



# **The Legal and Financial Landscape for Community College Faculty in Colorado**

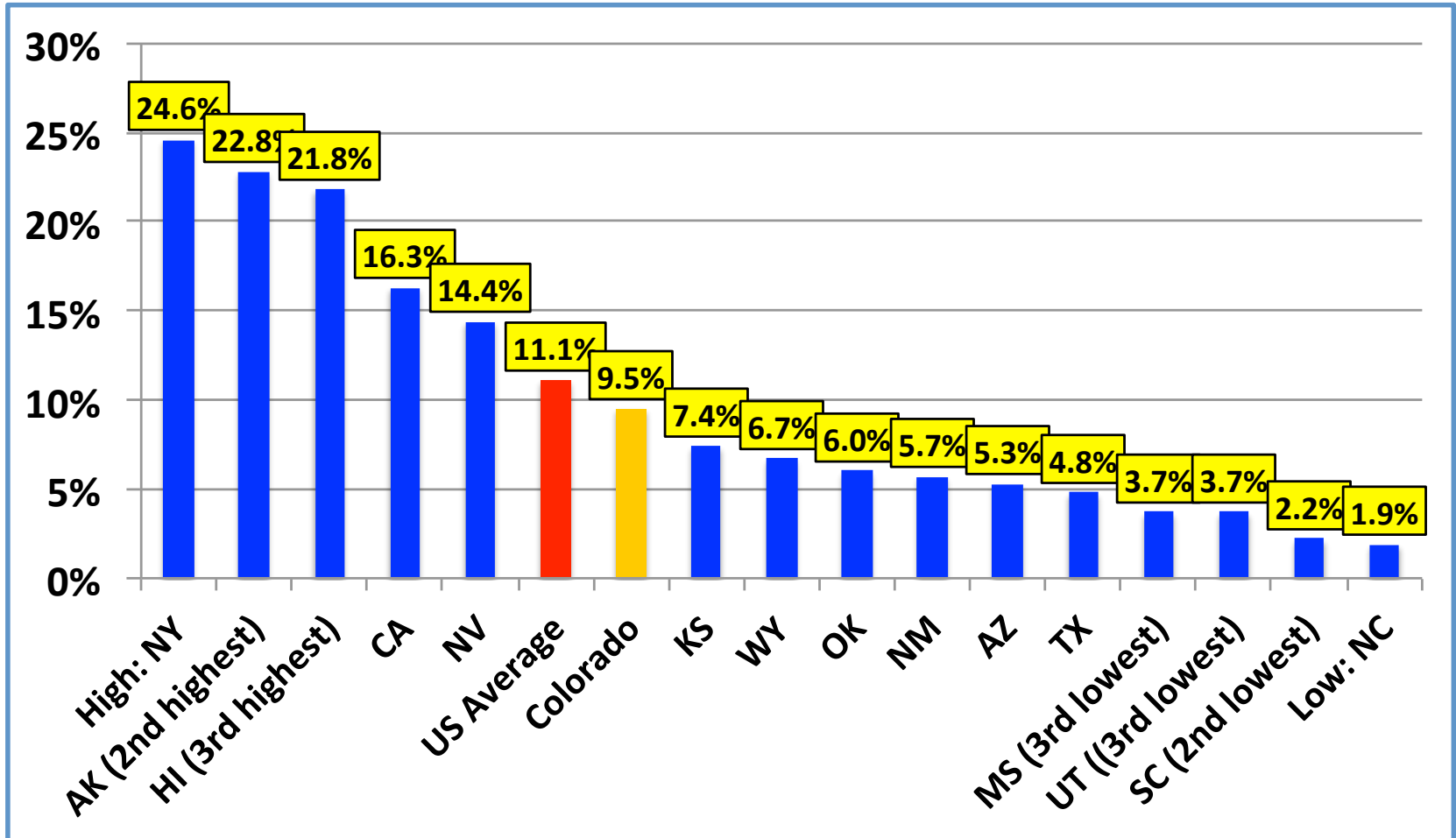
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# Are There Unions in Colorado?

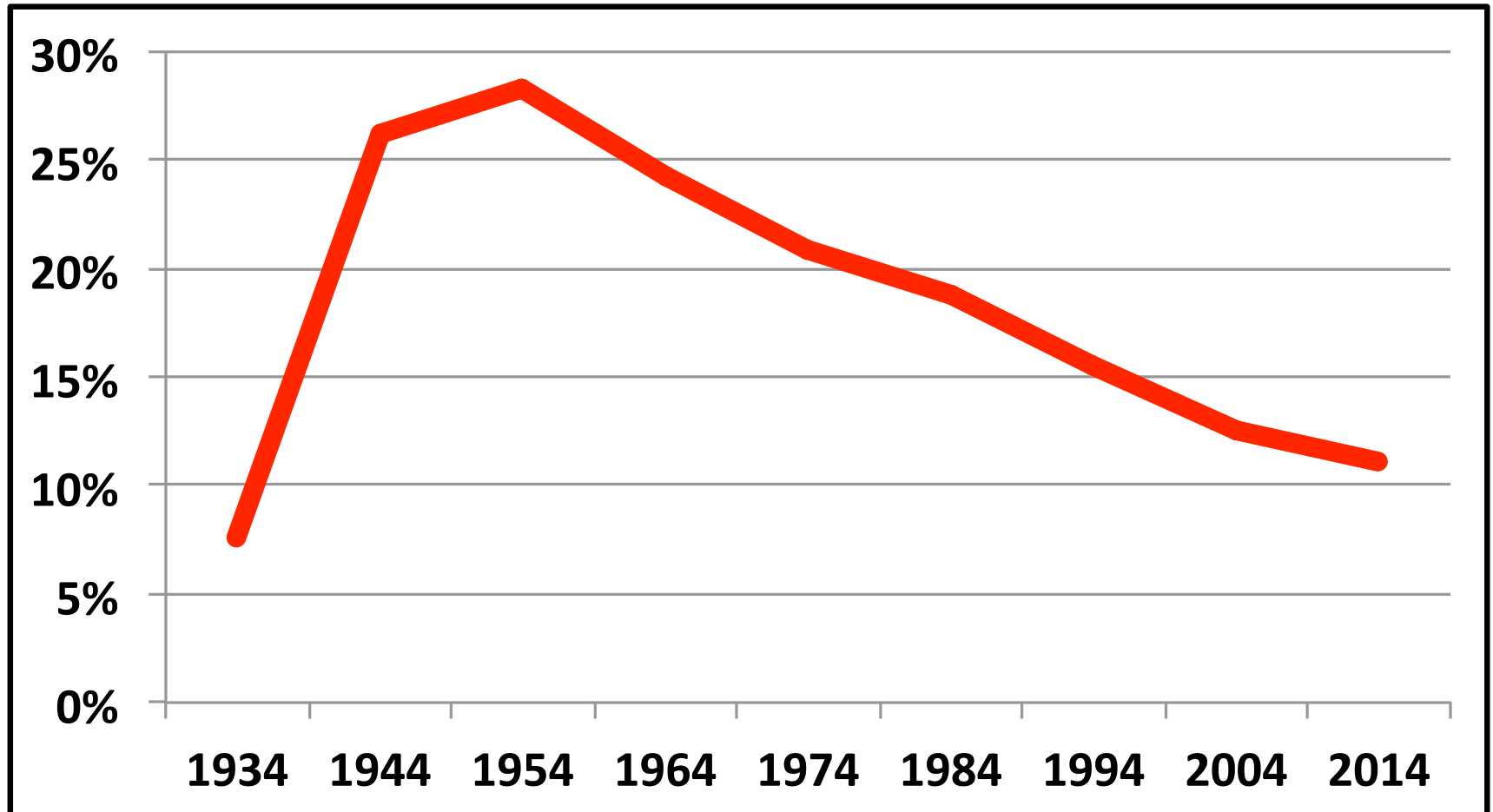
## Selected State Unionization Rates, 2014

