginning in early 2016 was certainly a complex process that involved the state government, the local governments and the courts. The case study method provides an appropriate framework to accommodate not just the varied group of participants in the collective bargaining process but also provides

an opportunity to understand relevant developments that happened at a certain time and place. A case study approach to understand collective bargaining outcomes by local public unions during Atlantic City's takeover will enable this inquiry to retain the holistic and meaningful characteristics of real-life events such as the collaborative efforts of the labor unions and the introduction of new legislations.

#### **4.3. Research Methods: Process Tracing**

Central to this study is the careful and close analysis of local government employees and their collective bargaining rights during a state-takeover. In search for a research method that allows for systematic examination of evidence selected and analyzed in light of research questions and hypotheses posed by the investigator, resulted in the choice of process tracing.

Process tracing, a fundamental research method of qualitative analysis used for drawing descriptive and causal inferences from diagnostic pieces of evidence, is often comprehended as part of a temporal sequence of events or phenomena (Collier, 2011). Process tracing also allows for us to establish a 'causal –inference' within a single-case analysis (Waldner, 2012). Process tracing works by “using evidence to affirm some explanations and cast doubt on others, and, it emphasizes that the probative value of evidence relative to competing explanations is more important than the number of pieces of evidence” (Bennett and Checkel, 2015, Chapter 1, p.16).

In chapter 6, the nuances of process tracing are discussed while analyzing the secondary data consisting of documentary evidence.

#### **4.4. Case Selection: Atlantic City in New Jersey**

The choice of New Jersey as the setting for the case study is crucial for two reasons: 1) New Jersey is a Home Rule State, implying that current state constitution, adopted in 1947, outlines limits on legislative interference, textually promotes local autonomy, and enumerates the specific rights of local governments additionally, 2) New Jersey has a relatively strong collective bargaining law and labor unions have an expansive, mandatory scope of bargaining rights.<sup>58</sup> In addition, prior to the U.S Supreme Court's decision in *Janus v. AFSCME*<sup>59</sup>, New Jersey was an agency fee state. The *Janus* decision effectively makes New Jersey a right-to-work state. Despite local governments being fairly autonomous and public sector employees having the right to unionize and collectively bargain, the state takeover of Atlantic City since 2016 has resulted in varied forms of disenfranchisement of local government employees. This local circumstance makes New Jersey the ideal setting to study impact of state takeovers on local government employee rights.

New Jersey is nearly \$209 billion in debt and has the worst finances of any state in the nation, three major Wall Street credit-rating agencies — Fitch Ratings, Moody's and S&P Global Ratings — have cut New Jersey's bond rating 11 times combined under Gov. Chris Christie in large part because of the ailing pension system.<sup>60</sup> The state of New Jersey has some of the country's most distressed municipalities, including Camden, Trenton and Newark. Yet, none of these municipalities or any of the other 1,500 jurisdictions (including municipalities, school districts, counties and authorities) in the

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<sup>58</sup> <https://www.nlr.gov/rights-we-protect/rights/employer-union-rights-and-obligations>

<sup>59</sup> *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466, 585 U.S. (2018)

<sup>60</sup> <https://www.truthinaccounting.org/library/doclib/FSOS-BOOKLET.pdf>

state has declared bankruptcy. The reason for this anomaly is that New Jersey has one of the most significant sets of laws, budgetary tools and overall state oversight programs. These include aid funds from the state to monitor local government finance, and when necessary, the state can ‘take-over’ a municipality that is experiencing severe financial stress, as in the recent case of Atlantic City and Camden. Atlantic City (placed in state receivership in 2016) will provide perfect conditions for an investigation of the process and outcomes of collective bargaining by local government employees during the state takeover.

Situating the case of Atlantic City historically within New Jersey’s administrative predispositions is quintessential. As Robert Strauss (2004) explains - “Small as New Jersey is, it has 566 municipalities, a vestige of the state's independent character. Some, like Newark, Jersey City, Paterson and Trenton, are large and have myriad bureaucracies and services. But others have barely enough residents to fill an auditorium. They are Cape May Point (population 241) and Diamond Beach (population 218) in Cape May County, Rockleigh (population 391) in Bergen County and Loch Arbour (population 280) in Monmouth County. Altogether, there are 30 incorporated towns in New Jersey with fewer than 1,000 residents, according to the 2010 census. Four of them have fewer than 50 souls: Walpack (41) in Sussex County, Teterboro (18) in Bergen County and Pine Valley and Tavistock (24) in Camden County”<sup>61</sup>. Beginning in the eighteenth century, municipal split-offs were provoked by private real-estate developers whose interests conflicted with the farming and industrial interests of the larger region (Karcher, 1998) and the creation of Atlantic City was no exception.

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<sup>61</sup> <https://www.nytimes.com/2004/01/04/nyregion/communities-municipal-madness-or-creative-localism.html>

Atlantic City was incorporated in the year 1854, the same year in which the Camden and Atlantic Railroad train service began bringing in nearly 500,000 passengers every year into the city<sup>62</sup>. From the 1880s up until the 1940s, Atlantic City was a major east coast vacation resort. However, with the advent of cheap air travel to Florida and the Caribbean in the 1950's, Atlantic City's popularity as a resort destination began to decline (Winpenny, 2012). In 1976, New Jersey voters approved a referendum legalizing gambling in Atlantic City, leading to the opening of the first casino.<sup>63</sup> Following which, the city's tax base skyrocketed from \$316 million in 1976 to almost \$7 billion in 2007.<sup>64</sup> Up until 2007, property values increased and between 2005-2006, Atlantic City had the highest percentage increase (25.9%) in average home value in the United States while most of the country showed little or no home value appreciation during this same period.

<sup>65</sup> Table 12 compares the change in tax ratables between 2008 and 2014.

**Table 12: An Overview of Deteriorating Property Values**

	Number of Parcels			Property Value		
	2008	2014	% Change	2008	2014	% Change
Vacant	2,365	2,229	-6%	\$1,490,690, 697	\$813,360,054	-45%
Residential	11,036	10,952	-1%	\$3,114,539,426	\$2,201,052,829	-29%
Commercial	1,771	1,645	-7%	\$17,415,239,503	\$8,861,743,791	-49%
Industrial	11	9	-18%	\$8,944,705	\$4,264,697	-52%
Apartments	182	170	-7%	\$321,524,267	\$194,521,848	-40%
Total	15,365	15,005	-2%	\$22,350,938,597	\$12,074,943,220	-46%

**Source:** Master Plan, City of Atlantic City

The assessed property value overall declined 46% in that time period with all

<sup>62</sup> <https://njmonthly.com/articles/jersey-living/atlantic-citys-godfather/>

<sup>63</sup> <https://www.nytimes.com/1978/05/27/archives/its-place-your-bets-as-easts-first-casino-opens-its-place-your-bets.html>

<sup>64</sup> New Jersey Commercial Casinos, American Gaming Association, 2012.  
<https://web.archive.org/web/20120707230726/http://www.state.nj.us/casinos/>

<sup>65</sup> New Jersey Commercial Casinos, American Gaming Association, 2012  
<https://web.archive.org/web/20120707230726/http://www.state.nj.us/casinos/>



property types (residential, commercial, vacant and apartments) sharing in the decline. The total assessed valuation in 2008 was approximately \$22 billion and in 2014 was \$12 billion. Through the early years of 2000, the gaming industry continued to monopolize the city's economy, however, beginning with the great recession in 2007, casino revenue began to fall and the city's assessed value of property decreased significantly.<sup>66</sup> Specifically, between 2007 and 2015 – 1) Casino revenue decreased from \$5.2 billion to \$2.5 billion, 2) Four of Atlantic City's twelve casinos closed and two more declared bankruptcies, 3) Approximately 10,000 casino employees lost their jobs, 4) Assessed retail value dropped from \$22 billion to \$7 billion. 5) The state first intervened in 2010, putting a state monitor in charge of its finances and taking over management of its tourism districts. 6) Furthering the economic devastation was Super storm Sandy, which came ashore in 2012 and produced storm surge and wave erosion of historic proportions. The Casino Reinvestment Development Authority (CRDA) estimated damages in Atlantic City at \$75.2 million including losses to public buildings, beaches and boardwalk, housing and business revenue.<sup>67</sup> The years following the hurricane devastation, lawmakers and politicians debated the best way to rescue Atlantic City, which was facing dangerous budget deficit and severe revenue crunch. In 2015, Standard & Poor's Ratings Services slashed Atlantic City's credit rating deeper into junk territory and said default appears to be a virtual certainty even under the most optimistic circumstances.<sup>68</sup> Early in 2016, Atlantic City was placed in state receivership.

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<sup>66</sup> New Jersey Commercial Casinos, American Gaming Association, 2012  
<https://web.archive.org/web/20120707230726/http://www.state.nj.us/casinos/>

<sup>67</sup> <https://njcrda.com/>

<sup>68</sup> [https://www.pressofatlanticcity.com/news/s-p-cuts-atlantic-city-s-credit-rating/article\\_2753fc06-3a39-11e5-9943-bf669a35f327.html](https://www.pressofatlanticcity.com/news/s-p-cuts-atlantic-city-s-credit-rating/article_2753fc06-3a39-11e5-9943-bf669a35f327.html)

#### 4.5. Units of Analysis

The primary units of analysis for this study will be the Atlantic City Police Department PBA Local 24 and the Atlantic City Professional Firefighters Local 198. The Atlantic City Fire Department (ACFD) provides fire protection and first responder emergency medical services to the city. The ACFD operates out of six fire stations, located throughout the city in one battalion, under the command of a Battalion Chief, who in-turn reports to an on-duty Deputy Chief of the Fire Department.<sup>69 70</sup> The Atlantic City Police Department (ACPD) includes a Patrol Unit, Traffic Unit (made up of a Motorcycle Unit and an Accident Investigation Unit) and a K-9 Unit, which handle 150,000 911 calls per year.<sup>71</sup> Other divisions are investigations, vice, support and internal affairs.

