



WORKER FREEDOM IN THE STATES

The *Janus* Impact and Grading State Public Labor Laws





225 State Street, Suite 302 | Harrisburg, PA 17101
717.671.1901 phone | 717.671.1905 fax
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Worker Freedom in the States: The Janus Impact and Grading of State Public Sector Labor Laws

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Priya M. Brannick

Executive Summary

On the first anniversary of the *Janus v. AFSCME* Supreme Court ruling, U.S. senators introduced a bill that would enshrine collective bargaining as a right in federal law for America's government workers. The *Janus* decision, Senate Minority Leader Chuck Schumer (D-NY) scolded in a press release, was a "gut punch" to workers and part of recent "relentless attacks" on unions.¹ The new bill is just one of the latest salvos in a national policy war between government union leaders and their allies and supporters of individual workers' rights to reshape the U.S. labor landscape.

As we have noted in two earlier editions of this report, the last decade has seen an unprecedented sweep of pro-worker and economy-boosting public sector labor reforms across several states. For example, Wisconsin, Michigan, Indiana, West Virginia,² and Kentucky³ all became right-to-work states. Missouri passed right-to-work in 2017, only to have it overturned in an August 2018 ballot initiative.⁴ Despite unions filing lawsuits against right-to-work laws in West Virginia, Wisconsin, and Kentucky, the courts upheld the reforms. Right-to-work states now outnumber forced-union states 27 to 23.

At the same time, legislative reforms that specifically cover state and local government workers have also been taking root—and encountering challenges in turn. For example, Iowa passed a raft of Wisconsin-like collective bargaining reforms in 2017. For most employees, the law limited the scope of bargaining to wages and enacted paycheck protection. The law also requires regular recertification of unions and stipulates that arbitrators must include the

¹ Office of Sen. Mazie Hirono, "Following the Supreme Court's Janus Decision, Hirono, Cartwright, Senate & House Democrats Introduce New Legislation to Strengthen Rights of Workers to Join Unions & Bargain Collectively," June 28, 2019, https://www.hirono.senate.gov/news/press-releases/following-the-supreme-courts-janus-decision-hirono-cartwright-senate-and-house-democrats-introduce-new-legislation-to-strengthen-rights-of-workers-to-join-unions_bargain-collectively.

² AP, "West Virginia's top court clears 'right-to-work' law," USA News, September 15, 2017, <https://www.usnews.com/news/best-states/west-virginia/articles/2017-09-15/west-virginia-top-court-clears-right-to-work-law>.

³ Reid Wilson, "Ky. Governor signs right to work law," *The Hill*, January 8, 2017, <http://thehill.com/homenews/news/313251-ky-governor-signs-right-to-work-law>.

⁴ Scott Neuman, "Missouri Blocks Right-to-Work Law," NPR, August 8, 2018, <https://www.npr.org/2018/08/08/636568530/missouri-blocks-right-to-work-law>.

employer's ability to fund a contract when choosing the best proposal.⁵ Though major unions sued the state over the law, the Iowa Supreme Court upheld the reforms in May 2019.⁶

However, even the uptick in activity on labor issues over the past five years pales in comparison to the year following the 2018 *Janus* ruling. According to Ballotpedia, as of early August 2019, 102 *Janus*-related state bills were introduced and seven bills backed by labor leaders were enacted.⁷ A majority of these 2019 bills contained union-backed policies. They represented an effort to codify union privileges that may have simply been negotiated at the contract level before; shore up the scope of collective bargaining; and unionize new groups of government employees.

Union Leaders Strike Back After *Janus*

Counteracting *Janus*

House Bill 1575 in Washington state deals directly with the *Janus* ruling, by declaring that government unions are not liable for refunding fair share fees collected before the court decision went into effect.⁸ California's Senate Bill 846, passed in September 2018, does the same.⁹

Oregon leads the states with 10 new labor bills in 2019.¹⁰ With House Bill 3009, public safety unions succeeded in maintaining some form of agency fees, replacing them with "reasonable fees and costs for representation that are unrelated to the negotiation of a collective bargaining agreement."¹¹ In February 2019, the Oregon Coalition of Police and Sheriffs (ORCOPS) explained: "ORCOPS's response to the U.S. Supreme Court's *Janus* decision will be HB 3009. The bill helps to protect law enforcement from incurring excessive non-member costs."¹² In other words, the law is an illegal *Janus* workaround to maintain the union's cash flow from agency fees and limit employees' freedom of association—and is thus ripe for a court challenge. Gov. Christopher Sununu vetoed New Hampshire's Senate Bill 18, which proposed

⁵ House File 291, Feb. 17, 2017,

https://www.legis.iowa.gov/docs/publications/LGE/87/Attachments/HF291_GovLetter.pdf. The Act amends Public Employee Relations, Iowa Code 20.1 § et seq., <https://www.legis.iowa.gov/docs/code/20.pdf>.

⁶ Shelby Fleig and Robin Opsahi, "In a Victory for Republicans, Iowa Supreme Court Upholds 2017 Law Limiting Public-Worker Unions' Rights," *Des Moines Register*, May 17, 2019, <https://www.desmoinesregister.com/story/news/crime-and-courts/2019/05/17/collective-bargaining-iowa-legislature-afscme-61-kim-reynolds-supreme-court-unions/3705134002/>.

⁷ Ballotpedia, "Number of Relevant Bills by Current Legislative Status," Aug. 9, 2019, https://ballotpedia.org/Public-sector_union_policy_in_the_United_States,_2018-present.

⁸ Washington State Legislature, "HB 1575," 2019-20, <https://apps.leg.wa.gov/billsummary/?BillNumber=1575&Year=2019&Initiative=false>.

⁹ Cal. Gov. Code §1159, http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB846.

¹⁰ Dave Beaudoin and Cory Eucalitto, "Deep Dive: Public-Sector Unions After *Janus*," June 27, 2019 Ballotpedia webinar presentation,

https://docs.google.com/presentation/d/1Q91Wi8DwNpehly1WNHItygcs4JgvP_IALYO_c2eubMo/edit#slide=id.g5c0cd9f0c1_0_260.

¹¹ Oregon State Legislature, Section 1(5), "House Bill 3009 – Enrolled," 2019 Regular Session, <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB3009/Enrolled>.

¹² ORCOPS, "2019 Legislative Session in Full Swing," February 27, 2019, <https://orcops.org/2019-legislative-session-in-full-swing/>.

voluntary union payments.¹³ He explained why: “Continuing the payroll deduction for a month after a worker has chosen not to continue union membership falls outside the spirit of the Janus ruling and could potentially expose the state, counties and municipalities to litigation.”¹⁴

Rhode Island passed a more measured law permitting unions to levy fees on public school teachers and municipal workers who, as non-members, request arbitration and/or grievance services.¹⁵ A bill for work-around fees in Massachusetts failed to advance.¹⁶

Padding Government Union Privileges

Once again, Oregon is ground zero with lawmakers passing House Bill 2016. The law codifies the practice of “release time,” requiring employers to grant union officials paid time off to conduct union business during the work day “without loss of compensation, seniority, leave accrual or any other benefits.”¹⁷ Before this bill, our previous research showed that release time was permitted and negotiated at the bargaining table but not required in statute.¹⁸

California Senate Bill 1085, passed in 2018, essentially accomplishes the same thing.¹⁹ Previously, state law allowed paid time off for local and state union representatives to conduct union business with employers.²⁰ Now, the new law allows most government employees also “to serve as stewards or officers of the exclusive representative.” Unions are supposed to reimburse employers for the absent employee’s compensation, but the law allows a labor contract to supersede that proviso.²¹

Meanwhile a Florida bill that would have done the opposite—prohibit release time—failed in committee.²²

In sum, the large government unions are attempting to benefit from a policy weakness we identified three years ago in state laws: the lack of clear statutory language prohibiting or limiting union privileges such as release time, the payroll deduction of union dues and other political money, and the scope of collective bargaining. Such provisions adversely impact state

¹³ General Court of New Hampshire, “Senate Bill 18,” 2019, http://gencourt.state.nh.us/bill_status/bill_status.aspx?lsr=1009&sy=2019&sortoption=&txtsessionyear=2019&txtbillnumber=SB18.