Source: Bureau of Labor Statistics, 1/23/2015



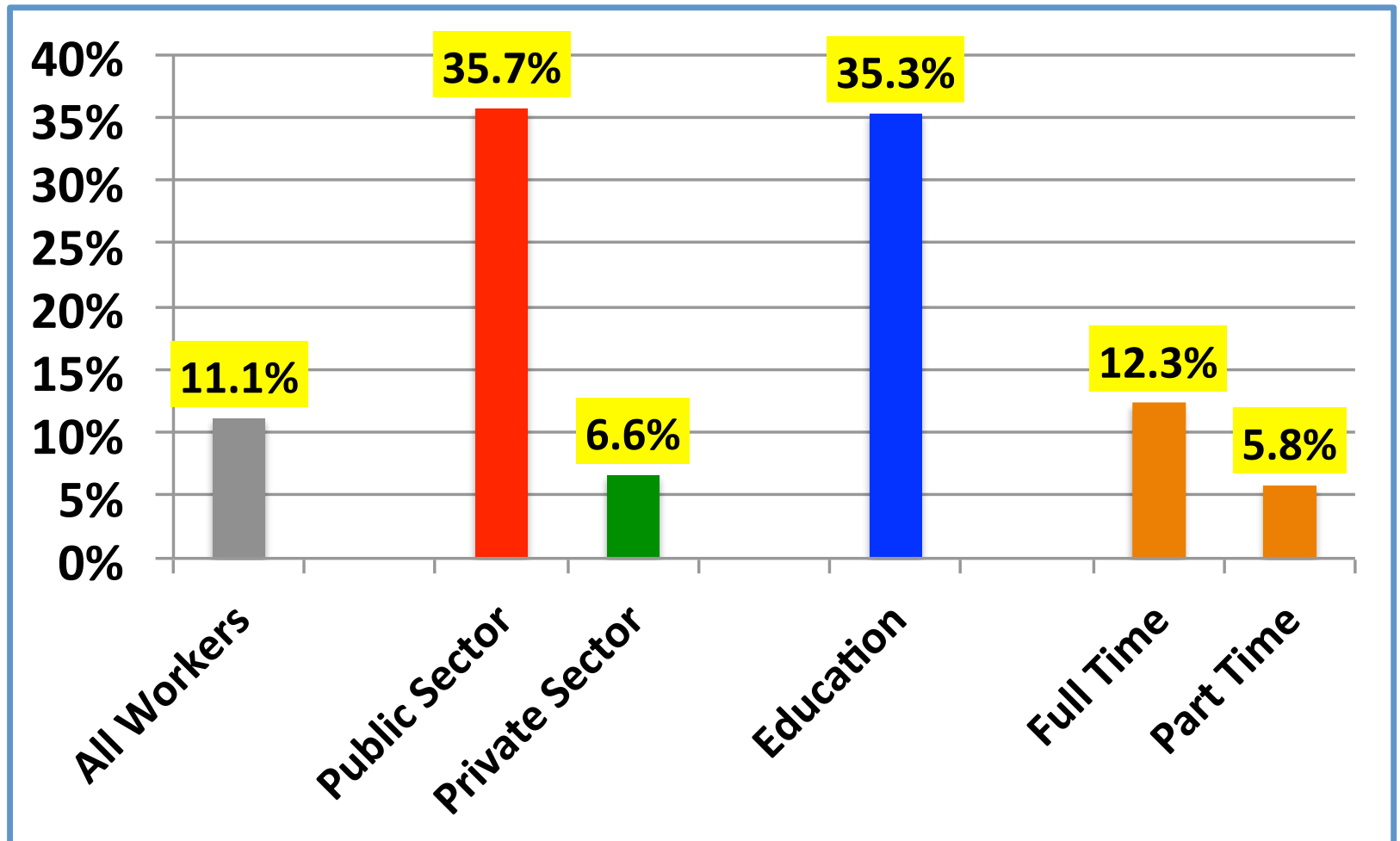
# Total U.S. Unionization Rate Over Time

Source: Bureau of Labor Statistics and Congressional Research Service



# 2014 Unionization Rates of Certain Groups

Source: Bureau of Labor Statistics



# Public Sector Labor Law – Enabling Legislation

- Enabling legislation is a state law that requires public sector employers to recognize a union of workers – assuming the workers have voted to support a union.
- Private sector employees are protected by the National Labor Relations Act
- The NLRA specifically exempts public sector employees.
- *Sources:*
  - *Union Organizing in a Public Setting: By Madeleine Meacham and Patrick Scully. Colorado Bar Association 2009*
  - *Aaron Nisenson, AAUP Senior Counsel*

**Is there a Public Sector Law in Colorado?**

**Yes, but partially.  
Named the Colorado Labor  
Peace Act**



## **The Colorado Labor Peace Act Does Not Allow Public Sector Collective Bargaining – Nor does it exclude it**

**"Employer" means a person who regularly engages the services of eight or more employees.**

**The term does not include the state or any political subdivision thereof."**

# First Amendment of the U.S. Constitution

Congress shall make no law respecting an establishment of religion,  
or prohibiting the free exercise thereof;  
or abridging the freedom of speech, or of the press;  
or the right of the people peaceably to assemble,  
and to petition the Government for a redress of grievances.



# **How do some public sector unions have bargaining in Colorado?**

**The Supreme Court of Colorado has held that because there is no state Constitutional provision and no state law governing public sector unions, the field is open for each unit of government to determine whether to negotiate and bargain with a union. Littleton Education Association v Arapahoe County, 191 Col. 411 (Supreme Court of Colorado 1976)**

# **How do specific public sector employees get bargaining rights – 3 Options**

**1 – The entity governing the employees can agree to voluntarily recognize the union. For example, some school boards have voluntarily recognized education unions. Similarly, Governor Ritter issued an executive order requiring departments under his authority to recognize and bargain with unions.**

**2 – The legislative or political body above the governing board can direct that the entity recognize and bargain with a union. For example, some City Council's have passed laws requiring police departments to bargain with employees, and in Denver the citizens passed an amendment to the City Charter requiring the City fire department to bargain with the fire union.**

**3 – The state legislature could pass a law requiring bargaining for certain employers or generally. To date, the legislature has done neither.**

## **Littleton Education Association v Arapahoe County, (Supreme Court of Colorado 1976)**

- **Facts:**
  - There were 2 CB contracts from 1967 to 1973.
  - They could not agree on the next contract.
  - Board imposed a budget; LEA members went on strike
  - Board got an injunction, then sent out individual contracts
- **Result:** The court found that public employers in Colorado can voluntarily recognize a union
- **Voluntary recognition is political** – if the employer recognizes the union, then they can bargain over wages, hours, and working conditions.