Classification of local government employees based on the work they perform reveals that the three largest groups of employees in the state of New Jersey are schoolteachers, fire fighters and police officers<sup>72</sup>. Since, the schoolteachers are employees of the Atlantic City school district, which is not directly affected by the takeover of a municipality, this study excludes the unionism and collective bargaining outcomes of Atlantic City schoolteachers. This study concentrates on the protective

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<sup>69</sup><https://web.archive.org/web/20131202222817/http://www.acfdlocal198.com/index.cfm?Section=10&PageNum=221>

<sup>70</sup><https://web.archive.org/web/20131004222629/http://www.acfdlocal198.com/index.cfm?Section=10&PageNum=217>

<sup>71</sup><http://acpolice.org/>

<sup>72</sup> State of New Jersey Civil Service Commission 2016 Workforce Profile

services. Also, excluded from this study's data are voluntary firefighters who do not have in place a long-term employment contract with the local government department they are serving. Thus, eliminating seasonal employees, volunteers and private contractors who do not appear on the payroll and are not part of the union of the ACFD and ACPD.

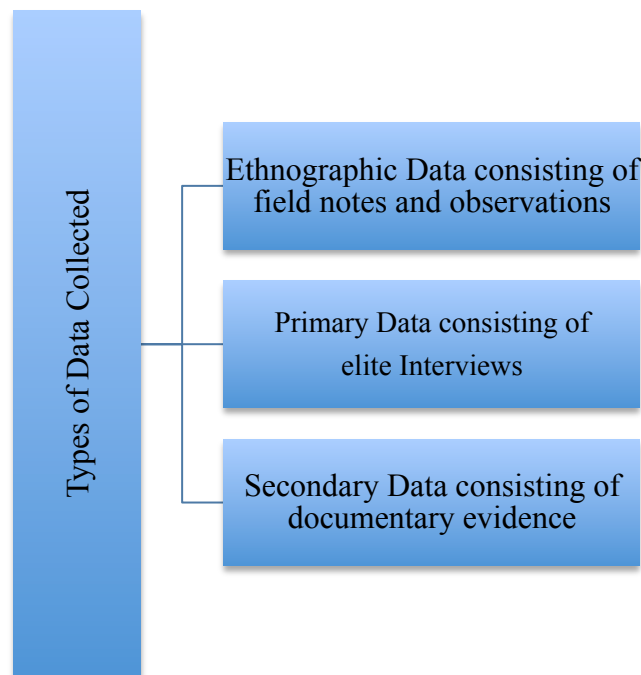
The next chapter of the study provides a detailed explanation of the data collection and data analysis using the research design from this chapter.

## **Chapter 5: Data Collection**

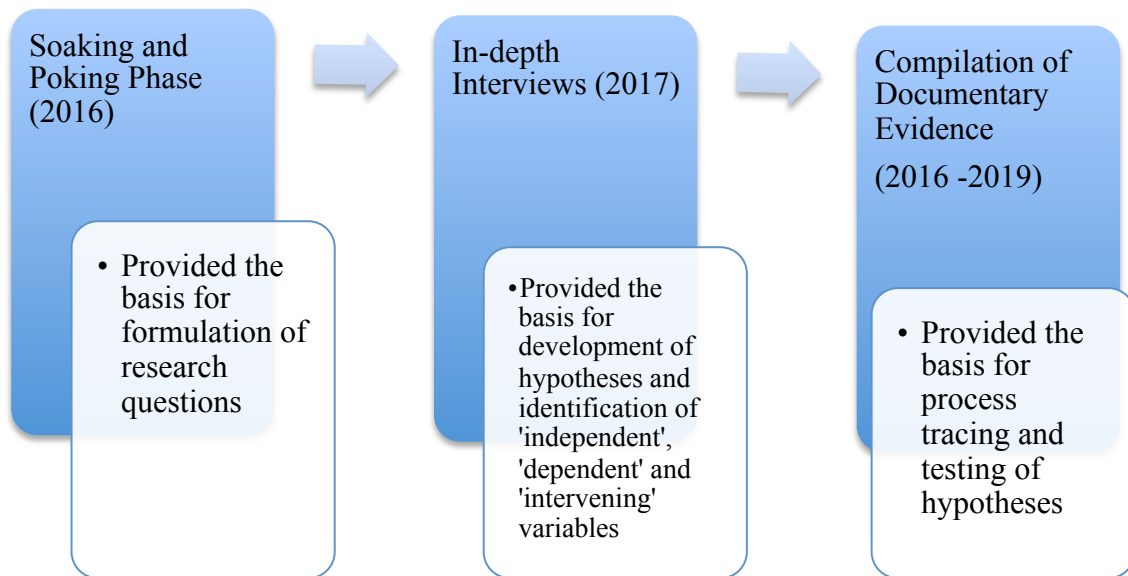
### 5.1. Data Collection

There were three types of data that were collected as part of this case study. The first type of data is ethnographic in nature and includes field notes from participative observation in Atlantic City during two brief visits in 2016. The second type of data is primary data generated from elite interviews with members of the Atlantic City firefighters labor union and the Atlantic City police officers labor unions. The third type of data is secondary in nature and includes government documents, labor contracts, state legislations, New Jersey statutes, city council meeting minutes, city budget reports and local journalistic reports. Figure 7 provides an overview of the types of data collected and Figure 8 explains the logical sequence behind the data collection for this study.

**Figure 7: Types of Data Collected**



**Figure 8: Sequence of Data Collection (2016 -2019)**



## 5.2. Soaking and Poking Phase

This first phase of data collection can be referred to as the “soaking and poking” phase (George et al, 2005). The “soaking and poking” phase, a prerequisite for process tracing, includes efforts to become familiar with the case setting, closely examining and personally experiencing the state takeover of Atlantic City and identifying variables and potential relationships between variables. The first field visit was conducted beginning of the state takeover in early 2016. The first field visit included walking around Atlantic city, interacting with citizens and small business owners on the boardwalk, including attending a church service and talking to members of a religious organization about the potential state takeover. The second field visit to Atlantic City involved identifying and familiarizing with the locations, logistics and functioning of the Atlantic City Firefighters

and Atlantic City Police Officers organizations. Table 13 provides an overview of the locations visited during the second field visit.

**Table 13:** Atlantic City Police and Fire Locations visited

1) Atlantic City Police Department, Public Safety Building, 2715 Atlantic Ave. Atlantic City, NJ 08401
2) Atlantic City Fire Department Headquarters; 2715 Atlantic Ave
3) Atlantic City Fire Department Station 1; Atlantic Ave & Maryland Ave.
4) Atlantic City Fire Department Station 2; Baltic Ave & North Indiana Ave.
5) Atlantic City Fire Department Station 3; North Indiana Ave & Grant Ave.
6) Atlantic City Fire Department Station 4; Atlantic Ave & South Carolina Ave.
7) Atlantic City Fire Department Station 5; Bader Field
8) Atlantic City Fire Department Station 6; Atlantic Ave & South Annapolis Ave.

This soaking and poking phase of data collection laid the foundation for the genesis of the broad research questions (table 14) that would guide the next phase of the data collection.

**Table 14:** Broad research questions emerging from soaking and poking phase

1) How do state takeovers of municipalities impair the obligation of local government employees' labor contracts with Atlantic City?
2) What is the impact of takeovers on public sector collective bargaining?

### 5.3. Primary Data

The second type of data is qualitative in nature and includes elite interviews with union presidents of the Atlantic City firefighters labor union and the Atlantic City police

officers labor union. These interviews were in-depth conversations lasting approximately 40 to 60 minutes and guided by a semi-structured interview protocol. These telephone interviews were conducted during over a few weeks on multiple occasions between 2018-2019. The sample was purposive in nature and specifically involved leaders representing PBA Local 24 and Local 198. Depending on the willingness and availability of the interviewees, the interviews were conducted. Hence, the researcher was not able to control for the demographic characteristics of the sample. However, since the units of analysis for this study are the two public sector labor unions, and, the interview questions are focused on 'labor union' perspectives and not personal ideologies, it can be argued that the sample is fairly representative. Table 15 provides an overview of the open-ended questions used to guide the interview process. Various dimensions of public sector collective bargaining, human resource management and legislative policy were specifically explored in the interviews. The interview data was recorded and transcribed. The data was manually coded to track any emerging themes or sub-themes relating to public sector employee rights during a takeover. The emerging themes from this qualitative primary data were used to come up with nuanced and refined hypotheses that specifically aligned with the theoretical framework of this study. Table 16 provides an overview of the themes and sub-themes rising from conventional content analysis of interview transcripts. The three major themes included issues pertaining to the employee's labor contracts, issues pertaining to human resource management and issues of representation. These emerging codes were used as a basis to form the specific research questions listed below in table 17. These specific research questions lead the search for secondary data, which was then process traced.



**Table 15:** List of open-ended questions asked during the in-depth interviews.

1. What was your initial reaction to the municipal takeover? (prompt) Why did you oppose the takeover? Why did you support the takeover?
2. What were the initial changes to your job under the municipal takeover?
3. Can you talk about the major changes to work hours, wages, benefits, promotions and any other aspect, which was affected by the municipal takeover?
4. Can you talk about the lawsuits filed by your union since the takeover?
5. In your opinion who are the winners and losers in the Atlantic City takeover?