¹⁴ Christopher T. Sununu, “Governor’s Veto Message Regarding Senate Bill 18,” State of New Hampshire – Office of the Governor, July 10, 2019, <https://www.governor.nh.gov/news-media/press-2019/documents/sb18-veto-message.pdf>.

¹⁵ Rhode Island State Legislature, “House Bill 5259,” 2019 Regular Session, <https://legiscan.com/RI/text/H5259/2019>.

¹⁶ 191st General Court of the Commonwealth of Massachusetts, “Bill S.1043,” 2019, <https://malegislature.gov/Bills/191/S1043>.

¹⁷ Oregon State Legislature, Section 3(1), “House Bill 2016 Enrolled,” 2019 Regular Session, <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2016/Enrolled>.

¹⁸ Commonwealth Foundation, “State Labor Comparison – Oregon,” https://www.commonwealthfoundation.org/state_labor_laws/state_labor_comparison.asp?s=OR.

¹⁹ Cal. Gov. Code §3505.3, <https://www.perb.ca.gov/lawspdfs/mmba.pdf>, and §3518.5, <https://www.perb.ca.gov/lawspdfs/Dills.pdf>.

²⁰ Cal. Gov. Code §3505.3, <https://www.perb.ca.gov/lawspdfs/mmba.pdf>, and §3518.5, <https://www.perb.ca.gov/lawspdfs/Dills.pdf>.

²¹ Cal. Gov. Code §3558.8, http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=4.&title=1.&part=&chapter=11.5.&article=

²² The Florida Senate, “House Bill 13,” 2019, <http://www.flsenate.gov/Session/Bill/2019/13>.

and local budgets, creating the potential for cumulative deficits and higher future taxes.

Invading Workers' Privacy

Other efforts directly affect workers and their privacy and First Amendment rights. In fact, as Table 1 shows, the preponderance of proposed union-backed legislation in 13 states deals with gaining access to the private contact details of new and existing government workers. Oregon's House Bill 2016 requires government employers to disclose to unions a breathtaking array of private information, such as employee cell phone numbers, work locations, and personal e-mail addresses.²³

On Aug. 2, Massachusetts Gov. Charlie Baker vetoed an omnibus government union bill, H3854,²⁴ over proposals to grant unions access to private employee details such as cell phone numbers. The bill would have also allowed unions to charge non-members fees for grievance proceedings.²⁵ Given the bill's overwhelming support in the House and Senate, the veto may be overridden in the legislature's next session.

In Pennsylvania, labor leaders have twice attempted to institute "card check" legislation, which would take away an individual's secret ballot during a unionization vote by allowing unions to be authorized by publicly signed authorization cards. Secret ballot elections allow workers to cast their decisions free from peer pressure and intimidation, while open card checks are not confidential. House Bill 2606 (failed to pass in 2018) and current House Bill 1178 would also provide union leaders with unprecedented access to workers' private information, including personal email address, home address, and personal cell phone numbers.²⁶

Expanding Collective Bargaining

As the above examples show, the 23 non-right-to-work states are pressing to preserve and expand government union privileges. To further illustrate, in 2019, Illinois²⁷ and New Mexico²⁸—two states that dropped from D to D- grades in this report—each banned government entities from enacting local right-to-work provisions for private sector workers.

Delaware passed Senate Bill 8 of 2019 mandating compensation as a bargaining topic.²⁹ In Maryland³⁰, lawmakers are attempting to expand collective bargaining to more types of

²³ Oregon State Legislature, Section 5(4)(a), "House Bill 2016 Enrolled," 2019 Regular Session, <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2016/Enrolled>.

²⁴ The 191st General Court of the Commonwealth of Massachusetts, "Bill H.3854," <https://malegislature.gov/Bills/191/H3854/BillHistory?pageNumber=2>.

²⁵ Shira Schoenberg, "Gov. Charlie Baker Vetoes Pro-Union Bill for Second Time," MassLive.com, Aug. 2, 2019, <https://www.masslive.com/news/2019/08/gov-charlie-baker-vetoes-pro-union-bill-for-second-time.html>.

²⁶ Pennsylvania General Assembly, "House Bill 2606," 2019, <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2017&sInd=0&body=H&type=B&bn=2606>; Pennsylvania General Assembly, "House Bill 1178," 2019,

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2017&sind=0&body=H&type=B&bn=1178>.

²⁷ Illinois General Assembly, Section 5, "Full Text of SB1474," 101st General Assembly, 2019,

<http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=108&GA=101&DocTypeId=SB&DocNum=1474&GAID=15&LegID=118327&SpecSess=&Session=>

²⁸ Section 1(D), HB 85, <https://www.nmlegis.gov/Sessions/19%20Regular/final/HB0085.pdf>.

²⁹ Delaware General Assembly, "Senate Bill 8," <https://legis.delaware.gov/BillDetail?LegislationId=37098>.

³⁰ Legiscan, "Maryland House Bill 1143," 2019 Regular Session, <https://legiscan.com/MD/bill/HB1143/2019>; Legiscan, "Maryland House Bill 766," 2019 Regular Session, <https://legiscan.com/MD/bill/HB766/2019>.

higher education employees, with similar expansion bills introduced in Arizona for government workers in general³¹ and in California for legislative employees³² and childcare providers.³³ Washington is also attempting to allow state legislative employees³⁴ and administrative law judges³⁵ to collectively bargain.

A quick glance at 2018 and 2019 shows that union leaders are dominating legislative efforts in relatively positive “B” and “C” states (see below) too. In fact, there have been unsuccessful attempts to roll back right-to-work laws in three states—Virginia, Arizona, and Indiana.³⁶ However, no post-*Janus* trend better illustrates this expansion than a significant union win in the right-to-work state Nevada.

After the 2018 midterm elections, Nevada’s House, Senate, and Governorship all came under Democratic control (after a previously split government).³⁷ In June 2019, union-friendly lawmakers took advantage of these majorities. Nevada passed Senate Bill 135,³⁸ which allows collective bargaining for the first time for some 20,000 state employees.³⁹ In April legislative testimony, the Nevada Policy Research Institute estimated annual government spending would increase by about \$500 million under the law.⁴⁰

We are seeing that, post-*Janus*, government unions and their allies will capitalize on legislative majorities, political weaknesses, and vague labor law to create statutory protections for Big Labor.

³¹ Legiscan, “Arizona Senate Bill 1433,” 1st Regular Session – 54th Legislature, 2019, <https://legiscan.com/AZ/bill/SB1433/2019>.

³² California Legislative Information, “AB-969 Collective Bargaining: Legislature,” 2019-2020 Regular Session, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB969.

³³ California Legislative Information, “AB-378 Childcare: Family Childcare Providers: Collective Bargaining,” 2019-2020 Regular Session, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB378.

³⁴ Washington State Legislature, “HB 1452,” 2019-20, <https://app.leg.wa.gov/billsummary?BillNumber=1452&Initiative=false&Year=2019>.

³⁵ Washington State Legislature, “HB 2017,” 2019-20, <https://app.leg.wa.gov/billsummary?BillNumber=2017&Initiative=false&Year=2019>.

³⁶ Ballotpedia, “Legislation Related to Public-Sector Employee Unions, 2019,” https://ballotpedia.org/Public-sector_union_policy_in_the_United_States_2018-present.

³⁷ Ballotpedia, “2018 Election Analysis: State Government Trifectas,” Updated February 14, 2019, https://ballotpedia.org/2018_election_analysis:_State_government_trifectas.

³⁸ Nevada Legislative Assembly, “HB 135 – Enrolled,” 80th (2019) Session, <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6159/Text>.

³⁹ Wall Street Journal, “Nevada Embraces Public Unions,” June 20, 2019, <https://www.wsj.com/articles/nevada-embraces-public-unions-11561070430>.

⁴⁰ John Tsarpalos and John Fellner, “SB 135 Testimony (Collective Bargaining),” Nevada Policy Research Institute, April 7, 2019, <https://www.npri.org/commentary/sb135-testimony-collective-bargaining/>.