## Voluntary Recognition Case

*International Union of Operating Engineers v. Detrick (9<sup>th</sup> Circuit, 1979)*

- The key issue with voluntary recognition is that it is at the **discretion of the employer**. Absent some law to the contrary, the union cannot legally compel a public employer to recognize the union.
- "The county government's refusal to bargain on matters of wages, hours, and working conditions is a right preserved for state governments and their subdivisions
- Result: "Except when the state by an act of its own legislature compels counties to bargain with unions, counties have no duty to do so."
- Assuming the board is not prohibited from bargaining, then whether it would agree to bargain is largely a **political one**.

## More on Voluntary Recognition: Limitation

### *Greely Policy Union v. City of Greeley (Colorado Supreme Court 1976)*

- **Facts**
  - The city of Greeley charter had an amendment, voted on by the people, that compelled the city to bargain with the police union, and send unsolved matters to arbitration.
  - The city also claimed that arbitration provision was invalid
- **Result: Upheld the city's duty to bargain with the police union pursuant to an amendment to the city's charter. "The city asserts that the charter amendment involves a matter of statewide concern which is not properly subject to municipal regulation. We do not accept that argument as valid.**
- The court did rule for the city and against binding arbitration, claiming this is an unconstitutional delegation of power from the elected officials to an arbitrator

# Denver Firefighters Case: Another Limitation

Colorado Supreme Court 2014

- Is a disciplinary matrix subject to collective bargaining?
  - The City says no because the Charter vests the City with authority to unilaterally draft and implement disciplinary rules.
  - The firefighter union claim that the discipline matrix is subject to collective bargaining because discipline is a term and condition of employment and the Charter grants firefighters the right to bargain over terms and conditions of employment.
- **City Charter: “Firefighters shall have the right to bargain collectively with the City and County of Denver and to be represented by an employee organization in such collective bargaining as to wages, rates of pay, hours, grievance procedure, working conditions, and all other terms and conditions of employment, except the table of organization of the Fire Department and except pensions.”**
- **Result: Because the word discipline is not in the charter amendment, bargaining over the disciplinary matrix is prohibited because the matrix is not subject to collective bargaining.**

## At Least we are not in North Carolina: Collective Bargaining is Illegal in the Public Sector

- Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county or other municipality, or agency or instrumentality of government, *is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect*

## **What Does this Mean for Community College Faculty?**

- **In Colorado, it is extremely unlikely that the law governing community colleges would require that the Board recognize or bargain with a union.**
- **In addition, any local law allowing collective bargaining in the public sector would not apply to community colleges as they are governed by state, and not local, law**
- **So what can we do?**
- **We must get bargaining rights from either the College Board or from the state legislature.**



## The bodies that could authorize bargaining are the Community College Board or the State Legislature

- **Colorado Constitution** provides that the state legislature has legislative authority over the community colleges,
  - “The establishment, management, and abolition of the state institutions shall be subject to the control of the state, under the provisions of the constitution and such laws and regulations as the general assembly may provide.” Col Const. Art. VIII, Sec. 5(1)
- Under the Colorado Constitution the **College Board generally supervises the institutions.**
  - “The governing boards of the state institutions of higher education, whether established by this constitution or by law, shall have the general supervision of their respective institutions and the exclusive control and direction of all funds of and appropriations to their respective institutions, unless otherwise provided by law.” Col Const. Art. VIII, Sec. 5(2).

# **The Governing body for Community Colleges is the Community College Board**

- **State legislature has by statute, established the Community College Board, and designated to it the general management of the system.**
  - **“There is hereby established a state system of community and technical colleges which shall be under the management and jurisdiction of the state board for community colleges and occupational education.”**

***C.R.S. 23-60-201***

## The Community College Board would be the body that could voluntarily recognize the union

- On the recognition of unions for bargaining purposes at community colleges, there is currently nothing specific – no statute, board policy, board designation, or policy on a campus basis.
- Therefore, in the first instance the issue of union recognition is something that would generally be within the control of the Board. Why? Because per the Colorado Constitution and state law, the Board has the authority for the *“general supervision” and “management” of the institutions under its purview.*

## **How could the Community College Board voluntarily recognize the union**

- **The board could recognize on a system wide basis, or the board could create a policy allowing for campus by campus recognition, or could not do either one. There is no requirement that the Board recognize the union – i.e. the Board could refuse to recognize the union or could refuse to allow campuses to recognize the union.**
  - **If the board did decide to allow union recognition, it would likely pass a policy that set out the process for union recognition and then for bargaining.**
  - **If the board is likely to recognize the union, AAUP could provide to the Board sample policies that would accomplish this goal.**

## **What if the Community College Board fails to voluntarily recognize the union**

- **The union cannot force the Community College Board to recognize the union under current law.**
- **If the Board fails to recognize the union, either by refusing to do so or simply by failing to act at all, the only way to get bargaining rights would be to get the state legislature to pass a statute requiring that the college board recognize and bargain with a union.**

## **What if the College Board or state legislature provides union recognition and bargaining?**

- **Initially, the College Board or state legislature would establish rules governing union recognition and bargaining. While the rules could vary in many ways, here are some elements that would almost certainly be addressed, either explicitly or by operation of law.**
  - **Any union would need to show it had the support of over 50% of the relevant employees, either through an election or card check.**
  - **75% rule**
  - **There would be rules governing negotiations and certain subjects of might be non-negotiable because of constitutional or statutory limitations, as with the Denver Fire Fighters.**

# Organize AAUP Chapters and Acting Like a Union!

Even though collective bargaining is not likely in the current environment, this does not mean that faculty cannot organize.

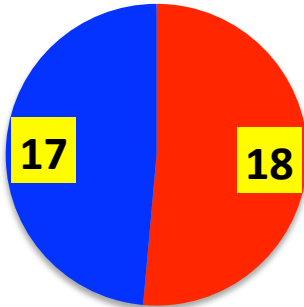
AAUP chapters can:

- Publish statements and analyses: [Colorado Community College Faculty Bill of Rights](#).
- Propose legislation: **SB15-094, “A Bill for an Act Concerning Community College Faculty.”**
- **Testify before the legislature**
- Represent faculty in hearings
- Conduct surveys
- Organize rallies

The Colorado Conference has done much of this excellent work, and the AAUP/CBC is here to help

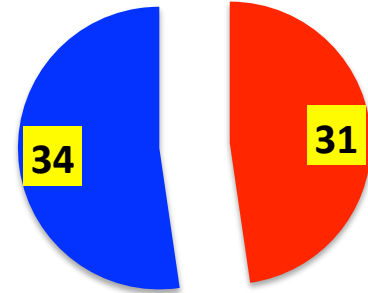
# Colorado Government

Colorado Senate



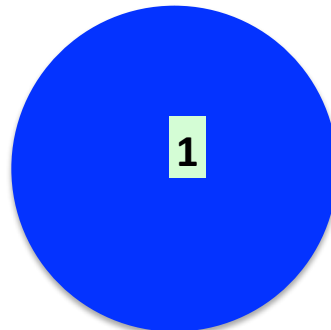
■ Republicans ■ Democrats

Colorado General Assembly



■ Republicans ■ Democrats

Colorado Governor





# Support Among the Faculty

Since the union will ultimately need support of at least 50% of the faculty in order to be recognized, we need to continue building this support.