**Table 16:** Emerging themes coded from the interview responses

Questions	Initial Codes Developed	Emerging Themes
<b>1. What was your initial reaction to the municipal takeover? Why did you oppose the takeover? Why did you support the takeover?</b>	<p><b>Initial Reaction to Takeover:</b></p> <ul style="list-style-type: none"> <li>What will happen next? Will the city fight back? Will more casinos close? Will the police and fire departments be consolidated regionally, as was done in Camden city? Will the city council be consulted? Will the local finance board be consulted? What if there is a disagreement?</li> </ul> <p><b>Opposition to Takeover:</b></p> <ul style="list-style-type: none"> <li>The state now has authority to assume power held by Atlantic City's elected officials. This power includes the ability to break union contracts, hire and fire workers, sell city assets, enter into shared services agreements, restructure debt.</li> <li>The takeover amounts to fascist dictatorship</li> <li>Why a pro-union state like NJ</li> </ul>	<p>Sense of disenfranchisement</p> <p>Lack of representation, Lack of being involved in the decision-making process.</p>

	<p>continues to withhold basic rights of collective bargaining to the city employees is lost on us.</p> <ul style="list-style-type: none"> <li>• The last thing we want is another lawsuit but, in this case, the state government is unwilling to recognize that the local employees are with them in the struggle to help Atlantic City.</li> <li>• The takeover is not a fair process. How do local employees come to a fair resolution when the guys that are in charge of making decisions against you control the people who are hearing your arguments?</li> </ul>	
<b>2. What were the initial changes to your job under the municipal takeover?</b>	<ul style="list-style-type: none"> <li>• The Civil service was eliminated. Without civil service and other public employee rights granted under the Employer-Employee Relations Act and the state's Public Employee Relations Commission, local government employees have no avenue to address grievances such as degraded working conditions, increased workloads, lack of resources, arbitrary disciplinary actions and compensation and benefits that are not comparable to similar jurisdictions throughout New Jersey.</li> </ul>	Lack of due procedural oversight
<b>3. Can you talk about the major changes to work hours, wages, benefits, promotions and any other aspect, which was affected by the municipal takeover?</b>	<ul style="list-style-type: none"> <li>• The takeover law, the Municipal Stabilization &amp; Recovery Act, ultimately gave state overseer and former U.S. Sen. Jeffrey Chiesa broad authority to fix the city's finances, including the ability to break union contract and fire workers.</li> <li>• In addition to 100 layoffs in September, timed to take place when the federal grant paying for 85 firefighters expires, state</li> </ul>	

	<p>officials want to implement new salary guides, eliminate education and terminal leave pay, and establish a new work schedule under which all firefighters would work one 24-hour shift followed by two days off.</p> <ul style="list-style-type: none"> <li>The state allowed the Civil Service Promotional List to expire and did not implement a traditional method afterward for assigning captain promotions. Instead of using the promotion list, the state announced in late January it would hold interviews with all firefighters for captain promotions.</li> </ul>	<p>Disrespecting of labor union contracts, no constitutional or judicial oversight in implementation of takeover law.</p>
<p><b>4. Can you talk about the lawsuits filed by your union since the takeover?</b></p>	<ul style="list-style-type: none"> <li>The lawsuit seeks a declaratory judgment finding the NJ State in violation of the state constitution.</li> <li>Our lawsuits seek the NJ superior court to order NJ state to provide previously requested information regarding the promotional process, to negotiate in good faith and prohibit the defendants from making future promotions, hires or disciplinary actions without regard to the 'civil service appointment clause'.</li> <li>Lawsuit challenges the constitutionality of the legislation and the legality of unilaterally cutting pay and benefits for officers. State allegedly failing to pay current/retired/promoted officers.</li> <li>Lawsuit alleges that NJ state</li> </ul>	<p>'Unconstitutional nature of the takeover legislation'</p>

	<p>Department of Community Affairs (DCA) and Division of Local Government Services failed to “act in good faith” in promotions to captain, as well as failed to live up to contracted step raises.</p> <ul style="list-style-type: none"> <li>• Lawsuit stems from inconsistent labor practices the Fire Department has had to deal with since the state takeover went into effect in 2016.</li> <li>• Lawsuit over state-mandated changes to the department, including staff cuts, salary and benefits reductions and switching from a 42-hour work schedule to a 56-hour schedule</li> <li>• The union is asking that the court grant an injunction to stop the promotions and the interview process until all parties negotiate the procedures, standards, requirements and selection process used.</li> <li>• The complaint also alleges eight firefighters have had to take on the role of acting captains the past three years without receiving the benefits tied to that higher title.</li> <li>• State takeover law is unconstitutional since it impairs its contract rights, among other reasons. It ultimately seeks a permanent injunction prohibiting the state from using its takeover powers against the firefighters.</li> <li>• Cutting nearly half of the department’s staff and the proposed work schedule would make the city less safe, wanted the case kept in state court so a</li> </ul>	
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	local judge would consider the case. Moving the case to a federal court would delay the process.	
<b>5. In your opinion who are the winners and losers in the Atlantic City takeover?</b>	<ul style="list-style-type: none"> <li>Winners: interest groups, casinos.</li> <li>Losers: city council, taxpayers, local government employees, labor unions</li> </ul>	Disregard for local government employees

**Table 17:** Emerging research questions/hypotheses from coded themes

<p><b>RQ1:</b> Did the state takeover impair the obligation of local government employee labor contracts with Atlantic City?</p> <p><b>H1a:</b> The state takeover impaired the obligation of the Atlantic City police union contracts with the city</p> <p><b>H1b:</b> The state takeover impairs the obligation of the Atlantic City firefighter's union contracts with the city</p>
<p><b>RQ2:</b> Did the state takeover of Atlantic City impair the substantive rights of local government employees?</p> <p><b>H2a:</b> The state takeover of Atlantic City impairs the substantive rights of police officers</p> <p><b>H2b:</b> The state takeover of Atlantic City impairs the substantive rights of firefighters'</p>
<p><b>RQ3:</b> Did the state takeover of Atlantic City impair the procedural due process rights of local government employees?</p> <p><b>H3a:</b> The state takeover of Atlantic City impaired the procedural due process rights of police union contracts</p> <p><b>H3b:</b> The state takeover of Atlantic City impaired the procedural due process rights of firefighters' union contracts</p>
<p><b>RQ4:</b> What are the (exact) collective bargaining outcomes during state takeovers of municipalities?</p> <p><b>RQ4a:</b> What provisions of the Atlantic City police union contract were re-negotiated with the state during the municipal takeover?</p> <p><b>RQ4b:</b> What provisions of the Atlantic City firefighters' union contract were re-negotiated with the state during the municipal takeover?</p>

#### 5.4. Secondary Data

The third type of data collected is secondary in nature and includes an array of documentary evidence surrounding the Atlantic City takeover. The various documentary evidence listed in this section was collected mainly from publicly accessible sources both

online and offline. Table 18 provides an overview of the six different lawsuits which were filed by the Atlantic City Police union and Firefighter's union between January 2017 until March 2019. Table 19 provides a list of New Jersey state statutes that were also used as secondary evidence. These include the New Jersey Special Municipal Act, the New Jersey Municipal Finance Commission Act, New Jersey Local Government Supervision Act, Municipal Rehabilitation and Economic Recovery Act, and the New Jersey State Constitution. The matter content of each of these lawsuits, legislations and the constitution were used in process tracing and hypothesis testing, which is explained in the next chapter.

**Table 18:** Overview of lawsuits filed

Police Union Lawsuits	1) PBA Local 24 Lawsuit in March 2017 2) PBA Local 24 Lawsuit in September 2018 3) PBA Local 24 Lawsuit in December 2018
Firefighters Lawsuits	1) Local 198 Lawsuit in January 2017 2) Local 198 Lawsuit in May 2018 3) Local 198 Lawsuit in March 2019

**Table 19:** Overview of state statutes (including the state constitution)

New Jersey Statutes	1) New Jersey, N.J.S.A. 52:27D-118.24 to 118.31, Special Municipal Aid Act 2) New Jersey, R.S. 52:27-1 to R.S. 52:27-66, Municipal Finance Commission 3) New Jersey Local Government Supervision Act. Title 40, Municipalities and Counties. 4) New Jersey Revised Statutes 52:27BBB and 52:27BB, Municipal Rehabilitation and Economic Recovery Act 5) New Jersey State Constitution
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Additionally, this study relies on the rich repertoire of local journalistic reporting in New Jersey as a secondary source of evidence. Since, this study relates to a very

current and on-going phenomenon, that lends itself to sparse accumulation of scholarly literature, the news articles provide the much-needed texture and depth to understanding the process of state takeovers and its impact on local government employees in Atlantic City. A detailed Internet search using Google News was conducted using the search terms mentioned in table 20. A total of 103 news articles pertaining to the Atlantic City State takeover were collected. The timeframe used to collect these articles was from March 2016 until March 2019. Table 21 provides a break-up of the number of articles and their sources.

**Table 20:** Search terms used to identify news articles relating to Atlantic City Takeover

1) Atlantic City takeover
2) Atlantic City bankruptcy
3) Atlantic City local government employees
4) Atlantic City firefighters
5) Atlantic City police officers
6) Atlantic City police union
7) Atlantic City firefighter's union

**Table 21:** News articles relating to Atlantic City take over

<a href="https://www.nj.com/">https://www.nj.com/</a>	32
<a href="https://www.pressofatlanticcity.com/">https://www.pressofatlanticcity.com/</a>	25
<a href="https://www.dailydispatch.com/">https://www.dailydispatch.com/</a>	6
<a href="https://www.njpublicsafetyofficers.com/">https://www.njpublicsafetyofficers.com/</a>	5
<a href="https://www.firefighternation.com/index.html">https://www.firefighternation.com/index.html</a>	4
<a href="https://www.atlanticcityweekly.com/">https://www.atlanticcityweekly.com/</a>	19
<a href="https://philadelphia.cbslocal.com/category/news/">https://philadelphia.cbslocal.com/category/news/</a>	12
<b>Total</b>	<b>103</b>

This study also makes use of Atlantic City’s city council meeting minutes to complement the documentary evidence. City council meeting minutes were obtained from the Atlantic City Office of the Clerk. Interestingly, there were no city council meeting recordings for the initial duration of the takeover (January 2016 – December 2017). The earliest city council meeting minutes were available starting January 2018 with the election of Democratic Governor Phil Murphy. Table 22 provides an overview of the meeting minutes used in process tracing.