Table 1

Overview of Labor Laws Since 2018		
Law	Enacted 2018-19	Introduced Winter/Spring 2019
Unionizes new classes of employees	Md., Nev.	Ariz., Calif., Md., Mich., Minn., Wash.
Expands the subject of collective bargaining	Del.	
Permits employees to represent themselves		Ill., Pa.
Gives unions access to existing and new employees' contact details and/or makes it easier to unionize	Conn., Md., N.J., Ore., R.I., Wash.	Conn., Ill., Maine, Mass., Nev., N.H., Pa., Vt.
Restricts employers from deterring or discouraging union membership	Calif.	
Institutes release time	Calif., Ore.	Calif., Fla.
Bans release time	Mo.	
Permits unions to refrain from representing non-members		Ill., Hawaii, Md., Mass., Ore.
Repeals state's right-to-work law		Ariz., Ind., Ky., Va.
Bans local government entities from instituting right-to-work for private sector workers	Ill., N.M.	
Allows easier opt-outs	Okla.	Kan., Pa.
Institutes opt-out	Hawaii	
Requires payroll deduction of union dues when requested	Ore., R.I., Wash.	Vt.
Paycheck protection or limits on dues deduction	Iowa, Mo.	Kan., N.J., Okla.
Requires regular recertification of unions	Fla., Mo.	Okla., Pa.
Prevents lawsuits seeking repayment of fair share fees paid prior to <i>Janus</i>	Calif., Wash.	
Institutes fair share fee alternative	Ore., R.I.	Hawaii, Mass., N.H., Ore.
Statute prohibiting employers from requiring union membership or fees		CO, Maine, Md., Minn., Mont., Mo., N.H., N.M., Ore.
Removes fair share fees from statute	Wash.	Ill., Ore., Pa.
Requires employers to notify workers of right to join or not join a union		Conn., N.H., Pa.
Contract transparency measures	Ind., Mo.	Pa.

Source: News reports, "Public-Sector Union Policy in the United States," 2018-Present, Ballotpedia, https://ballotpedia.org/Public-sector_union_policy_in_the_United_States,_2018-present.

Positive Post-*Janus* Reforms

Eliminating Opt-Out Windows and Establishing Union Elections

By contrast, the more pro-worker and pro-free market right-to-work states are less active in solidifying *Janus* and similar labor reforms. In May 2018, in anticipation of the *Janus* ruling, Oklahoma passed a law that allows union members to resign outside previous “opt-out” windows.⁴¹

In Pennsylvania, pending legislation called the Employee Rights Notification Act would notify employees of their existing rights, including the fact that fair share fees are unconstitutional for non-members under *Janus*.⁴² According to a 2019 survey, many public school educators are unaware of this change.⁴³ A bill with notification provisions in New Hampshire was vetoed over its giving unions wider access to employees,⁴⁴ while Connecticut is still considering notification legislation.⁴⁵

In March 2018, Florida passed a law requiring unions with fewer than 50% of eligible employees as members to apply for recertification.⁴⁶ By 2019, two teachers’ unions in Florida faced decertification as a result of the new law.

The union for Florida’s Santa Rosa County School District represented less than half of the 2,055 instructional employees and was required to hold a new workplace election to be recertified.⁴⁷ Because the union had to collect “interest” cards from teachers to proceed with the vote, the law was already having its intended effect of creating greater union accountability to members. In August 2018, Missouri went even further, passing a law requiring all previously certified unions to undergo a recertification within 12 months and then conduct an election by phone or online every three years after.⁴⁸

Missouri’s Comprehensive Reform Effort

Missouri’s 2018 public sector labor reforms were comprehensive, despite the loss of the state’s right-to-work status. However, the reforms remain in limbo following a seven-union lawsuit against HB 1413, which led to a Missouri judge’s March 2019 preliminary injunction

⁴¹ Negotiation Between School Employees and Districts, Okla. Stat. tit. 70 §5-139, <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=89888>.

⁴² Pennsylvania General Assembly, “House Bill 785,” Regular Session 2019-2020, <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=H&type=B&bn=0785>.

⁴³ TeacherFreedom.org, “One Year After Janus, What Do Teachers Think?” June 2019, <https://teacherfreedom.org/janus-anniversary-teacher-poll/>.

⁴⁴ Legiscan, “New Hampshire Senate Bill 148,” 2019 Regular Session, <https://legiscan.com/NH/bill/SB148/2019>.

⁴⁵ Connecticut General Assembly, “Proposed H.B. No. 5637,” Session Year 2019, https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2019&bill_num=5637.

⁴⁶ F.S. § 1012.2315(4)(c), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=1000-1099/1012/Sections/1012.2315.html.

⁴⁷ Kevin Boyer, “Santa Rosa Teachers Union Works to Keep Certification,” *Santa Rosa’s Press Gazette*, June 20, 2019, <https://www.srpressgazette.com/news/20190620/santa-rosa-teachers-union-works-to-keep-certification>.

⁴⁸ Mo. Rev. Stat. § 105.575(12) (2018), <https://law.justia.com/codes/missouri/2018/title-viii/chapter-105/section-105.575/>.

preventing the law's implementation.⁴⁹ It's easy to see why labor unions oppose the state's reforms. For example, release time is expressly forbidden in the new law.⁵⁰ In addition, transparency is greatly improved by requiring government unions to file annual financial reports with the state covering 11 categories of spending, including union official salaries; political activities; voter education; candidate, nonprofit, and PAC contributions; and a list of all lobbying, legal, and PR firms the union used.⁵¹ Every union officer must also yearly report financial or legal interests in a public body associated with the officer's union.⁵² These annual union reports are also expressly public records.⁵³ Missouri's new union transparency requirements constitute some of the best and most robust in the country.

Missouri's reforms also protect taxpayers. Previously, binding interest arbitration could be written into labor contracts as the way an employer and union would resolve a negotiation impasse. Now binding arbitration is prohibited. Similarly, contracts may not be extended indefinitely under so-called "evergreen" provisions: labor agreements must be negotiated every three years, and any change to a contract constitutes a new agreement.⁵⁴

The only weakness in Missouri's impressive overhaul is that the law fell shy of paycheck protection as defined in this report (that is, a complete ban on government agencies performing payroll deduction of union dues and political contributions). Still, unions must now have annual authorization from employees to make such deductions, but "shall not be made a condition of employment or continued employment." As such, employees may effectively resign when they wish and revoke payroll deductions without having to comply with a defined opt-out window.⁵⁵ With all the above changes, we believe Missouri has moved up from a grade of "C" to "B."

From the above developments, we can see that pro-union states and lawmakers are pushing hard to gain new privileges via state law after the *Janus* loss. In contrast, pro-worker and pro-free market states and groups appear to be more active through the judiciary and executive branches. Were it not for an explosion of *Janus*-related lawsuits from workers (see Table 2) and moves from the Trump administration to further the ruling's effect, the year after *Janus* might be characterized by a loss of worker freedom.

Federal Reforms

One major victory for worker freedom was the May 2019 ruling from the U.S. Department of Health and Human Services, which prohibited "dues skimming" from the

⁴⁹ Alisha Shurr, "Unions Sued Over 2018 'Paycheck Protection,' Merit System Changes. Where Are They Now?" *The Missouri Times*, July 29, 2019, <https://themissouritimes.com/63559/unions-sued-over-2018-paycheck-protection-merit-system-changes-where-are-those-lawsuits-now/>.

⁵⁰ Mo. Rev. Stat. §105.585(4) (2018), <https://law.justia.com/codes/missouri/2018/title-viii/chapter-105/section-105.585/>.

⁵¹ Mo. Rev. Stat. §105.533 (2018), <https://law.justia.com/codes/missouri/2018/title-viii/chapter-105/section-105.533/>.

⁵² Mo. Rev. Stat. §105.535 (2018), <https://law.justia.com/codes/missouri/2018/title-viii/chapter-105/section-105.535/>.

⁵³ Mo. Rev. Stat. §105.540 (2018), <https://law.justia.com/codes/missouri/2018/title-viii/chapter-105/section-105.540/>.