**Gaining Voluntary Recognition**

# Is there Something More Drastic?

Let's say the community college faculty at one of the CCCS institutions gets completely fed up. They act collectively, and ultimately decide to withhold their services.

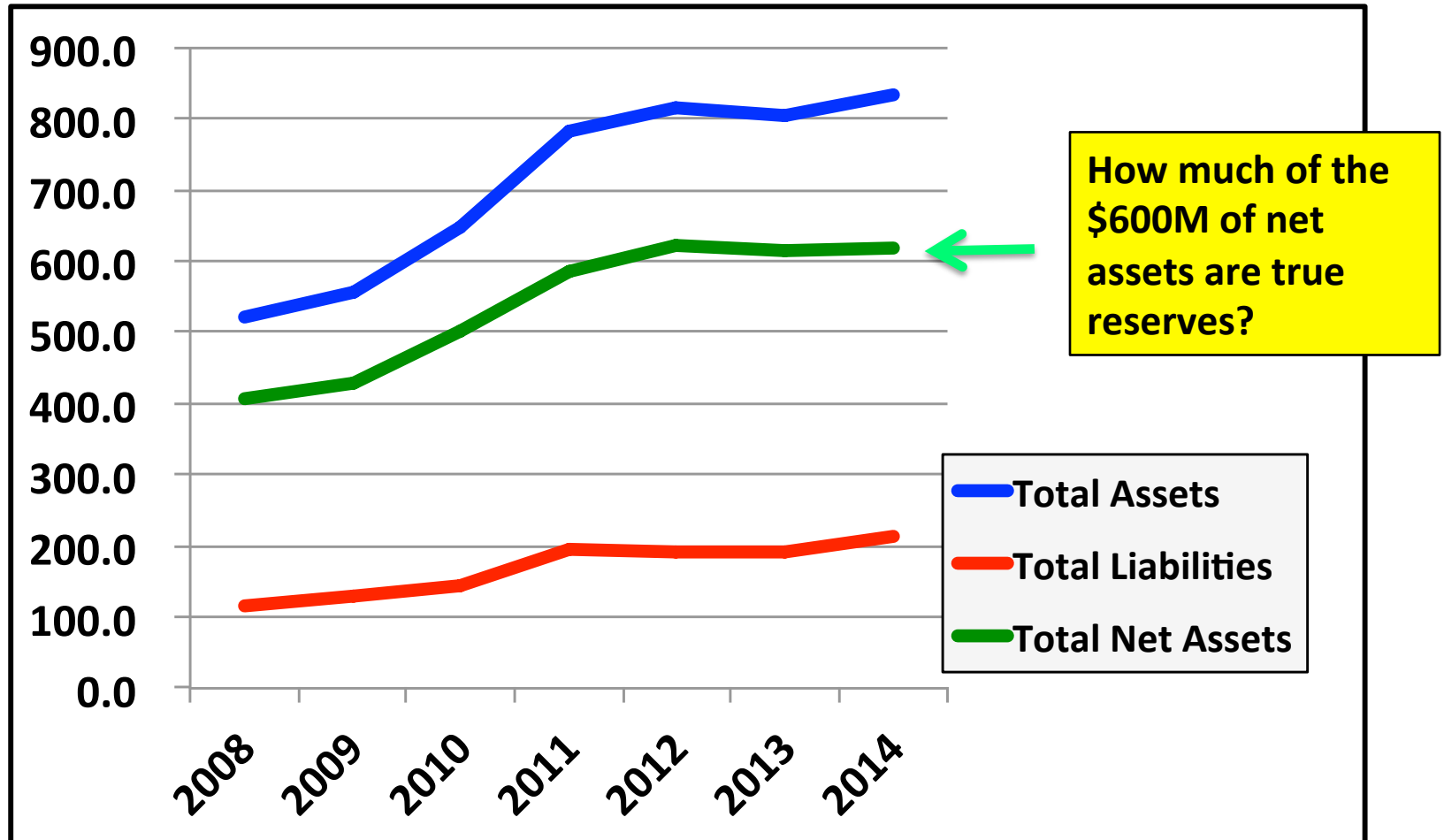
Would the faculty ever take this step?

Would this shut the place down?

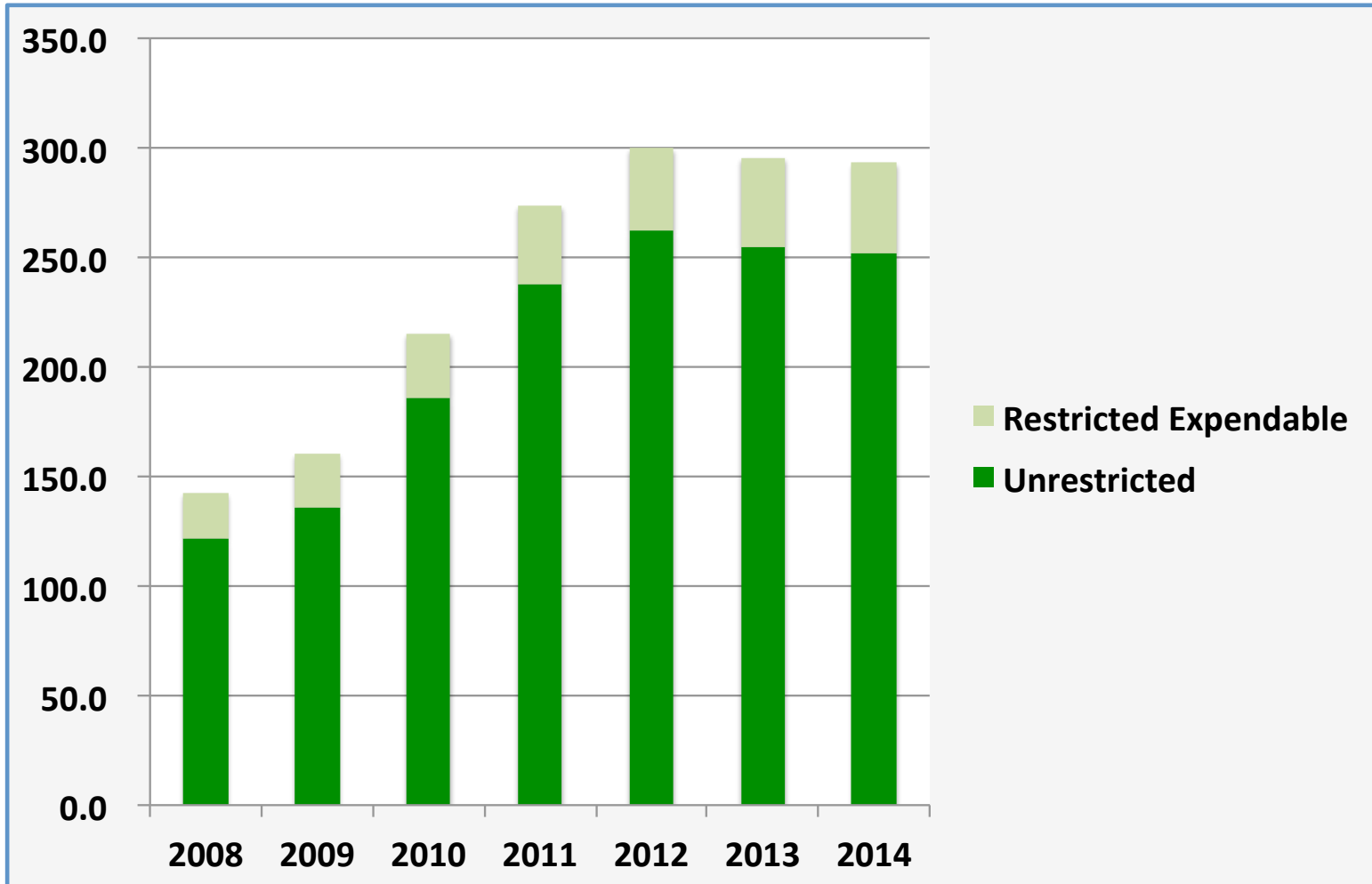
Would the administration and CCCS Board agree to enter collective bargain with the faculty?