**Table 22:** List of dates of Atlantic City city council meeting minutes

2018	2019
April 6 <sup>th</sup> May 8 <sup>th</sup> June 8 <sup>th</sup> July 31 <sup>st</sup> August 8 <sup>th</sup> October 18 <sup>th</sup> December 6 <sup>th</sup> , 21 <sup>st</sup> and 28 <sup>th</sup>	January 21 <sup>st</sup> February 3 <sup>rd</sup> March 21 <sup>st</sup> May 5 <sup>th</sup>

To recap, the soaking and poking phase provided the foundation for the genesis of overarching research questions. These research questions were then used in the second phase to guide the interview with the labor union members and collect primary data. The in-depth interview responses were conventionally coded to identify a possible ‘causal pathway’ and variables that constitute this causal pathway. The in-depth interview data also helped refine the broad research questions to form more nuanced hypotheses that could be tested using process tracing. In the third and final stage, the vast array of secondary data collected was carefully analyzed for traces of the ‘causal graph’ that establish a relationship between the independent and dependent variables and the role of the intervening variables. This process tracing data generated in the third stage was used



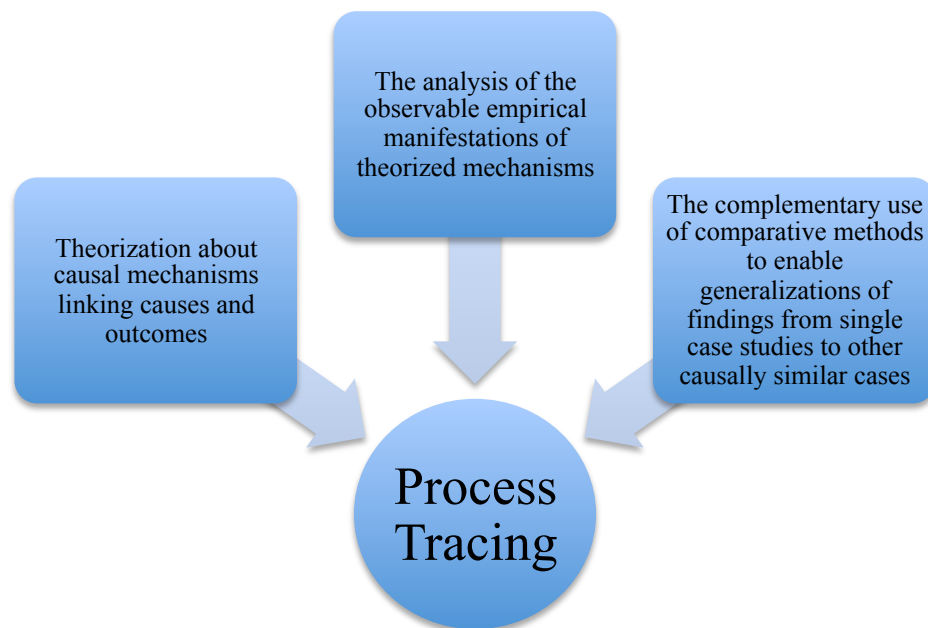
for hypotheses testing using the smoking gun tests. In the following chapter, the details of the process tracing procedure are discussed.

## **Chapter 6: Results and Analysis via Process Tracing**

### 6.1. Understanding Process Tracing

The research method of process tracing can be used for either theory-building or theory-testing purposes. Conventionally, in order to build theory via process tracing, one engages in rigorous ‘soaking and probing’ of the ground realities of the case and the expanse of theoretical literature, in order to gain clues about potential mechanisms that could link a causal variable and an outcome variable (Beach, 2017). On the other hand, in theory testing via process tracing, hypotheses surrounding the observable manifestations of a theorized causal framework are tested empirically (Beach, 2017). In this study, process tracing is used to do a bit of both, i.e. a bit of theory building and creating a causal graph and historical event map and a bit of theory testing with the smoking gun hypothesis test.

**Figure 9:** The Utility and Functions of Process Tracing



**Source:** Adapted from Beach (2017)

## 6.2. Causal Graph and Event History Map

The data analysis begins with the construction of a causal graph that embodies the causal process being traced in this study. The causal graph indicates the causal process crucial to the data tracing in this study. The next step is to construct an event – history map, in which events unfolding in the case study of Atlantic City correspond to the nodes in the causal graph. Table 23 denotes the event history map of this case study. A central function of process tracing is to establish a correspondence of descriptive inference between the event-history map and the causal graph, showing that the particular case constitutes the theorized value of a random variable as expressed in the causal graph.

The causal graph and the event-history maps work in tandem: the causal graph supports the proposition that if the random variables take on their hypothesized values, then the graph is sufficient to produce the outcome. The event-history maps establish that the random variables took on the hypothesized value in this particular case. It can be noted that in this study the causal graph is complete and hence sufficient to generate the outcome variable, and the descriptive inferences are able to establish correspondence between the event – history map and the causal graph, the study has achieved causal adequacy. Furthermore, in the case of this study, the causal graph includes a complete inventory of the causal mechanisms that connect nodes in the graph, and if the empirical evidence corroborates those mechanisms, the study has also achieved explanatory adequacy. We can not only say that X causes Y but, also that X causes Y because the set of mechanisms connect X and Y in the relevant manner.

While the rules of matrix algebra apply to data-set observations, which consist of multiple observation of dependent and independent variables across different units or

across time, process tracing, on the contrary, analyzes causal-process observations, which rely on only one measure of X and Y with the set of variables that connect them (Waldner, 2012, p. 79).

In this study the X variable (independent variable) is the municipal takeover, the Y variable (dependent variable) is the collective bargaining outcome. The T variable (intervening variable) includes the role of the NJ superior courts. From these basic variables, a causal graph is constructed by representing direct causal relationships with an arrowhead. A causal graph is acyclic if it contains no directed path that begins and ends at the same node (Waldner, 2012, p. 73). The directed acyclic graph below gives us a causal pathway for the research design of this study.

$$X \rightarrow T \rightarrow Y$$

Municipal takeover  $\rightarrow$  Role of Courts  $\rightarrow$  Collective Bargaining Outcomes

While X causes Y, Y is dependent on X, conditional on T. Therefore; Y is conditionally dependent on X, given the role of the courts in this causal process. The intermediate variable is of interest here since; it is thought to affect the outcome. Brady and Collier (2010) note “Process tracing, which focuses on the diagnostic intervening steps in a hypothesized causal process, can provide inferential leverage on problems that are difficult to address through statistical analysis alone.” For instance, did X cause Y? Careful process tracing focused on the sequencing of who knew what, when, and what they did in response, can help address this question. If X and Y are correlated, is this because X caused Y, or is it because some third variable caused both X and Y? Process tracing can help establish whether there is a causal chain of steps connecting X to Y, and whether there is such evidence for other variables that may have caused both X and Y.

**Table 23:** Components of Process Tracing Research Design

<b>A Causal Map</b>	<b>An Event History Map</b>	<b>Theoretical Statement Map</b>
Individual nodes are connected in such a way that they jointly suffice the outcomes	Establishes valid correspondence between the events in each particular event and the nodes in the causal graph	Theoretical statements about causal mechanisms that link nodes in causal graph, allowing us to infer that the events were actually generated by the relevant mechanisms

**Source:** Waldner, 2012

The forms of secondary data (collected and listed) in chapter 5 was used to create this event history map. The causal graph and the variables mentioned in the causal graph were used to trace processes and patterns in the secondary data. The theoretical statement map is presented in the results section of this chapter.

**Table 24:** Event History Map

<b>Date</b>	<b>Event</b>	<b>Details</b>
January 2016	Governor Chris Christie announces 5-year agreement to repair city finances and prevent city from filing for bankruptcy.	<ul style="list-style-type: none"> <li>Under this new agreement, the state will take expanded responsibility and decision-making authority over Atlantic City's finances including the power to restructure municipal debt, alter or terminate municipal contracts and collective bargaining agreements, strike shared service agreement with the county and sell/lease city owned services.</li> </ul>
May 2016	Governor Chris Christie introduces the Municipal Stabilization and Recovery Act.	<ul style="list-style-type: none"> <li>To formulate contractual terms designed to reduce operating costs and to provide significant assistance in the ongoing efforts toward restoring the fiscal stability of the city.</li> </ul>
September 2016	NJ state legislature passes the law.	<ul style="list-style-type: none"> <li>NJ State is given authority to assume power over local governments.</li> </ul>

November 2016	State Takeover officially begins.	<ul style="list-style-type: none"> <li>• NJ Department of Community Affairs (DCA) assumes power over Atlantic City. Bureaucrat Timothy Cunningham, Director of the Division of Local Government Services will head the DCA. Governor Chris Christie's aide Senator and Attorney General Jeffery Chiesa will oversee the takeover. His law firm Chiesa Shahnian &amp; Giantomasi officially begins work for the NJ state.</li> <li>• The takeover law, the Municipal Stabilization &amp; Recovery Act, ultimately gave state overseer and former U.S. Sen. Jeffrey Chiesa broad authority to fix the city's finances, including the ability to break union contract and fire workers.</li> </ul>
January 2017	Local 198 Lawsuit	<ul style="list-style-type: none"> <li>• Union initially sued the state to block layoffs and other changes the state was prepared to make under the Municipal Stabilization and Recovery Act.</li> <li>• This initial action is to ensure the state does not cut the fire department by half and make changes to work schedules, which would create unsafe gaps in service coverage. The department has 225 firefighters presently and under the takeover, the state is looking to reduce the department to 125 firefighters.</li> <li>• Lawsuit also claimed that state officials delayed implementation of union contract</li> </ul>
March 2017	PBA Local 24 Lawsuit	<ul style="list-style-type: none"> <li>• Following the takeover, the police union sued the state challenging the constitutionality of the takeover legislation and the legality of unilaterally cutting pay and benefits for officers.</li> </ul>

April 2017	Governor Chris Christie's administration unveils first municipal budget since takeover.	<ul style="list-style-type: none"> <li>• \$35 million budgetary cut including \$8 million reduction to spending for public safety, \$6 reduction to debt, \$5 reduction to administrative costs. This also included moving municipal services like trash pick up and towing to private vendors.</li> <li>• Privatization of the Municipal Utilities Authority</li> </ul>
May 2018	Local 198 Lawsuit	<ul style="list-style-type: none"> <li>• The Lawsuit involves federal case law interpreting the U.S. Constitution and a federal grant paying for 85 city firefighters.</li> <li>• The state allowed the Civil Service Promotional List to expire and did not implement a traditional method afterward for assigning captain promotions. Instead of using the promotion list, the state announced in late January it would hold interviews with all firefighters for captain promotions. The interviews, which started in February, used unknown procedures and criteria, including having a firefighter from another city sit on the interview panel, according to the complaint. We've never discussed who goes on the panel, we don't know how it's graded, we don't know the scoring system, and we don't know what questions they ask. We don't know, is there an appeal process if they skip over somebody? We can't have somebody get skipped over because of the color of their skin, we can't have somebody get skipped over because they're a veteran, we can't have somebody get skipped over who's a woman. We need to have a mechanism in place so we can fight for her and get her position if she was wronged.</li> <li>• Forty or 50 firefighters will be interviewed and some are being asked to sign confidentiality</li> </ul>