⁵⁴ Mo. Rev. Stat. §§105.580(6) and §105.580(8) (2018), <https://law.justia.com/codes/missouri/2018/title-viii/chapter-105/section-105.580/>.

⁵⁵ Mo. Rev. Stat. §105.505 (2018), <https://law.justia.com/codes/missouri/2018/title-viii/chapter-105/section-105.505/>.

paychecks of some 3 million home care workers across America.⁵⁶ Before this ruling, in unionized states home care workers—for example, parents caring full-time for disabled children—had union dues deducted from their Medicaid subsidies. Even when the 2014 Supreme Court decision *Harris v. Quinn* banned the charging of non-union member fair share fees to home care workers, many did not know of their new right to leave the union and avoid paying dues or fees. The new regulation thus protects families from a money grab carried out by major labor organizations such as the Service Employees International Union (SEIU).⁵⁷

Separately, the National Labor Relations Board (NLRB), under the Trump administration, appears to be changing its operations in favor of individual workers’ rights. In April 2019, the NLRB’s general counsel issued a memo informing the agency’s field offices that non-union member private sector workers no longer have to provide evidence when they challenge their union’s collective bargaining and other charges. The onus, rather, is on unions themselves to prove they are charging workers a defensible amount in agency fees.⁵⁸ The NLRB development is likely a course correction from the agency’s pro-Big Labor stance under the Obama administration. However, it is also possible that the landmark jurisprudence provided through *Janus* is having a beneficial influence on private sector labor policy, much like the National Labor Relations Act helped to mold state-level public sector labor laws in the mid-twentieth century.

2019 Grading of States on Public Sector Labor Laws

Public Sector Labor Laws	
Measures that impact taxpayers and government budgets	Measures that impact individual workers’ rights
Legality of collective bargaining	Union certification (installing, affirming, or removing a union)
Scope of collective bargaining	Opt-out windows
Union release time	Exclusive representation/agency fees
Legality of worker strikes	Paycheck protection
Binding arbitration	Right-to-work
Union contract negotiation transparency	

⁵⁶ Federal Register, “Medicaid Program, Reassignment of Medicaid Provider Claims,” 84 FR 19718 (May 6, 2019): 19718-19728,

<https://www.federalregister.gov/documents/2019/05/06/2019-09118/medicaid-program-reassignment-of-medicaid-provider-claims>.

⁵⁷ Hayden Ludwig and Michael Watson, “Inside the SEIU: ‘Fight for \$15,’ Skimming Dues, and More,” Capital Research Center, October 23, 2017, <https://capitalresearch.org/article/inside-the-seiu-fight-for-15-skimming-dues-and-more/>.

⁵⁸ Robert Iafolla, “Challenges to Union Fees Made Easier by Top NLRB Lawyer,” Bloomberg Law, May 3, 2019, <https://news.bloomberglaw.com/daily-labor-report/nonmember-challenges-to-union-fees-made-easier-by-top-nlr-lawyer>.

We have retained the rubric of assessing state labor laws on 11 policy measures that affect taxpayers and individual workers. To outline each state's practices—as seen in the 50-state table available at [www.http://www.commonwealthfoundation.org/state_labor_laws/](http://www.commonwealthfoundation.org/state_labor_laws/)—we combed through state-level laws, administrative codes, and regulations relating to public sector collective bargaining. Where no law or statutory provision existed on issues such as release time, opt-out windows, or payroll deduction of union dues, we examined local- and state-level labor agreements and used the designation “written in union contracts” to show how such matters are addressed at the negotiating table.

This approach allows policymakers to go beyond right-to-work status, revealing a wider spectrum of reforms that guarantee greater protections of individual workers' freedom of association, shield taxpayers from overspending, and can produce budget savings. This analysis allows even highly graded states to see untapped areas for reform and improvement.

States earned grades based on the following rubric:

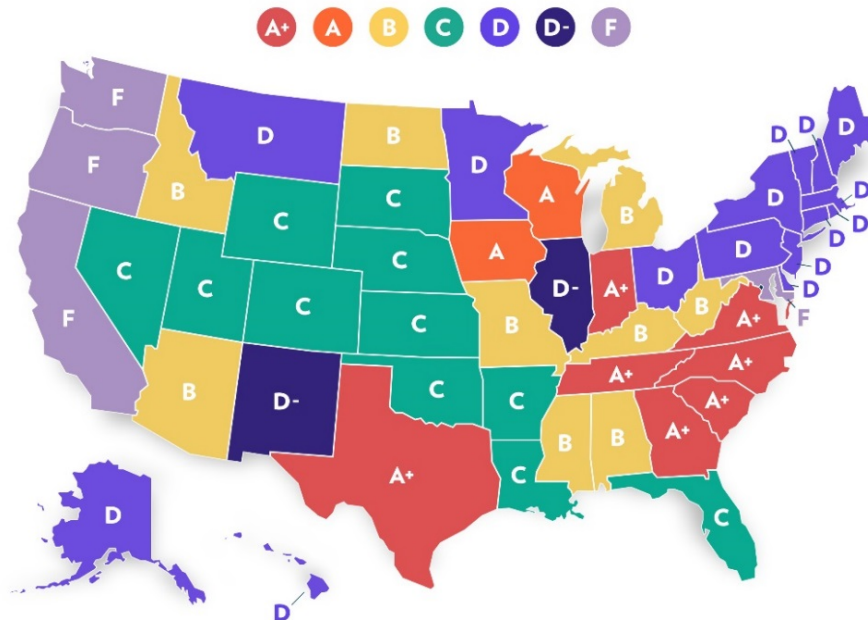
- **A+:** These states prohibit collective bargaining for some or all classes of government workers, a feature that highly impacts both taxpayers and workers. Seven states received this highest grade. Virginia, North Carolina, and South Carolina have a blanket prohibition on collective bargaining for all public sector workers. Georgia outlaws collective bargaining for teachers; Tennessee outlaws collective bargaining for police and firefighters; Texas outlaws collective bargaining for teachers and most government workers except police and firefighters; and Indiana prohibits collective bargaining for state workers.
- **A:** States earning this grade are right-to-work and have limited collective bargaining. Wisconsin and Iowa, which recently passed a package of union reform laws,⁵⁹ are the only states that meet this standard.
- **B:** These states are right-to-work and protect most taxpayers' and individual workers' rights either explicitly or by laws that are silent on issues such as the scope of collective bargaining, opt-out windows, release time, or how a union is certified. However, vague or non-existent laws also count against states because they often permit unions to gain certain workplace privileges through contract negotiations. Nine states meet this designation: Alabama, Arizona, Idaho, Kentucky, Michigan, Mississippi, Missouri, North Dakota, and West Virginia. Though Missouri's right-to-work law was removed by voters, other wide-ranging labor reforms merit a “B” grade (these include union transparency, easier opt-out, a ban on binding arbitration, and regular union recertification).
- **C:** States earning this grade allow public sector collective bargaining, have union-friendly statutory provisions such as release time or the ability to close contract negotiations to the public, and have vague laws that allow unions to gain privileges through collective bargaining agreements. In these states, the law ends up protecting only some or few taxpayers' and individual workers' rights. Interestingly, both right-to-work and forced-union states fall into this category, highlighting the importance of creating explicit,

⁵⁹ William Petroski and Brianne Pfannenstiel, “Iowa House, Senate approve sweeping collective bargaining changes,” *Des Moines Register*, February 16, 2017, <http://www.desmoinesregister.com/story/news/politics/2017/02/16/amid-marathon-debate-iowa-legislature-barrels-towards-passage-collective-bargaining-bill/97984338/>.

defined protections in state law for both taxpayers and workers. Eleven states received this grade: Arkansas, Colorado, Florida, Kansas, Louisiana, Nebraska, Nevada, Oklahoma, South Dakota, Utah, and Wyoming.