If it gets to this point, the AAUP/CBC is prepared to be there with you!

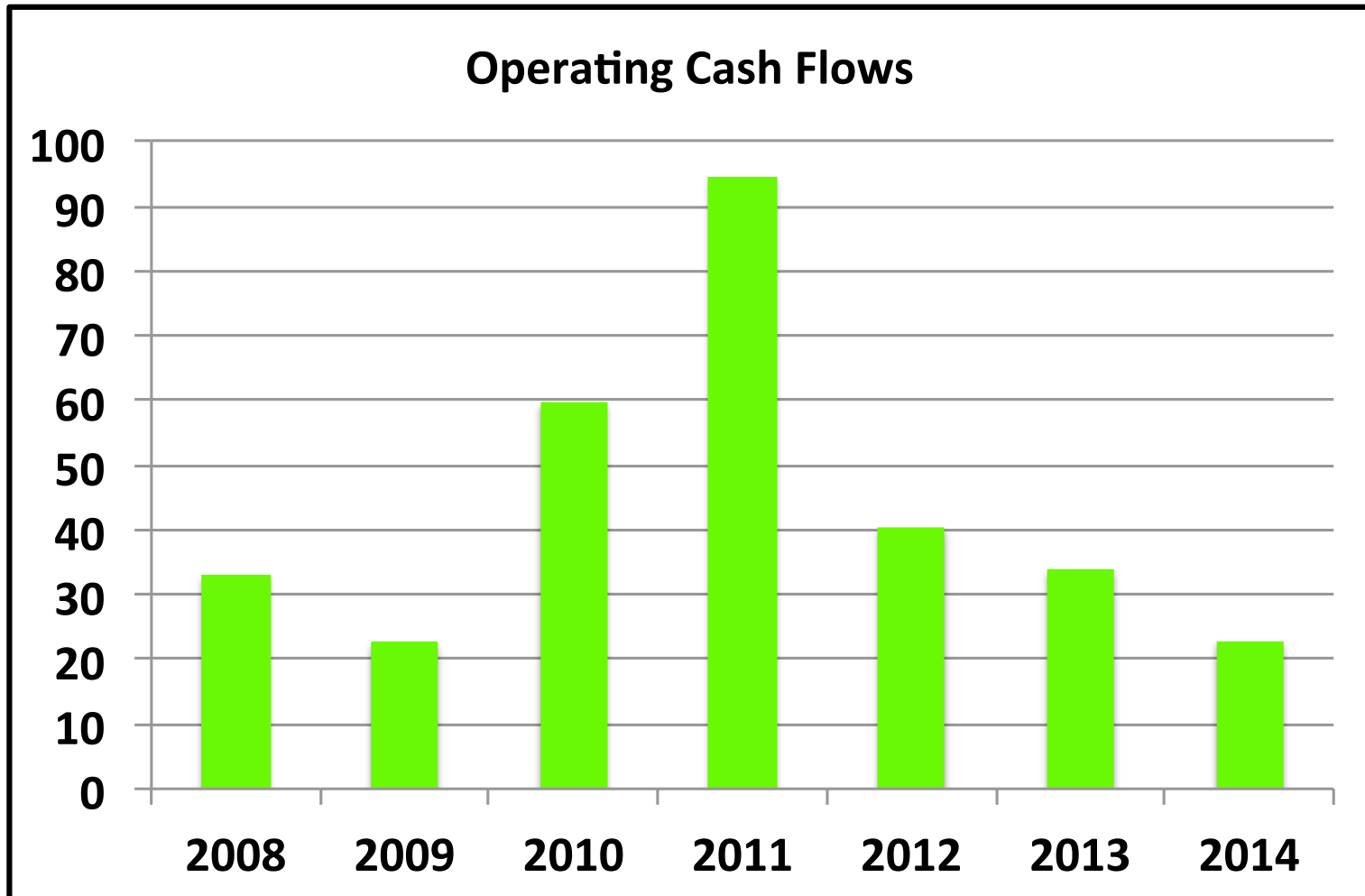
# Financial Situation of CCCS: Balance Sheet