		<p>agreements or “gag orders” for the interview, according to the complaint.</p> <ul style="list-style-type: none"> <li>• The department has not permanently promoted any firefighters to the rank of captain in more than five years, court filings show.</li> <li>• The city and state did not pay contractually mandated step raises and a one-time \$1,000 salary increase in 2016.</li> <li>• The 25 firefighters the union says are eligible for raises were hired in November 2011, January 2013 and May 2013 and have missed raises for 2016, 2017 and 2018.</li> <li>• The state came in and implemented a whole new salary guide, and they haven’t even paid the step raises on their new salary guide.</li> </ul>
September 2018	PBA Local 24 Lawsuit	<ul style="list-style-type: none"> <li>• Filed a three-count complaint in Atlantic County Superior Court</li> <li>• The complaint alleges that following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, the state and city violated the state Constitution by making departmental promotions without regard to the Civil Service Appointment Clause and by failing to negotiate in good faith by not providing requested information related to the promotion process.</li> <li>• The complaint further alleges the defendants violated the act by engaging in the aforementioned counts because the actions “are not reasonably and directly related to stabilizing the finances of Atlantic City.”</li> <li>• The union, which represents 252 rank-and-file Atlantic City police officers, alleges the state is conducting departmental promotions, hires and disciplinary</li> </ul>

		<p>actions “without regard to the merit and fitness of the applicants” in violation of “minimum constitutional and statutory requirements.” As an example, the complaint cites two special law-enforcement officers sworn in Tuesday. According to the union, the two part-time officer hires were done without announcing the openings or conducting proper interviews and that no appeals process exists for applicants who believe they were passed over for the positions</p> <ul style="list-style-type: none"> <li>• The suit seeks a declaratory judgment from the court that finds the defendants in violation of the takeover law and the state Constitution. The union is also asking the court to order the defendants to provide previously requested information regarding the promotional process, to negotiate in good faith and prohibit the defendants from making future promotions, hires or disciplinary actions. The suit requests a trial by jury.</li> </ul>
December 2018	PBA Local 24 Lawsuit	<ul style="list-style-type: none"> <li>• A second suit, filed by the union against the city, is pending in respect to the state allegedly failing to properly pay current and retired officers promoted after May 2016</li> <li>• The 18 officers, who filed a lawsuit in Atlantic County Superior Court earlier this week, are seeking a total of at least \$1.6 million split between them upon their retirement. Four officers claim they will be owed more than \$125,000 apiece once they turn in their badges.</li> <li>• The idea to cap its officers' unused</li> </ul>

		<p>sick time payout at \$15,000, which the Atlantic City's city council passed as a resolution in October 2017.</p> <ul style="list-style-type: none"> <li>• The money the officers are seeking is the sick time pay they accumulated from when they joined the force until the day before Christie signed the MSRA.</li> <li>• Accumulated sick time, that is a vested property right of individual officers. You can't change the rules of the game 22, 23, 24 years into someone's career</li> <li>• The retired officers who are suing said they were never contacted regarding the potential changes.</li> <li>• The accumulated sick time is a "vested right" and can only be waived by the individual, not by the union or through legislation.</li> </ul>
January 2019	Governor Phil Murphy is new Governor of NJ State	<ul style="list-style-type: none"> <li>• Attempted to remedy the situation "amicably" since first meeting with the union management in March</li> </ul>
March 2019	Local 198 Lawsuit	<ul style="list-style-type: none"> <li>• State officials delayed implementation of union contract.</li> <li>• In addition to 100 layoffs in September, timed to take place when the federal grant paying for 85 firefighters expires, state officials want to implement new salary guides, eliminate education and terminal leave pay, and establish a new work schedule under which all firefighters would work one 24-hour shift followed by two days off.</li> <li>• State wants \$14 million in givebacks from both the police and fire unions.</li> <li>• State-mandated changes to the department, including staff cuts,</li> </ul>

		salary and benefits reductions and switching from a 42-hour work schedule to a 56-hour schedule.
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### 6.3. Empirical Testing

The research method of process tracing involves four distinct empirical tests using evidence and developed by Van Evera (1997: 31-32). These tests are summarized briefly in table 6 (below). According to Collier (2011) – “The Straw-in-the Wind tests can increase the plausibility of a given hypothesis or raise doubts about it, but are not decisive by themselves. The Hoop tests on the other hand require a hypothesis to jump through the hoop to remain under consideration, but passing the test does not by itself affirm the hypothesis. The Smoking-Gun test on the other hand provides a sufficient but not necessary criterion for accepting the causal inference; implying, it can strongly support a given hypothesis, but failure to pass does not reject it. However, the Doubly-Decisive test unlike its three counterparts, provides the strongest inferential leverage confirming one hypothesis and eliminating all other alternative hypotheses and at the same time meeting both the necessary and sufficient standard for establishing causation.” (Pp. 826-828). Given this logic of testing and considering the fact that there are no alternative hypotheses in this study, the smoking gun test is most suitable and will be used to evaluate the hypotheses.

The adequacy of process tracing (Waldner, 2012, Chapter 5, p.128) also develops a ‘completeness standard’ to establish cause and effect relationship between independent and dependent variables. Table 7 provides an overview of the components that come

together to create a completeness standard of process tracing. These components will also be applied to the data collected in the next chapter.

**Table 25:** Process Tracing: Four Tests for Causation

<b>Necessary to Establish Causation</b>	<b>Sufficient to Establish Causation</b>	
	No	Yes
No	<b>Straw in the Wind Test</b> Passing affirms relevance of hypothesis but, does not confirm it. Failing suggests hypothesis may not be relevant, but, does not eliminate it.	<b>Smoking Gun Test</b> Passing confirms hypothesis. Failing does not eliminate it.
Yes	<b>Hoop Test</b> Passing affirms relevance of hypothesis but does not confirm it. Failing eliminates it.	<b>Doubly Decisive Test</b> Passing confirms hypothesis and eliminates others. Failing eliminates it.

**Source:** Brady and Collier (2010)

Hypothesis testing using process tracing is usually done via four empirical tests adapted from Bennett (2010), Van Evera (1997) and Collier (2011). These tests introduced earlier on in chapter 4 help in theory building and establishing causal inference. However, it is important to bear in mind that as Collier (2011) points out - “The distinctions between the various kinds are not rigid and only useful heuristically. Hence, the decision to treat a given piece of evidence as the basis for one of the four tests depends on the researcher’s prior knowledge, the assumptions that underlie the study, and the specific formulation of the hypothesis. Although in general the appropriate test is clear, sometimes a piece of evidence treated as a straw-in-the-wind might instead be viewed as the basis for a hoop test or a smoking gun test. Alternatively, a test can be

simply viewed as an “intermediate” test, with corresponding implications for rival hypotheses.” (Pp.825)

As justified earlier, this study makes use of the ‘smoking gun’ test to confirm the hypothesis and test for causal inference. The metaphor of the smoking gun communicates the idea that a ‘suspect’ in a case who is caught holding a smoking gun is presumed guilty, thereby, providing a sufficient condition for accepting the causal inference (Collier, 2011).

#### 6.4. Hypothesis Testing

The following section engages in building the smoking gun test to investigate the six hypotheses arrived at in chapter 5. Tables 25, 26 and 27 lay out in detail the causal clues for each hypothesis and the causal inferences that help establish the existence of the process or causal pathway.

**Table 26:** Evaluating RQ1

<b>RQ1:</b> Did the state takeover impair the obligation of local government employees?
<p><b>H1a:</b> The state takeover impairs the obligation of the Atlantic City police union contracts with the city</p> <p><b>Clues:</b></p> <ol style="list-style-type: none"> <li>1. Following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, the state failed to properly pay current and retired officers promoted after May 2016</li> <li>2. The 18 officers, who filed a lawsuit in Atlantic County Superior Court earlier this week, are seeking a total of at least \$1.6 million split between them upon their retirement. Four officers claim they will be owed more than \$125,000 apiece once they turn in their badges. However, the city council passed a resolution in October 2017 capping its officers' unused sick time payout at \$15,000. The money the officers are seeking is the sick time pay they accumulated from when they joined the force until the day before Governor Christie signed the MSRA.</li> <li>3. Accumulated sick time, is a vested property right of individual officers. You can't change the rules of the game 22, 23, 24 years into someone's career. The retired officers who are suing said they were never contacted regarding the</li> </ol>

potential changes. According to the lawsuit, the accumulated sick time is a “vested right” and can only be waived by the individual, not by the union or through legislation.

4. Department of Community Affairs issued new salary guides for the officers, sergeants, lieutenants and captains. The state also wants to eliminate longevity, education and terminal leave benefits; adjust schedules to make officers work more hours; and change rules regarding overtime, sick leave and vacation time. The changes amount to cuts in compensation of up to 25 percent, Rogers said. The new schedule would make patrol officers work 12-hour days, up from the current 10-hour shift. In addition, the state eventually wants to cut the Police Department’s staff from 274 to 250.

**Inference:** Following the passage of the Municipal Stabilization and Recovery Act, New Jersey state officials delayed implementation of police union contract.

$X \rightarrow T \rightarrow Y *$

**Summary:** We can accept hypothesis H1a since, the process tracing of police union lawsuits provides us with evidence sufficient to prove causal inference. The state takeover impairs the obligation of the Atlantic City police union contracts.

\*Independent Variable: Municipal Takeover; Dependent Variable: Collective Bargaining; Intervening Variable: Lawsuits Filed

**H1b:** The state takeover impairs the obligation of the Atlantic City firefighter’s union contracts with the city

**Clues:**

1. Following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, the state of New Jersey announced layoffs of 100 firefighters thereby downsizing the fire department into half its original size.
2. Following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, the state of New Jersey announced non-renewal of the federal grant paying for 85 firefighters when it expires in 2017.
3. Following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, the state came in and implemented a whole new salary guide, and they haven’t paid the step raises on their new salary guide.

**Inference:** Following the passage of the Municipal Stabilization and Recovery Act, New Jersey state officials delayed implementation of firefighter’s union contract.

$X \rightarrow T \rightarrow Y *$

**Summary:** We can accept hypothesis H1b since, the process tracing of firefighter’s

union lawsuits provides us with evidence sufficient to prove causal inference. The state takeover impairs the obligation of the Atlantic City firefighter's union contracts.