- **D:** States that earn this grade have collective bargaining that is either legal or required, and often have some form of binding arbitration during contract negotiation impasses. Though there is great improvement from the standpoint of individual worker rights following *Janus*, general labor policy still impacts taxpayers adversely and continues to merit a “D” grade. A whopping 15 states fall into this category, demonstrating how much work remains to be done in reforming public sector labor law: Alaska, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont.
- **D-:** Two states fall into this new post-*Janus* category because of worsening labor laws. Due to their bans on local right-to-work provisions, we see New Mexico and Illinois earning this dismal grade.
- **F:** Four states, Maryland, California, Oregon, and Washington, earned an “F.” The latter two fell from “D” to “F” because they succeeded in passing recent pro-Big Labor reforms that harm individual workers. These states have undermined the freedom of association rights asserted in *Janus* and leave workers and taxpayers largely unprotected. They further allow wider bargaining over pension benefits and mandatory card check for many workers.

RANKING PUBLIC SECTOR LABOR LAWS



Beyond the grading system for states, our research uncovered broad national patterns:

- Twenty-four states legally *require* government agencies to bargain collectively with labor unions. An additional 20 states permit collective bargaining.
- Twenty-seven states provide for binding arbitration, either mandatory or at unions' request.
- Two new states, Florida⁶⁰ and Missouri,⁶¹ now require incumbent government unions to go through a recertification election or process. This is in addition to Iowa and Wisconsin, reflecting that this reform is gaining currency. Still, most government unions nationwide were certified in the 1960s or 1970s when public sector collective bargaining arose and have never faced an election.⁶²
- Only two states allow multiple unions to negotiate compensation and work conditions for public sector workers. In Missouri, employers largely determine whether teachers and police officers—who are covered by case law rather than state collective bargaining statute—may have multiple union representatives.⁶³ Tennessee awards unions that earn 15% or more of employees' votes proportional representation at the bargaining table.⁶⁴ States overwhelmingly give a single union the designation of "exclusive bargaining representative" for all employees in a unit of similar workers.
- Ten states have some form of paycheck protection. Five states have full paycheck protection, which we define as a complete prohibition of the payroll deduction of union dues and political contributions. These states are Wisconsin,⁶⁵ Iowa,⁶⁶ Michigan (for teachers and other public school employees),⁶⁷ Oklahoma (whose 2015 statute covers

⁶⁰ State Library and Archives of Florida, "Committee Substitute for House Bill No. 7055," 2018, <http://laws.flrules.org/2018/6>, p. 89. The law amends F.S. §447.307(2) and (3).

⁶¹ Mo. Rev. Stat. §105.575, <http://revisor.mo.gov/main/OneSection.aspx?section=105.575&bid=34979&hl=>.

⁶² For a detailed example of this, see the Hawaii Labor Relations Board's April 2016 list of certified government unions. All but one gained certification in the 1970s: http://labor.hawaii.gov/hlr/b/files/2013/05/2016-04-25-EMPLOYEE_ORGANIZATIONS-Public-Sector.pdf.

⁶³ *Independence-National Education Association v. Independence School District*, 223 S.W.3d 131 (2007) extended collective bargaining rights to public sector employees, effectively covering teachers and police. The 2012 cases *Coalition of Police v. Chesterfield*, 386 S.W.3d 755, and *American Federation of Teachers v. Ledbetter*, 387 S.W.3d 360, further established that government entities had a duty to bargain collectively. See also John Wright, "A Primer on Government Labor Relations in Missouri," *Show-Me Institute*, April 1, 2015, http://showmeinstitute.org/sites/default/files/201503%20A%20Primer%20on%20Government%20Labor%20Relations%20in%20Missouri%20%20-%20Wright_0.pdf.

⁶⁴ Tenn. Code Ann. § 49-5-605, <https://www.lexisnexis.com/hottopics/tncode/>.

⁶⁵ Wis. Stat. § 111.70(3g), <http://docs.legis.wisconsin.gov/statutes/statutes/111/IV/70/3g>, Wis. Stat. § 111.845, <http://docs.legis.wisconsin.gov/statutes/statutes/111/V/845>.

⁶⁶ Iowa Code § 20.26, <https://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=IowaCode&ga=83&input=20.26>; Iowa Code § 731.5, <https://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=IowaCode&ga=83&input=731#731.5>.

⁶⁷ Mich. Comp. Laws § 423.210, [http://www.legislature.mi.gov/\(S\(4oyc3ho3dgv5mcbcf4yh4n\)\)/mileg.aspx?page=GetObject&objectname=mcl-423-210](http://www.legislature.mi.gov/(S(4oyc3ho3dgv5mcbcf4yh4n))/mileg.aspx?page=GetObject&objectname=mcl-423-210).

state employees),⁶⁸ and Indiana (which banned dues deductions for state workers by executive order in 2005).⁶⁹

- Union dues are implicitly political because they may fund ideologically partisan issues and independent expenditure committees, or SuperPACs.⁷⁰ Alabama,⁷¹ Idaho,⁷² Kansas,⁷³ Tennessee,⁷⁴ and Utah⁷⁵ all prohibit unions from using taxpayer-funded government payroll systems to collect political contributions or funds to be used for political purposes. Additionally, Kentucky passed a version of paycheck protection that prohibits that automatic deduction of union dues and political contributions without authorization from members.⁷⁶
- In 2018, one new state, Missouri⁷⁷ joined 12 others that require union contract negotiations to be open to the public, without limiting the option of agencies to go into executive session. The others are Colorado (for public schools only),⁷⁸ Florida,⁷⁹ Georgia,⁸⁰ Kansas,⁸¹ Minnesota,⁸² Mississippi,⁸³ Montana,⁸⁴ Nebraska,⁸⁵ Nevada,⁸⁶

⁶⁸ Okla. Stat. tit. 62 § 34.70.1, <http://www.oscn.net/applications/OCISWeb/DeliverDocument.asp?CiteID=476351>.

⁶⁹ State of Indiana, Executive Order 05-14, January 11, 2005,

http://in.gov/governorhistory/mitchdaniels/files/EO_05-14_Complaint_State_Employees.pdf.

⁷⁰ A portion of union dues may go toward political lobbying and ideological spending. For examples, view the “LM-2” financial reports for major national unions such as the National Education Association or the Service Employees International Union, filed with the U.S. Department of Labor pursuant to the Landrum-Griffin Act. In addition, an effectively unlimited amount of union dues may flow into SuperPACs following the 2010 U.S. Supreme Court ruling in *Citizens United v. Federal Election Commission*.

⁷¹ Ala. Code 1975 § 17-17-5, <http://codes.findlaw.com/al/title-17-elections/al-code-sect-17-17-5.html>.

⁷² Idaho Code Ann. § 44-2004, <https://legislature.idaho.gov/idstat/Title44/T44CH20SECT44-2004.htm>.

⁷³ Kan. Stat. Ann. § 44-808, http://www.ksrevisor.org/statutes/chapters/ch44/044_008_0008.html; Kan. Stat. Ann. § 75-4333, http://www.ksrevisor.org/statutes/chapters/ch75/075_043_0033.html.

⁷⁴ Tenn. Code Ann. § 49-5-608, <http://law.justia.com/codes/tennessee/2014/title-49/chapter-5/part-6/section-49-5-608>.

⁷⁵ Utah Code § 34-32-1.1.(2), https://le.utah.gov/xcode/Title34/Chapter32/34-32-S1.1.html?v=C34-32-S1.1_1800010118000101.

⁷⁶ KRS Chapter 336, <http://www.lrc.ky.gov/statutes/chapter.aspx?id=38883>; KRS Chapter 337

<http://www.lrc.ky.gov/statutes/chapter.aspx?id=38890>.

⁷⁷ Mo. Rev. Stat. §105.583, <http://revisor.mo.gov/main/OneSection.aspx?section=105.583&bid=34981&hl=>

⁷⁸ Colorado School Collective Bargaining Agreement Sunshine Act, C.R.S. 22-32-109.4 (2016) et seq., <http://www.lexisnexis.com/hottopics/Colorado/>.

⁷⁹ Fla. Stat. § 447.605, <https://www.flsenate.gov/Laws/Statutes/2012/447.605>; Fla. Stat. § 286.011, http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0200-0299/0286/Sections/0286.011.html.