# Reserves of CCCS



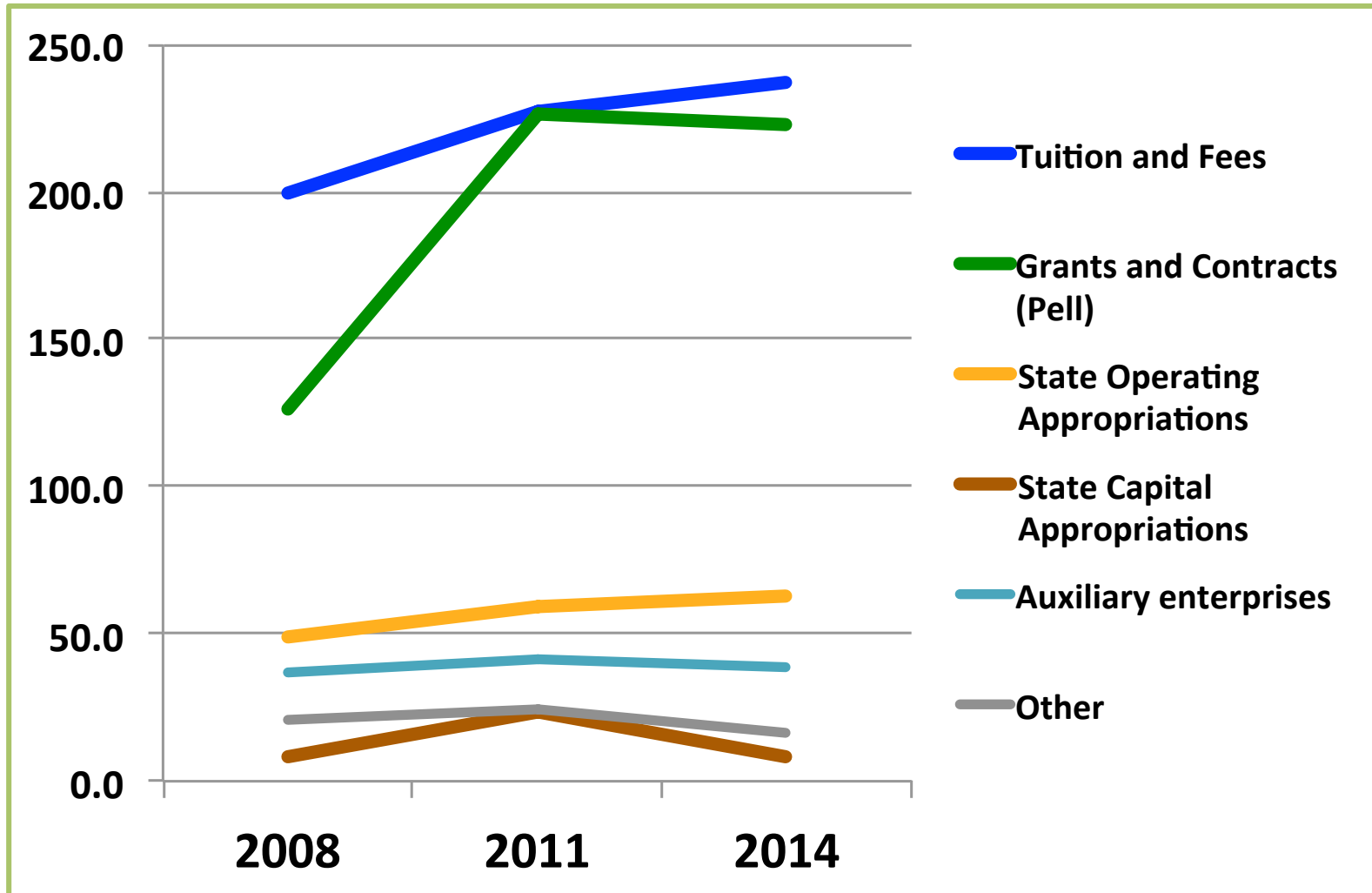
# Annual Operating Cash Flows of CCCS



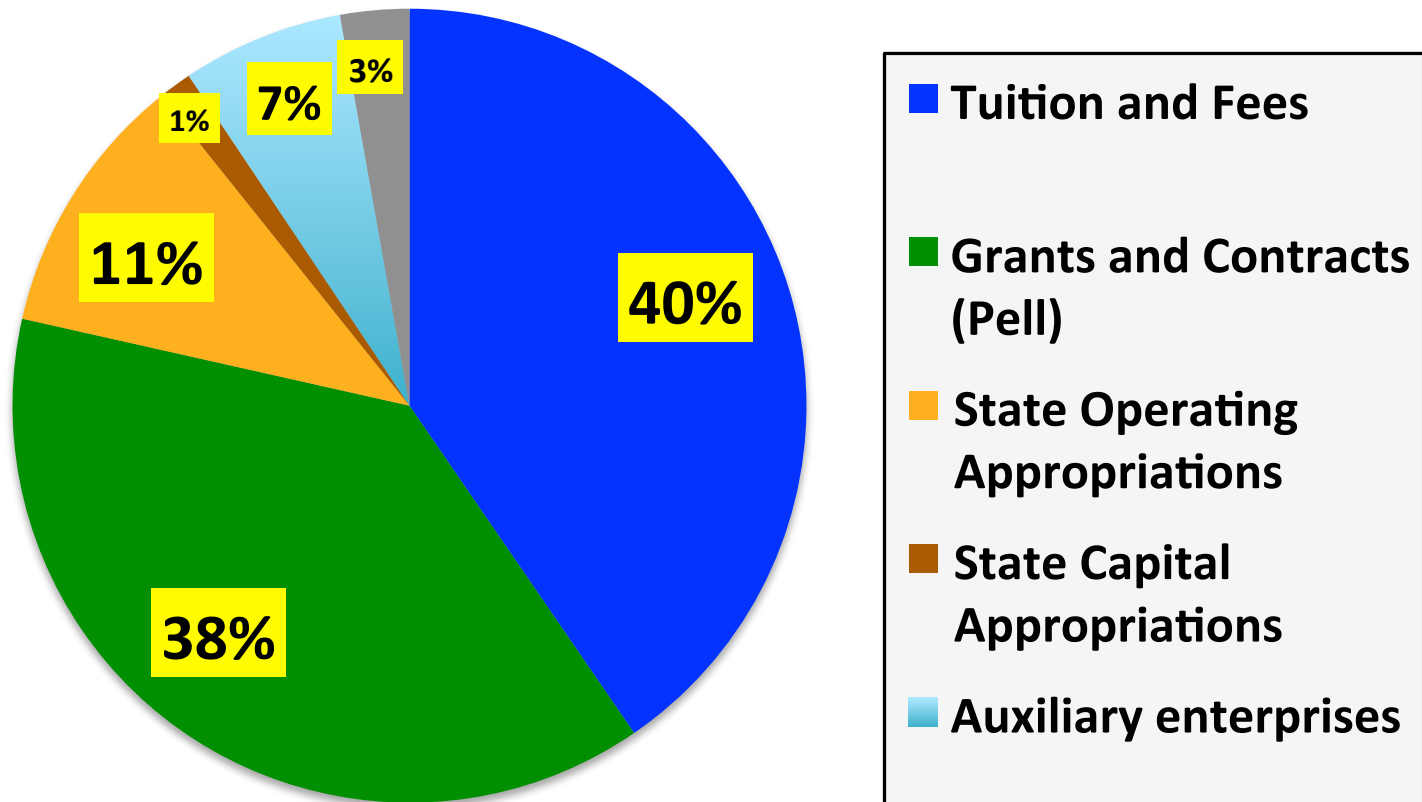
# Strong Bond Rating

- **Aa3 Rating for the CCCS System**
- **4<sup>th</sup> highest rating out of 24 possible rating categories**
- **Rationale: “The Aa3 underlying rating reflects the system's large operating base and enrollment, positive operating performance, and ample expendable financial resources to cushion both debt and operations.”**