\*Independent Variable: Municipal Takeover; Dependent Variable: Collective Bargaining; Intervening Variable: Lawsuits Filed

**Table 27:** Evaluating RQ2

**RQ2:** Did the state takeover of Atlantic City impair the substantive rights of local government employees?

**H2a:** The state takeover of Atlantic City impaired the substantive rights of police officers.

**Clues:**

1. Following the passage of the Municipal Stabilization and Recovery Act, New Jersey State capped the payout for the accumulated sick time at \$15,000. However, retired officers claim they will be owed more than \$125,000 per person. The accumulated sick time is a "vested right" and can only be waived by the individual, not by the union or through legislation. The officers were never contacted by the state or Department of Community Affairs regarding this matter.
2. Following the passage of the Municipal Stabilization and Recovery Act, New Jersey State wants \$14 million in givebacks from both the police and fire unions.

**Inference:** Municipal Stabilization and Recovery Act disregarded the substantive rights (which implies arbitrarily taking away a person's life, liberty or property) of Atlantic City police officers.

$$X \rightarrow T \rightarrow Y *$$

**Summary:** We can accept hypothesis H2a since, the process tracing of police union lawsuits provides us with evidence sufficient to prove causal inference. The state takeover impairs the substantive rights of police officers.

\*Independent Variable: Municipal Takeover; Dependent Variable: Collective Bargaining; Intervening Variable: Lawsuits Filed

**H2b:** The state takeover of Atlantic City impaired the substantive rights of firefighters.

**Clues:**

1. Following the passage of the Municipal Stabilization and Recovery Act, New Jersey State wants to unilaterally lay-off 100 firefighters.
2. Following the passage of the Municipal Stabilization and Recovery Act, New Jersey State wants \$14 million in givebacks from both the police and fire unions



**Inference:** Municipal Stabilization and Recovery Act disregarded the substantive rights (which implies arbitrarily taking away a person's life, liberty or property) of Atlantic City Firefighters.

$$X \rightarrow T \rightarrow Y *$$

**Summary:** We can accept hypothesis H2b since, the process tracing of firefighter's union lawsuits provides us with evidence sufficient to prove causal inference. The state takeover impairs the substantive rights of the Atlantic City firefighters.

\*Independent Variable: Municipal Takeover; Dependent Variable: Collective Bargaining; Intervening Variable: Lawsuits Filed

**Table 28:** Evaluating RQ3

**RQ3:** Did the state takeover of Atlantic City impair the procedural due process rights of local government employees?

**H3a:** The state takeover of Atlantic City impaired the procedural due process rights of police union contracts

**Clues:**

1. Following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, the state of New Jersey violated the state Constitution by making departmental promotions without regard to the Civil Service Appointment Clause and by failing to negotiate with the union in good faith by not providing requested information related to the promotion process.
2. Following the passage of the Municipal Stabilization and Recovery Act, the state of New Jersey conducted departmental promotions, hires and disciplinary actions "without regard to the merit and fitness of the applicants" in violation of "minimum constitutional and statutory requirements."
3. According to the union, the two part-time special law enforcement officer hires were done without announcing the openings or conducting proper interviews and that no appeals process exists for applicants who believe they were passed over for the positions

**Inference:** Municipal Stabilization and Recovery Act disregarded the procedural due processes, which imply the fairness of procedures in applying the law (rather than the fairness of the substance of the law) of police union contracts.

$$X \rightarrow T \rightarrow Y *$$

**Summary:** We can accept the hypothesis H3a since, the process tracing of Police union lawsuits provides us with evidence sufficient to prove causal inference. With the implementation of the Municipal Stabilization and Recovery Act, the local police

officer's union experienced infringement of procedural due process rights.

\*Independent Variable: Municipal Takeover; Dependent Variable: Collective Bargaining; Intervening Variable: Lawsuits Filed

**H3b:** The state takeover of Atlantic City impaired the procedural due process rights of firefighters' union contracts

**Clues:**

1. In addition to 100 layoffs in September, timed to take place when the federal grant paying for 85 firefighters expires, state officials want to implement new salary guides, eliminate education and terminal leave pay, and establish a new work schedule under which all firefighters would work one 24-hour shift followed by two days off.
2. Following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, the State-mandated changes to the department, including staff cuts, salary and benefits reductions and switching from a 42-hour work schedule to a 56-hour schedule.
3. Following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, the State allowed the Civil Service Promotional List to expire and did not implement a traditional method afterward for assigning captain promotions. Instead of using the promotion list, the state announced in late January it would hold interviews with all firefighters for captain promotions. The interviews, which started in February, used unknown procedures and criteria, including having a firefighter from another city sit on the interview panel, according to the complaint. The Atlantic City Fire Department was not consulted with regard to - who goes on the panel, how the interviews are graded, what comprises the scoring system, what questions they ask, and, if there an appeal process if they skip over somebody.
4. Following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, forty or 50 firefighters will be interviewed and some are being asked to sign confidentiality agreements or "gag orders" for the interview, according to the complaint.
5. Following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, the department has not permanently promoted any firefighters to the rank of captain in more than five years, court filings show.
6. Following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, the city and state did not pay contractually mandated step raises and a one-time \$1,000 salary increase in 2016.
7. Following the passage of the Municipal Stabilization and Recovery Act, which put the state in charge of the city until 2021, the 25 firefighters the union says are eligible for raises were hired in November 2011, January 2013 and May 2013 and have missed raises for 2016, 2017 and 2018.

**Inference:** Municipal Stabilization and Recovery Act disregarded the procedural due

processes, which imply the fairness of procedures in applying the law (rather than the fairness of the substance of the law) of firefighter's union contracts.

$$X \rightarrow T \rightarrow Y *$$

**Summary:** We can accept the hypothesis H3b since, the process tracing of Police union lawsuits provides us with evidence sufficient to prove causal inference. With the implementation of the Municipal Stabilization and Recovery Act, the local firefighter's union experienced infringement of procedural due process rights.

\*Independent Variable: Municipal Takeover; Dependent Variable: Collective Bargaining; Intervening Variable: Lawsuits Filed

While the affirmation of the six hypotheses sufficiently proves the causal inference, it remains to discover the nuances of the final outcomes of collective bargaining during the takeover. Circling back to the last set of research questions in table 28, this study looks for answers to the precise terms and conditions of the labor contracts that were negotiated between the Atlantic City police union and Atlantic City firefighter's union. Table 28 lays out the collective bargaining outcomes (or the lack of it) during the period between 2017 and 2019 when both the police union and firefighters union sued the state on multiple occasions for breach of union contract under the Municipal Stabilization and Recovery Act.

#### **Table 29: Evaluating RQ4**

**RQ4:** What are the (exact) collective bargaining outcomes during state takeovers of municipalities?

**RQ4a:** What provisions of the Atlantic City police union contract were re-negotiated with the state during the municipal takeover?

The lawsuits filed by the Atlantic City Police Union in the Atlantic County superior court at different points in time between 2017 and 2019, helped delay the state acting on the new unilateral collective bargaining modifications under the Municipal Stabilization and Recovery Act. In all three instances, the judges blocked the state from acting on the new modified contracts and referred both parties to negotiate outside the court. However, over the past two years, officials from the Department of Community Affairs and Division of Local Government Services have pushed back against the lawsuits of the unions.

Presently, no modifications to the police union contract under the Municipal Stabilization and Recovery Act were re-negotiated. And there is no publicly accessible secondary data to this end.

**RQ4b:** What provisions of the Atlantic City firefighters' union contract were re-negotiated with the state during the municipal takeover?

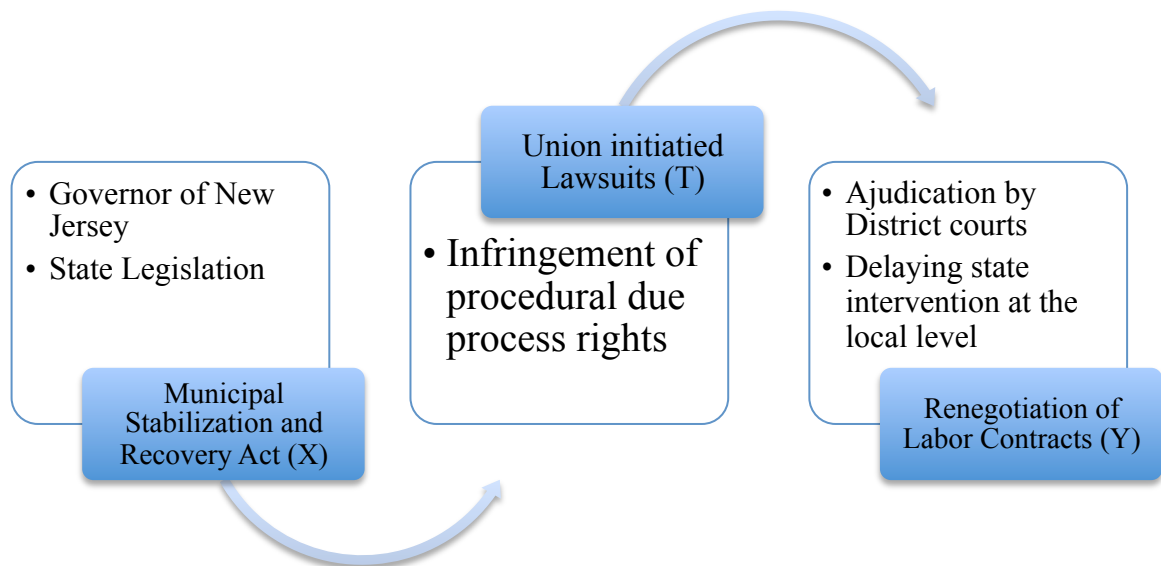
The lawsuits filed by the Atlantic City Firefighters Union in the Atlantic County superior court at different points in time between 2017 and 2019, helped delay the state acting on the new unilateral collective bargaining modifications under the Municipal Stabilization and Recovery Act. In all three instances, the judges blocked the state from acting on the new modified contracts and referred both parties to negotiate outside the court. However, over the past two years, officials from the Department of Community Affairs and Division of Local Government Services have pushed back against the lawsuits of the unions. Presently, no modifications to the firefighter's union contract under the Municipal Stabilization and Recovery Act were re-negotiated. And there is no publicly accessible secondary data to this end.