⁸⁰ Ga. Code Ann. § 50-14-1,

http://law.ga.gov/sites/law.ga.gov/files/imported/vgn/images/portal/cit_1210/62/49/186393706OMA_M_2012_Act_correctly_formatted.pdf.

⁸¹ Kan. Stat. Ann. §§ 75-4317–75-4320a,

http://kslegislature.org/li_2012/b2011_12/statute/075_000_0000_chapter/075_043_0000_article/.

⁸² Minn. Stat. § 13D.01, <https://www.revisor.mn.gov/statutes/?id=13D.01>.

⁸³ Miss. Code §§ 25-41-1–25-4-17,

[http://www.ethics.state.ms.us/ethics/ethics.nsf/PageSection/A_meetings_meetings_law/\\$FILE/Open%20Meetings%20Act_3.29.16.htm?OpenElement](http://www.ethics.state.ms.us/ethics/ethics.nsf/PageSection/A_meetings_meetings_law/$FILE/Open%20Meetings%20Act_3.29.16.htm?OpenElement).

⁸⁴ Open Meetings, Mont. Code Ann. § 2-3-203, <http://leg.mt.gov/bills/mca/2/3/2-3-203.htm>; *Great Falls Tribune v. Great Falls Public Schools*, 841 P.2d 502 (S.C. MT 1992), <https://filenet.mt.gov/getContent?vsId=%7B79DADF40-5F6C-4432-A0F5-084DCD7F4262%7D&impersonate=true&objectType=document&objectStoreName=PROD%20OBJECT%20STORE>.

⁸⁵ Neb. Rev. Stat. §§ 84-1408, 84-1410, <http://nebraskalegislature.gov/laws/browse-chapters.php?chapter=84>.

⁸⁶ Nev. Rev. Stat. § 288.153, <https://www.leg.state.nv.us/nrs/NRS-288.html#NRS288Sec153>.

North Dakota,⁸⁷ Tennessee,⁸⁸ and Texas.⁸⁹ Indiana also passed important new transparency measures for school district collective bargaining. While the law does not require negotiations themselves to be open to the public, school officials must call a public meeting 72 hours before a tentative proposal is ratified, and also post the proposed agreement online.⁹⁰

Litigation Another Post-*Janus* Battleground

Given the far-reaching impact of labor law reforms—whether full passage of right-to-work or piecemeal reform—it is not surprising that such efforts encounter obstacles and strong resistance from public officials and union leaders. For instance, right-to-work efforts in 2017 were blocked in New Hampshire, despite the governor’s support and a majority Republican legislature. Right-to-work opponents successfully enacted a two-year prohibition on the introduction of similar legislation.⁹¹

Since *Janus v. AFSCME*, however, legal challenges have mainly come from workers and their allies. There has been an avalanche of lawsuits from workers seeking to defend their First Amendment rights in the fullest sense. Several of these cases seek to overturn opt-out windows, which prohibit workers from resigning union membership outside of a narrow period—often yearly or at the end of a multi-year labor contract.

In Pennsylvania, one such case won freedom for 9,000 state workers represented by SEIU Local 668—though a ruling on the case has not yet been made. In January 2019, three state employees sued the union in a class action because leaders refused to recognize their resignations, which were lodged a year before the official 15-day opt-out window.⁹² The case clearly affected Local 668’s behavior going into negotiations for a new state contract in June: union leaders officially agreed to allow all employees to resign whenever they wish.⁹³

A similar case played out in Michigan even before the *Janus* ruling and remains instructive for the continuing importance of labor-related litigation. Many public school teachers were unaware of the August resignation window of the Michigan Education Association (MEA). With the help of the Mackinac Center Legal Foundation, frustrated educators filed an unfair labor practice charge asserting that the MEA’s opt-out window violated the state’s right-to-work protections against forced union association.⁹⁴ In September 2015, the Michigan Employment Relations Commission ruled in favor of the teachers (a decision later upheld by the Michigan Court of Appeals), forcing the MEA to change its rules and bylaws.⁹⁵

⁸⁷ N.D. Cent. Code § 44-04-19, <http://www.legis.nd.gov/cencode/t44c04.pdf>; *Dickinson Ed. Ass'n v. Dickinson Public School Dist. No. 1*, 252 N.W.2d 205 (N.D. 1977).

⁸⁸ Tenn. Code Ann. § 8-44-201, <http://law.justia.com/codes/tennessee/2010/title-8/chapter-44/part-2/8-44-201>.

⁸⁹ Tex. Bus. & Com. Code § 174.108, <http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.174.htm>.

⁹⁰ Legiscan, “Indiana Senate Bill 390,” 2019 Regular Session, <https://legiscan.com/IN/text/SB0390/id/2001230>.

⁹¹ Kathleen Ronayne, “Right-to-work’ Bill Killed in New Hampshire,” *The Portland Press Herald*, February 16, 2017, <http://www.pressherald.com/2017/02/16/right-to-work-bill-killed-in-new-hampshire/>.

⁹² The Fairness Center, “*James v. SEIU, Local 668*,” <https://www.fairnesscenter.org/cases/detail/james-v-seiu-668>.

⁹³ Free to Serve, “SEIU 668 Agrees to Let State Workers Resign When They Wish,” June 21, 2019, <https://freedomtoserve.org/seiu-668-agrees-to-let-state-workers-resign-when-they-wish/>.

⁹⁴ Susan Romska’s Charge Against the Saginaw Education Association and/or the Michigan Education Association, October 21, 2013, <https://www.mackinac.org/archives/2013/SusanMEACHarge.pdf>; *Michigan Education Association v. Susan Romska*, Michigan State Court of Appeals, November 10, 2015, [http://publicdocs.courts.mi.gov/coa/public/orders/2015/329431\(17\)_order.pdf](http://publicdocs.courts.mi.gov/coa/public/orders/2015/329431(17)_order.pdf).

⁹⁵ Mackinac Center, “Court of Appeals Denies MEA Request to Keep ‘August Window,’” November 13, 2015, <https://www.mackinac.org/21897>.

With the momentum of *Janus*, dozens of similar lawsuits have been filed across the country. The main lesson is that executing the spirit of *Janus* will entail much work. While the 23 non-right-to-work states are following the *Janus* ruling, fair share fee provisions remain largely untouched in state statute. Lawsuits on issues such as opt-windows not only help to clarify jurisprudence following the *Janus* ruling, they force Big Labor to act more ethically and transparently.

Table 2

Snapshot of Post- <i>Janus</i> Lawsuits		
Lawsuit Type	States with Lawsuits	Total
Return of fees taken before <i>Janus</i> ruling; find state fee provisions unconstitutional	Ore.	2
Return of fees taken before <i>Janus</i> ruling	Calif., Minn., Conn., Ill., Md., N.H., N.Y., Ohio, Ore., Pa.	20
Return of fees taken before <i>Janus</i> ruling; honor union resignation and cease dues deduction	Alaska, Calif., N.J., N.Y., Ohio, Wash.	12
Honor union resignation and cease dues deduction	Calif., Hawaii, Ill., Minn., N.J., N.M., Ohio, Ore., Pa., Texas, Wash.	34
Honor union resignation and right to be informed of union options	Calif.	1
Challenge exclusive representation	Maine, Minn., Ohio	3
Challenge fair share fee statute and exclusive representation	Mass.	1
Sources: Liberty Justice Center, https://libertyjusticecenter.org/cases/ ; The Fairness Center, https://www.fairnesscenter.org ; National Right to Work Foundation, https://myjanusrights.org ; Law360.com. This table may not capture every lawsuit; includes lawsuits dismissed, settled, or appealed. Updated August 2019.		

Opportunity to Reform Exclusive Bargaining

As we consider the roiling post-*Janus* labor landscape, we would like to recommend states pursue a policy reform that has gotten too little attention: the removal of “exclusive bargaining” status for government unions. We think this can be an effective reform that attracts bi-partisan support in state legislatures. First, it will protect unions from the “free rider” problem by not forcing them to represent non-members. Second, it protects workers from the “forced rider” problem, by not forcing them to work under a contract they didn’t bargain for, further protecting their freedom of association.