# CCCS Revenue Distribution in Millions

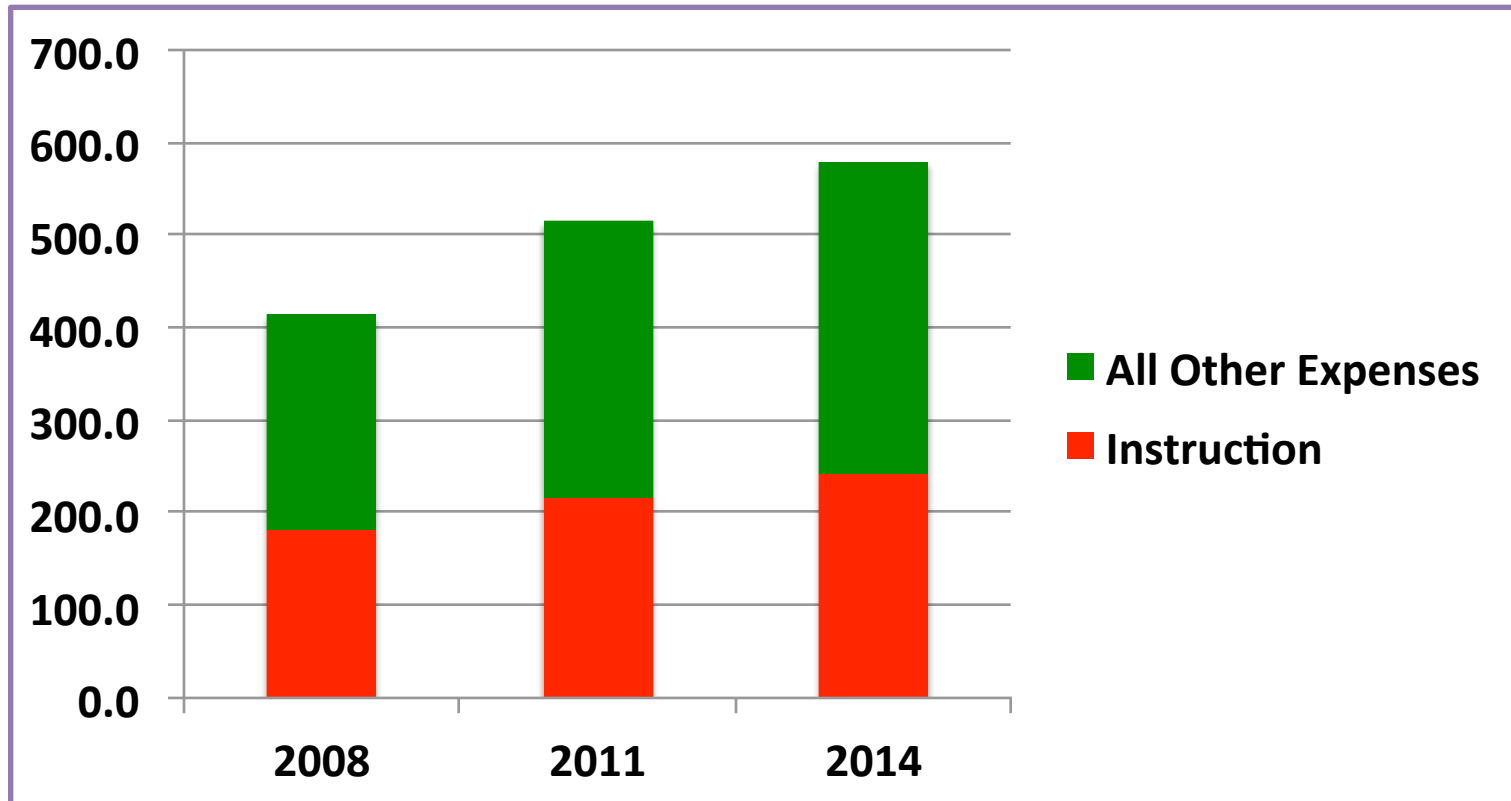


# 2014 CCCS Revenue Distribution



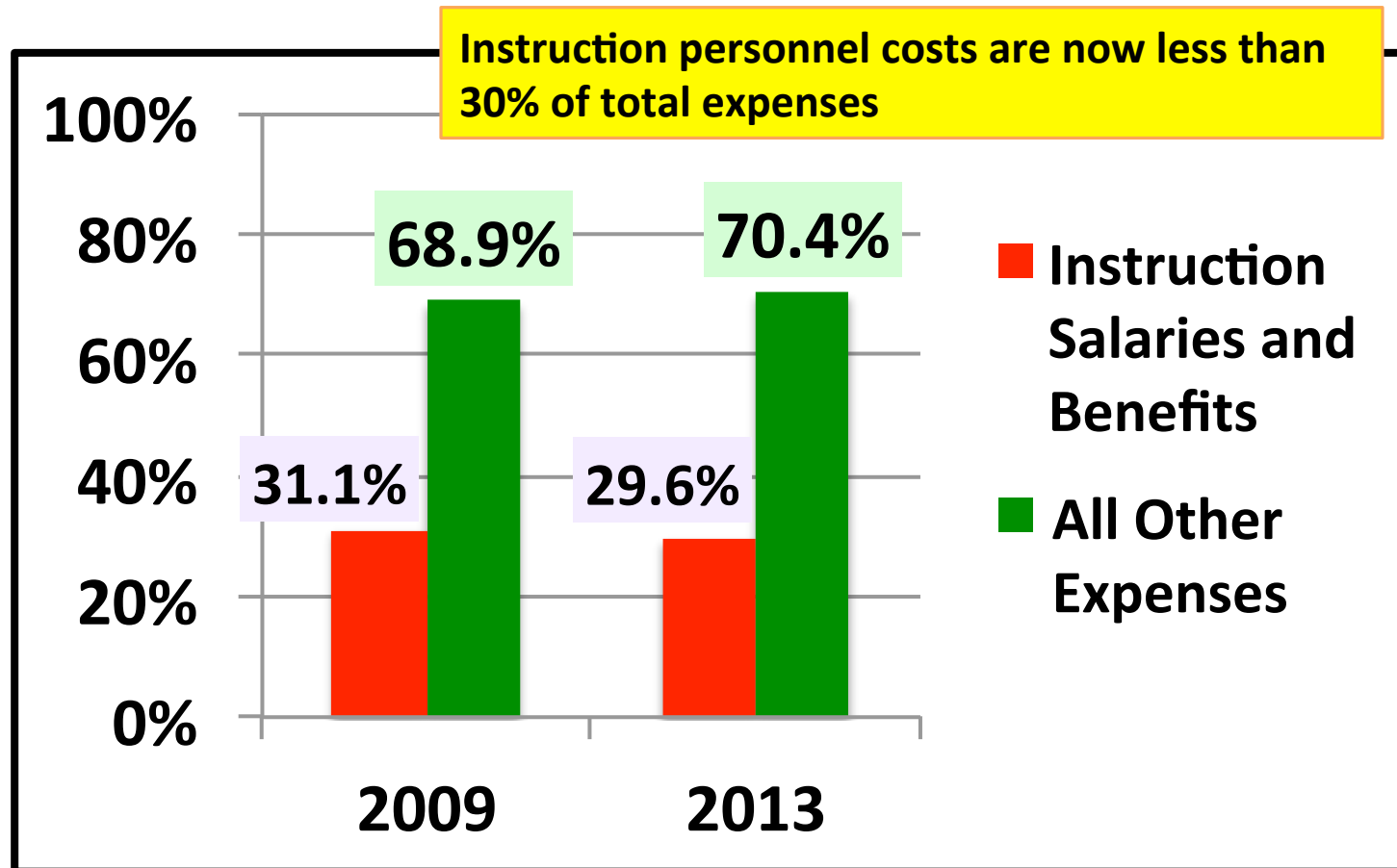


# Expense Distribution

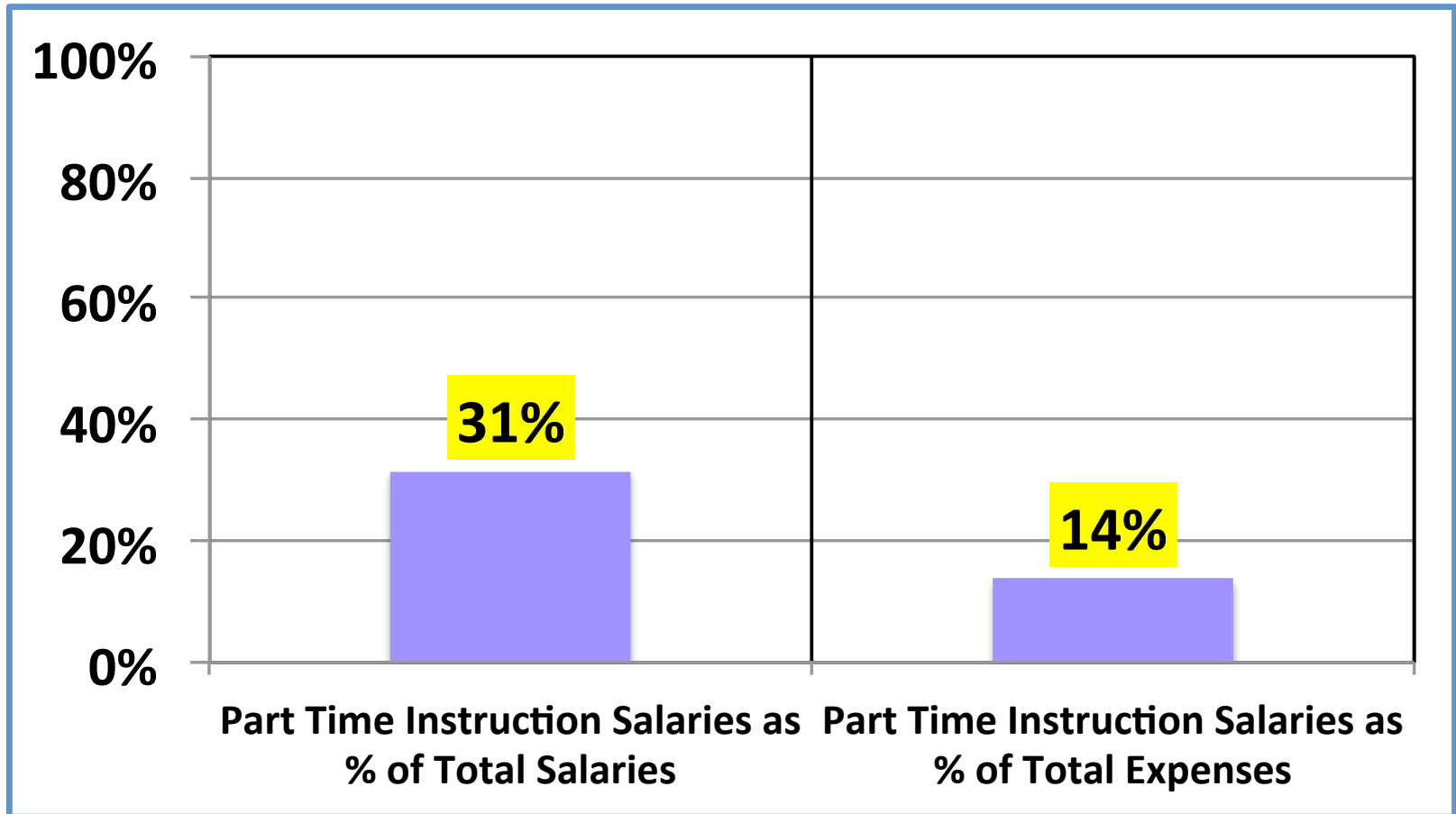


	2008	2011	2014
Instruction %	43.7%	42.1%	41.9%
All Other %	56.3%	57.9%	58.1%