## 6.5. Results

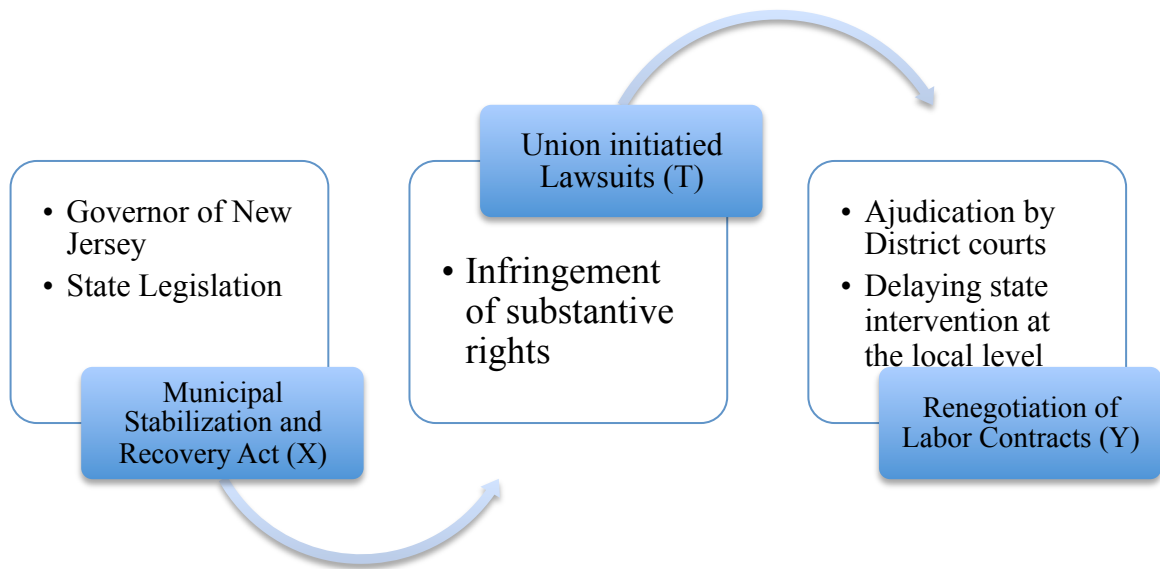
The results indicate the existence of a causal inference between the independent variable and the dependent variable in both scenarios engaging the causal graph. Additionally, via hypothesis testing in the larger framework of process tracing, we arrive at three causal maps engaging the causal graph. As depicted in figure 10 and table 27, the implementation of the Municipal Stabilization and Recovery Act disregarded the procedural due processes, which imply the fairness of procedures in applying the law (rather than the fairness of the substance of the law) in the case of its treatment of both police union and firefighter's union contract. In similar vein, the enactment of the Municipal Stabilization and Recovery Act, as depicted in figure 11 and table 26 led to the violation of substantive rights (which implies arbitrarily taking away a person's life, liberty or property) of Atlantic City's police officers and firefighters. And finally, as illustrated in figure 12 and table 25, following the passage of the Municipal Stabilization

and Recovery Act, New Jersey state officials delayed implementation of the police and firefighter's union contracts.

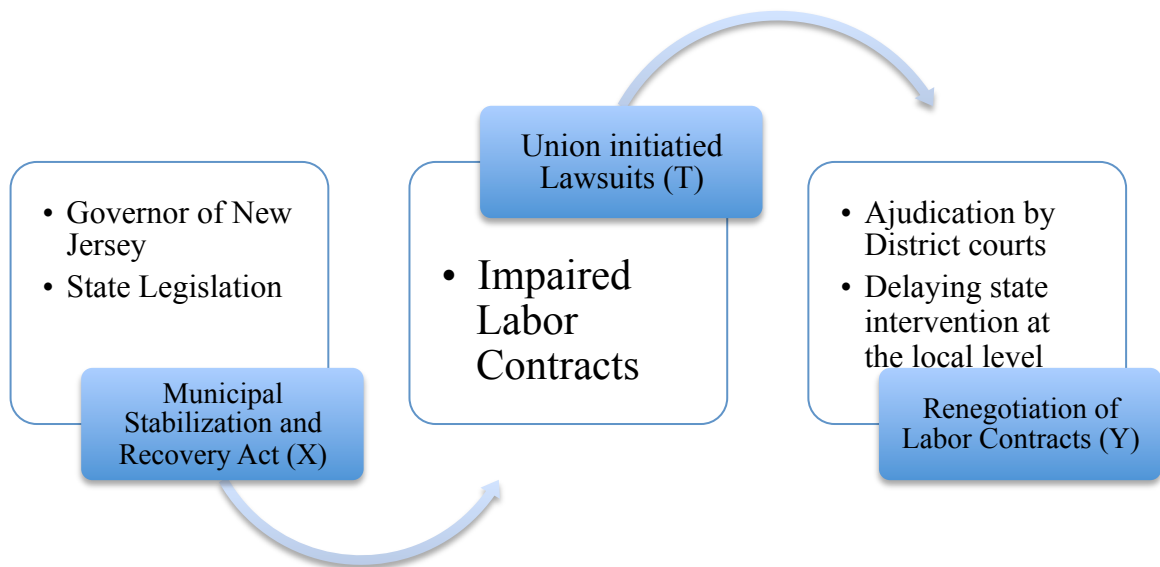
**Figure 10: Causal Map 1**



**Figure 11: Causal Map 2**



**Figure 12:** Causal Map 3



## **Chapter 7: Discussion and Conclusion**

## 7.1. Discussion

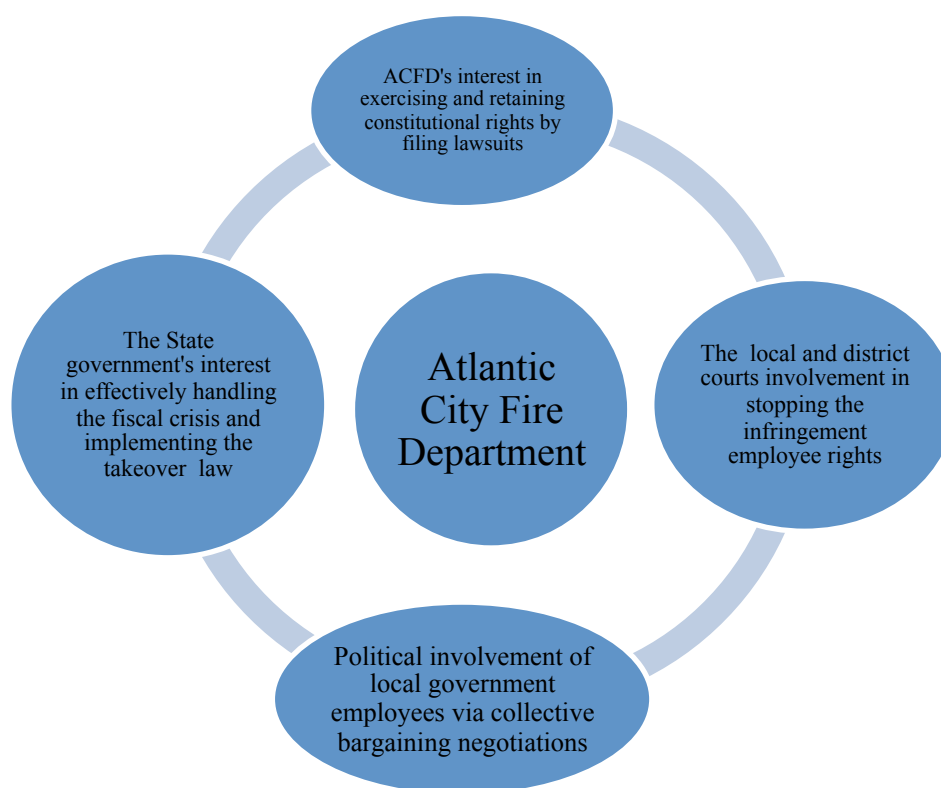
Local government employees form the base of the personnel pyramid of American federalism. The precariousness of local government employees during the state takeovers of municipalities helps advance the argument that public personnel management should include the study of local government employee rights and protection in relation to the study of American constitution and the state constitution. Data analysis and results of process tracing provide valuable insights which integrate the managerial approach, legal approach and the political approach to understand local government employee rights during a state takeover.

This study achieves its purpose by allowing the reader to conceptualize and extend the ‘public service model’ to public personnel at the local levels of federalism. Figure 13 and Figure 14 demonstrate how the study theorizes local government employee rights during the state takeover using the framework of the ‘public service model’. As discussed in chapter 3, the public service model, encompasses all aspects of public personnel relationships with the government including the 1) the scope of individual constitutional rights (the police officer’s and fire fighters substantive rights and procedural due process rights), 2) the roles of public employees in the political system (the police union and firefighter’s union’s involvement in collective bargaining and negotiation, 3) the quality of public management ( the state government authoritarian management strategy in introducing the Municipal Stabilization and Recovery Act which, violated pre-existing labor union contracts) and, 4) the extent of the judiciary’s involvement in public administration ( the role of the Atlantic City courts in blocking the implementation of the state introduced Municipal Stabilization and Recovery Act). The