A few states have made limited efforts on this issue. Illinois⁹⁶ and Hawaii⁹⁷ introduced Democrat-sponsored bills in early 2019 that would exempt unions from representing non-

⁹⁶ Illinois General Assembly, “Bill Status of HB 3455,” 101st General Assembly, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=3455&GAID=15&DocTypeID=HB&SessionID=108&GA=101>.

⁹⁷ Hawaii State Legislature, “HB 862 HD1”, 30th Legislature, 2019, https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=862&year=2019.

members on grievance issues. In 2018, Rhode Island passed a law that allows municipal firefighter⁹⁸ and police⁹⁹ unions to refuse to represent non-member employees in grievance or arbitration issues. Ideally, any measure that tackles exclusive representation should simply make unions responsible for negotiating and enforcing contracts for members alone.

Impact of a Decade of Reform

Among the many budgetary reforms of Wisconsin's Act 10 of 2011 were provisions to limit collective bargaining for public sector workers to base wages and require employees to contribute more toward their health and pension benefits.¹⁰⁰ According to the MacIver Institute, state retirement savings amounted to \$3.36 billion from 2011 to 2016, and Milwaukee Public Schools alone saved \$1.3 billion in long-term pension liabilities.¹⁰¹ Wisconsin's pioneering example demonstrated the enormous fiscal impact of collective bargaining, but it is important to note that even small changes in states with strong government unions can generate major savings for taxpayers.

In July 2011, Massachusetts passed municipal health insurance reform that allowed towns, cities, and school districts to go through an expedited bargaining process to change existing local health care plans or join the state's lower-cost Group Insurance Commission. If unions agreed to a 30-day bargaining window, employees could net up to 25% of the resulting health insurance savings.¹⁰² By mid-2014, it was clear that actual savings had surpassed initial estimates: More than 250 local government entities had saved about \$250 million in health care costs in just three years.¹⁰³

New Jersey tackled a different aspect of collective bargaining: binding interest arbitration when unions and government agencies cannot agree to new contract terms. In January 2011, new state law placed a strict annual cap of 2% on how much police and firefighter base salaries can increase through an arbitrator's final, binding award. Critically, the definition of "base salary" itself was adjusted to include the additional, built-in contract costs of employees moving up steps in a salary schedule and of longevity increases. Three years later, the legally mandated task force set up to study the impacts of the reform found the annual salary increase awarded through arbitration averaged 1.92% under the new cap, compared to a 4.69% increase had previous contract terms continued.¹⁰⁴ In 2014, following the initial success of the cap in relieving strain on local budgets, New Jersey extended the limitation for another three years,

⁹⁸ 28 R.I. Gen. Laws § 28-9.1-18, <http://webserver.rilin.state.ri.us/Statutes/TITLE28/28-9.1/28-9.1-18.HTM>.

⁹⁹ 28 R.I. Gen. Laws § 28-9.2-18, <http://webserver.rilin.state.ri.us/Statutes/TITLE28/28-9.2/28-9.2-18.HTM>.

¹⁰⁰ 2011 Wisconsin Act 10, <https://docs.legis.wisconsin.gov/2011/related/acts/10.pdf>.

¹⁰¹ Brett Healy, "Act 10 Saves Wisconsin Taxpayers More Than \$5 Billion Over 5 Years, MacIver Analysis Finds," MacIver Institute, February 11, 2016, <http://www.maciverinstitute.com/2016/02/act-10-saves-wisconsin-taxpayers-more-than-5-billion-over-5-years-maciver-analysis-finds/>.

¹⁰² Shira Schoenberg, "State Health Care Reforms Saves \$250 Million, Says Massachusetts Finance Secretary Glen Shor," *MassLive.com*, June 10, 2014,

http://www.masslive.com/politics/index.ssf/2014/06/patrick_administration_report.html#incart_email.

¹⁰³ Massachusetts Municipal Association, "Municipal Health Insurance Reform Yields \$247M in Savings," June 10, 2014, <https://www.mma.org/labor-and-personnel/13397-municipal-health-insurance-reform-yields-247m-in-savings>.

¹⁰⁴ Police and Fire Public Interest Arbitration Task Force, Final Report, March 19, 2014, <http://www.state.nj.us/perc/IATaskForceFinalReport.pdf>.

until its expiration in 2017.¹⁰⁵ Municipalities have been lobbying for the cap's renewal ever since.¹⁰⁶

As part of the state's 2017 legislative union reform package, Iowa also instituted a cap on wage increases during arbitration—3% or a percent equal to the cost of living increase—and instructed the arbitrator to consider the employer's ability to finance wage increases.¹⁰⁷

In Colorado, voters overwhelmingly approved a 2014 ballot initiative to open school district union contract negotiations to the public. Since then, local news outlets have been able to report regularly on the process of negotiations. However, as much as this reform is a triumph for government transparency, it also yields a cautionary note about how quickly unions and government officials find workarounds. Colorado's Open Meetings Law stipulates that "all meetings of a quorum or three or more members of any local public body, whichever is fewer" must be open to the public.¹⁰⁸ To get around this, some districts have been holding smaller meetings with two officials. Thompson School District even dubbed the practice "two-by-twos," in which two union officials, the district superintendent, and one district negotiator, meet.¹⁰⁹

Washington passed a mild transparency measure, effective October 2017, requiring the posting of all state union contracts and modifications, as well as contract summaries including details such as compensation, benefits, and provisions for reopening the contract. Collective bargaining agreements for state workers that are pending approval in the Washington State Legislature must also be posted within 45 days of their submission to the office of financial management. Additionally, the legislation establishes a committee of public officials to consult on matters of collective bargaining and the state's ability to pay for the contracts.¹¹⁰

Conclusion

Major collective bargaining and government union changes have passed in the last decade, changing the national landscape for public sector unions dramatically. The fastest pace and volume of proposed laws and litigation have come after *Janus v. AFSCME*, however, in an effort to remake the labor landscape in the aftermath of the historical decision. Even so, several legal areas concerning government unions remain untouched.

Most states, even those with right-to-work, do not limit the scope of collective bargaining or prohibit it for some classes of employees. Additionally, any reform efforts to limit or prohibit certain activities like opt-out windows, dues deductions, and release time, should be explicit in law. Absent such clarity, government unions and their allies will move to legally protect such practices instead, as we have seen above. Finally, too few states mandate that union contract

¹⁰⁵ Michael Linhorst, "Christie Signs Arbitration Cap on Raises for Police, Firefighter Unions," *NorthJersey.com*, June 25, 2014, <http://www.northjersey.com/news/christie-signs-arbitration-cap-on-raises-for-police-firefighter-unions-1.1040420>.

¹⁰⁶ New Jersey State League of Municipalities, "2% Interest Arbitration Extension," <https://www.njlm.org/483/2-Interest-Arbitration-Extension>.

¹⁰⁷ Office of the Governor, "House File 291," February 17, 2017, https://www.legis.iowa.gov/docs/publications/LGE/87/Attachments/HF291_GovLetter.pdf.

¹⁰⁸ Colo. Rev. Stat. §24-6-402(2)(b), <http://www.lexisnexis.com/hottopics/Colorado/>.

¹⁰⁹ Sherrie Peif, "School Districts Across State Finding Ways to Skirt the Intent of Prop. 104," *CompleteColorado.com*, April 8, 2015, <http://completecolorado.com/pagetwo/2015/04/08/school-districts-across-state-finding-ways-to-skirt-the-intent-of-proposition-104/>.

¹¹⁰ Senate Bill 5969, State of Washington 65th Legislature, July 7, 2017, <http://lawfilesextra.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/5969.SL.pdf>.

negotiations be open to the public, a tremendous oversight when personnel costs generally comprise the lion's share of local and state budgets.

As 2019 has demonstrated, Big Labor allies are not waiting to capitalize on gaps in statutes. Without explicit language in statute, free-market reforms can be easily undermined. While states have made extensive progress in public sector labor reform, many areas remain ripe for change in the coming years.