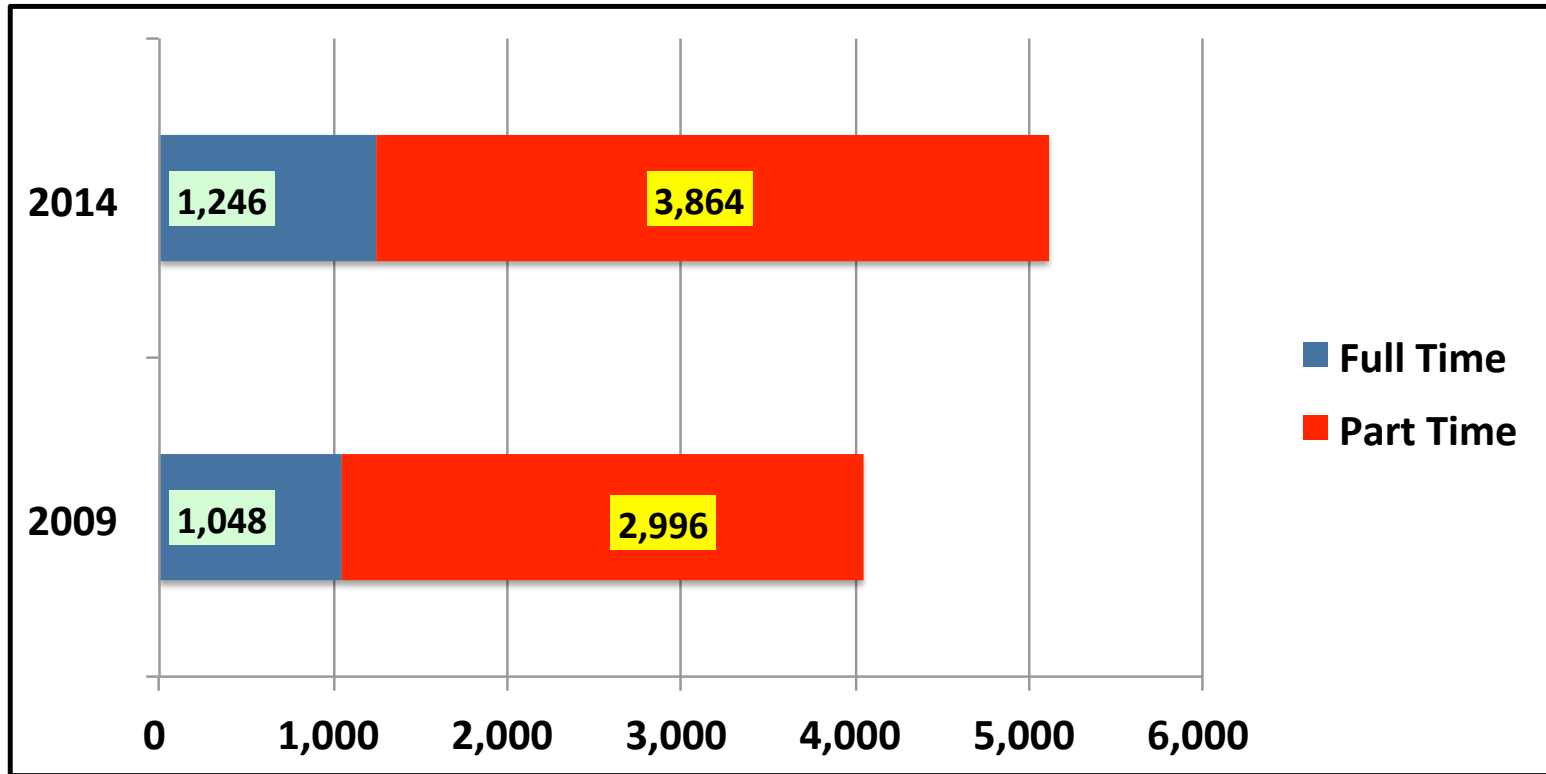
# Instruction Compensation in Context: All 14 CCCS Institutions per IPEDS



# IPEDS: 2013 Part Time Salaries in Context



# Faculty Composition per IPEDS



	2009	2014	# Change	% Change
Full Time	1,048	1,246	198	19%
Part Time	2,996	3,864	868	29%
Total	4,044	5,110	1,066	26%
% Part Time	74%	76%		