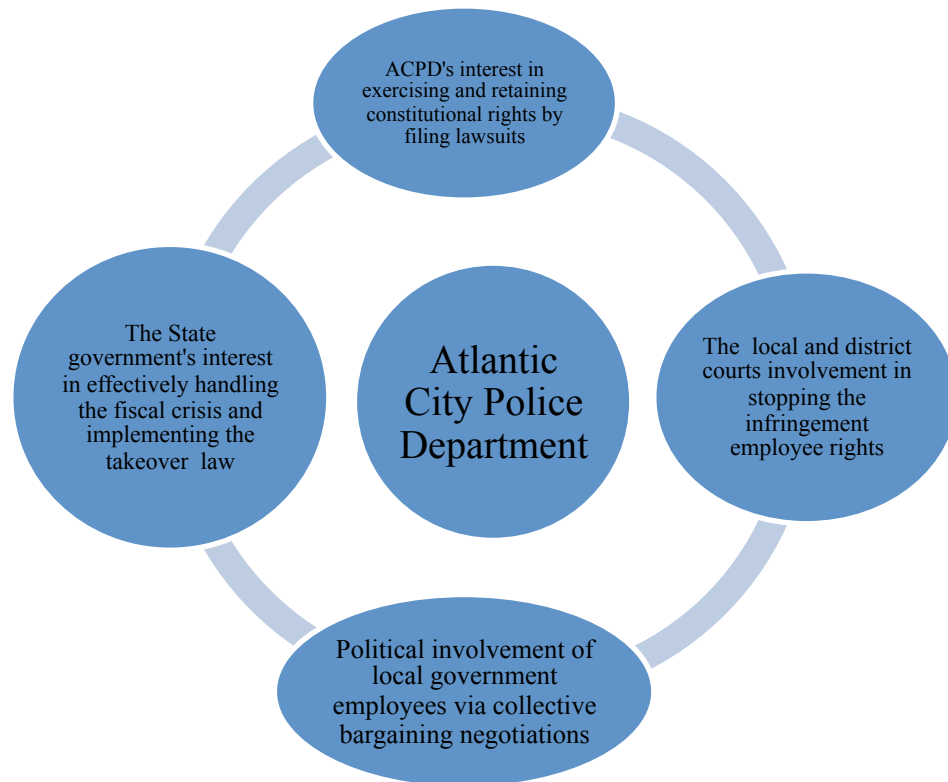


‘public service model’ has been traditionally used to understand personnel management at the federal level. This study is a primer effort in analyzing local government personnel via the ‘public service model’ framework thus, enabling new theory building and theory testing at the local level. Figure 13 and figure 14 visually represent the adaptation of the public service model to studying the personnel circumstances of the Atlantic City Fire Department and the Atlantic City Police Department. The figures represent the four dimensions of the public service model with specific implications to the local government employees serving in Atlantic City’s police and fire forces.

**Figure 13:** A Public Service Model for Atlantic City’s Fire Department



**Figure 14:** A Public Service Model for Atlantic City's Police Department



## 7.2. Limitations

The limitations of this study are two-fold. Despite the analytical value added by the qualitative process tracing within this study, including the fact that it enabled in identifying how the causal processes work in the Atlantic City takeover, this study remains a single-case method, implying that that only, inferences about the operation of the mechanism *within* the studied case are possible because this is the evidence gathered through tracing the process with respect to only this one case. Therefore, to generalize beyond the studied case of Atlantic City, one needs to couple process-tracing case studies

with comparative methods to enable generalization of the causal processes. Comparisons across cases make generalization possible because then one can claim that, as a set of other cases are causally similar to the studied case, one can expect similar casual mechanisms to also be operative in these cases (Beach, 2017). This inability to generalize the causal process remains the biggest limitation of this study. The other limitation of this study is the fact that – the unit of analysis used are narrow and include only a small sample of Atlantic City’s police officers and firefighters – hence, simultaneously excluding all other local government employees and the impact of the state takeover on their occupations and related union activity.

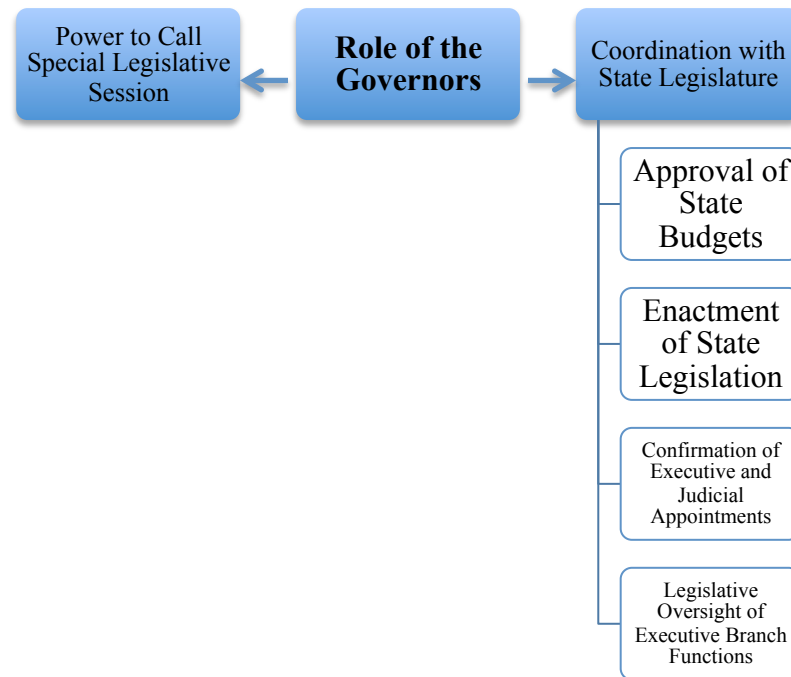
### **7.3. Recommendations**

While not an explicit finding of this study, one of the implicit findings is the burgeoning cost of lawsuits and legal representation for local government employee unions (who are initiating the legal proceedings) and the state (who are defending the cases). Public administrators can avoid these expenses (consisting of taxpayer money) in an already cash-strapped situation by involving the local unions in the decision-making process from the very beginning itself. State governments can and should take a ‘partnership’ approach to fiscal restructuring during a near bankruptcy or state takeover, which is more horizontal in nature than a top-down vertical approach, used by Governor Chris Christie’s administration in 2016 and 2017. When studying local government employee rights in the field of public administration, scholars need to systematically and intellectually reengage with the study of federal and state law, its interpretations and implications for local government employees. A more holistic approach to understanding the implications of state takeovers on local government employee rights is to analyze

their rights using the public service model but, expanding it to include a more nuanced legal perspective consisting of the state legal framework (home rule and Dillon's rule) and the federal constitutional framework (substantive rights and procedural due process rights).

Public administration scholars also need to pay close attention to the interplay of the courts in the actual implementation of public policy. The case study of Atlantic City reflects that the superior courts of New Jersey (intervening variable in the causal graph) had a pivotal role in interpreting the Municipal Stabilization and Recovery Act and in blocking the state from going ahead with some of the personnel decisions. In the same vein, the field of public administration needs to pay more attention to the interplay of legislative policy and public policy. The interplay of legislative policy and administrative policy cannot be studied in isolation from the role of the governor. One of the unspoken findings of this study is the role of the governor in shaping the outcomes of the state takeover at the local levels.

The office of the governor of New Jersey can be viewed as the macro structure that shapes micro events such as the collective bargaining rights of local government employees. Given the fact that Governors in the United States can serve two consecutive terms of eight years in office, they can exercise remarkable power over the legislative branch in their state. Figure 15 exemplifies the role of the Governor in four pivotal areas of state and local government policymaking: a) approval of state budgets, b) enactment of state legislation, c) confirmation of executive and judicial appointments and, d) legislative oversight of executive branch functions.

**Figure 15:** Overview of Role of Governor

**Source:** National Governor's Association

This is especially true in the case of New Jersey and the Governor's decision to place Atlantic City in state receivership and subsequently break union contracts in order to reach debt settlements. The field of public administration needs to re-conceptualize the role of the office of the Governor while theorizing the welfare of local government employees. The results of the process tracing have shown the formal tools (budget cutting discretion, power of veto, gubernatorial appointments) a governor can use in order to shape both legislative policy and public policy at the micro levels of public administration.

#### 7.4. Conclusion

From a public administration perspective, this study helps conceptualize and link macro-structures of state legislative policy (state takeover) to micro-level consequences of local government employee rights. That said, the state takeover itself is an ongoing and

dynamic process, while this study focuses on the early stages of the takeover beginning in 2016 under Republican governor Chris Christie, much has changed under the new administration in New Jersey State with Democratic governor Phil Murphy at the helm. For the very first time since the state takeover, on January 29<sup>th</sup> 2019, approximately 500 city residents were invited to a town-hall meeting at organized by the NJ state Department of Community Affairs and the Atlantic City Initiative Project Office, allowing for community stakeholders to voice their opinions and engage in discussions surrounding the takeover. Lieutenant governor Sheila Murphy is also the new head of the NJ Department of Community Affairs and has been making effort across Atlantic City's six wards to usher improvements in social service, public health, youth opportunities and employment opportunities focusing specifically on the 37% of the city's residents who live in poverty. While the state takeover is set to continue until 2021 (at least), the focus has shifted away from sabotaging local government union contracts, thereby, changing the stance and outlook of the state takeover. Hence, while state takeovers of municipalities can create threats to the individual and constitutional rights of the local government employees. These threats can be mitigated by the local courts and a shift in political ideology in the office of the Governor.

This study also raises two normative question - while New Jersey is nearly \$209 billion in debt and a massive source of this debt load (\$118.8 billion in unfunded pension benefits and \$70 billion in unfunded retiree health care costs) stems from pension and retiree health care costs for state workers <sup>73</sup>, is it still ethical to break union contracts and infringe on public sector employee rights? From an administrative and constitutional

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<sup>73</sup> <https://www.truthinaccounting.org/library/doclib/FSOS-BOOKLET.pdf>

standpoint, is it ethical to endanger local government units providing protective, essential and emergency services at the municipal levels?

In the aftermath of the Supreme Court verdict in *Janus V. AFSCME*<sup>74</sup>, public sector unions at federal, state and local levels have faced staggering reductions to their revenue base. In one particular report, public-sector union officials predicted that they would lose 10 to 30 percent of their members and tens of millions of dollars in revenue in the states that would be affected.<sup>75 76</sup> The nation's two largest public sector unions lost the vast majority of agency-fee payers after the ruling. American Federation of State, County and Municipal Employees went from 112,233 agency-fee payers to 2,215 (a 98% decline) while Service Employees International Union went from 104,501 to 5,812 (94%), as per 2018 filings.<sup>77 78</sup> Given these present circumstances of public sector unions, this study is a timely contribution in understanding the unwarrantable risks public sector labor unions and their members face during state takeovers of municipalities.

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<sup>74</sup> *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466, 585 U.S. (2018)

<sup>75</sup> <https://www.nytimes.com/2018/06/27/business/economy/supreme-court-unions-future.html>

<sup>76</sup> <https://www.nytimes.com/2018/06/27/us/politics/supreme-court-unions-organized-labor.html>

<sup>77</sup> <https://news.bloomberglaw.com/daily-labor-report/mass-exodus-of-public-union-fee-payers-after-high-court-ruling>

<sup>78</sup> <https://reason.com/2019/04/09/janus-211000-workers-fled-seiu-afscme>

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