An online, interactive version of the 50 state table is available online:
http://www.commonwealthfoundation.org/state_labor_laws/

Glossary of Labor Terms

Agency fee: Also known as a “fair share fee.” Until June 2018, it was the portion of dues a public employee who was not a union member was required to pay the exclusive representative as a condition of employment. The fee was meant to cover the worker’s “fair share” of union representation and collective bargaining costs. Fair share fees were ruled, via *Janus v. AFSCME*, a violation of public sector workers’ First Amendment rights.

Agency shop: A workplace that imposes an agency fee arrangement on workers who are not union members.

Bargaining unit: The term for employees grouped together by similar type of position for the purposes of being represented by a union and collective bargaining.

Card check: The process by which a union becomes the official representative of workers by collecting authorization cards from a majority of workers in a bargaining unit. There are three types.

- *Mandatory card check:* A public employer is required to recognize a union as exclusive representative when presented with such a majority of employee signatures.
- *Optional card check:* A public employer may decline to recognize a union when presented with such a request, and instead ask the relevant state or local administrative agency for a workplace election.
- *Prohibited card check:* No form of card check authorization is permitted; unions may be certified only through secret ballot elections for workers.

Certification: The process by which a union becomes the official, usually exclusive, representative of workers in a bargaining unit. May occur through card check or election.

Collective bargaining: The formal process by which a union negotiates legally binding employee compensation and work conditions with a government agency.

Dues deductions: Also known as “dues checkoff.” The written authorization an employee gives an employer to conduct payroll deduction of union dues. In many states, workers may also authorize the payroll deduction of union political action committee contributions by unions.

Fact finding: Usually the second step in resolving a contract negotiation impasse. It involves a third party formally gathering detailed information such as comparable employee wages and benefits, the rate of inflation, and an employer’s ability to pay compensation increases. The fact finder then recommends non-binding solutions.

Free rider: Union term for workers who are covered by collective bargaining and union representation without paying for them through union dues. Rather, these workers are “forced riders,” because they never have the option of negotiating their pay apart from the union. Before *Janus v. AFSCME*, the solution in non-right-to-work states was to make such a worker pay the union a fair share fee or lose his or her government job.

Exclusive representative: The designation for the single labor union or employee organization that is permitted to represent all workers in a bargaining unit.

Interest arbitration: Usually the third step and/or last resort in resolving a contract negotiation impasse. It is the usually binding process by which a third party, or arbitrator, rules on final terms of a collective bargaining agreement when a union and employer have reached an impasse in negotiations.

Mediation: Usually the first step in resolving a contract negotiation impasse. A third party facilitates discussion between the employer and union in an attempt to help them reach a voluntary agreement.

Maintenance of membership: Also known as an “opt-out window.” The requirement that an employee who is a union member maintain that membership for the duration of a collective bargaining agreement, a year, or some other specified period. Resigning outside of the designated window is not allowed.

Meet and confer: Refers to a more informal process by which an employer and union discuss compensation and work conditions. The terms of the resulting agreement are usually not legally binding, but in practice, the process is often very similar to collective bargaining.

Paycheck protection: The prohibition against government payroll deductions of political money for unions. Often refers only to employees’ direct political contributions, or political action committee money. However, it exists in full when government agencies are prohibited from collecting both union dues and political contributions on behalf of unions.

Release time: Also known as official time. The practice by which union officials receive paid time off from their government jobs to perform union business during work hours. It may occur with or without reimbursement from the union to the government entity. For long-term absences—such as a state teachers’ union president’s absence from the classroom for years—it occurs without loss of benefits or seniority.

Right to work: A protection that prohibits any employer-union arrangement wherein a worker can be forced to join a union or pay union dues or fees. There are now 27 right-to-work states.

Unfair labor practice: A union or employer violation of labor relations and collective bargaining law.

About the Author

Priya M. Brannick is a senior fellow with the Commonwealth Foundation. Priya's primary research areas include education reform and labor policy. Her expertise has been featured in various outlets, including KDKA, WITF, WHYY, the *Patriot News*, and the *Philadelphia Inquirer*.

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State	Is collective bargaining legal for government workers?	What items may be negotiated in collective bargaining?	How unions are certified	Do unions have a right to exclusive representation of workers?	Are there provisions permitting union release time?
Alabama	Yes	Not outlined in law	Not outlined in law	Yes	Not outlined in law
Alaska	Yes, required	Salaries, fringe benefits, hours, work conditions	Optional card check	Yes	Written in union contracts
Arizona	Yes	Not outlined in law	Not outlined in law	Yes	Written in union contracts
Arkansas	Yes	Wages, other work conditions	Not outlined in law	Yes	Written in union contracts
California	Yes, required	Salaries, pension benefits, fringe benefits, hours, other work conditions	Mandatory and optional card check	Yes	Yes
Colorado	Yes	Wages, fringe benefits, hours, other work conditions	Mandatory card check for state workers	Yes	Written in union contracts
Connecticut	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Delaware	Yes, required	Wages, fringe benefits, hours, other work conditions.	Secret ballot election only	Yes	Written in union contracts
Florida	Yes	Salaries, pension benefits, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Georgia	Yes for firefighters; No for teachers	Wages, hours, other work conditions	Secret ballot election only	Yes	Written in union contracts
Hawaii	Yes, required	Wages, fringe benefits, hours, other work conditions	Secret ballot election only	Yes	Yes
Idaho	Yes	Wages, hours, employment terms	Secret ballot election only	Yes	Yes
Illinois	Yes, required	Wages, fringe benefits, hours, other work conditions.	Optional card check	Yes	Written in union contracts
Indiana	Legal for all except state employees	Salary, wages, fringe benefits, hours	Optional card check	Yes	Written in union contracts
Iowa	Yes	Limited to base wages only, except for public safety workers	Secret ballot election only	Yes	Written in union contracts

Are there union membership opt-out windows?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Is there paycheck protection?	Right-to-Work	Legality of public worker strikes
Not outlined in law	Not specified	No	Partial: No collection of union political money	Yes	Legal for some
Written in union contracts	May be closed	Yes	No	No	Legal for some
Not outlined in law	Not specified	Not outlined in law	No	Yes	Legal for some
No	Not specified	Not outlined in law	No	Yes	Illegal
Written in union contracts	May be closed	Yes, once requested by law enforcement and firefighters	No	No	Legal for some
Written in union contracts	Must be open for schools; may be closed for other agencies.	No	No	No	Legal for some
Written in union contracts	No	Yes	No	No	Illegal
Written in union contracts	No	Yes, once requested	No	No	Illegal
Written in union contracts	Must be open	Not outlined in law	No	Yes	Illegal
Written in union contracts	Must be open	Not outlined in law	Not outlined in law	Yes	Illegal
Yes	May be closed	Yes, for police, firefighters, nurses and certain other white-collar workers.	No	No	Legal
Written in union contracts	May be closed	No	Partial: No collection of union political money	Yes	Illegal
Written in union contracts	No	Yes, once requested by law enforcement and firefighters	No	No	Legal for teachers
Not outlined in law	Partial	No	Yes, for state workers	Yes	Illegal
Yes	Partial	Yes, once requested	Yes	Yes	Illegal

State	Is collective bargaining legal for government workers?	What items may be negotiated in collective bargaining?	How unions are certified	Do unions have a right to exclusive representation of workers?	Are there provisions permitting union release time?
Kansas	Yes	Salary, pension benefits, fringe benefits, hours, other working conditions	Varies	Yes	Written in union contracts
Kentucky	Yes	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Louisiana	Yes	Not outlined in law	Not outlined in law	Yes	Written in union contracts
Maine	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Maryland	Yes, required	Wages, hours, pension benefits, fringe benefits, other work conditions	Mandatory card check for teachers. Secret ballot election only for state and higher education workers.	Yes	Yes
Massachusetts	Yes, required	Wages, hours, fringe benefits, standards, productivity/performance, other work conditions	Mandatory card check	Yes	Written in union contracts
Michigan	Yes	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Minnesota	Yes, required	Wages, hours, fringe benefits, other work conditions	Optional card check	Yes	Yes
Mississippi	Yes	Not outlined in law	Not outlined in law	Yes	Not outlined in law
Missouri	Yes, required	Salaries, fringe benefits, other work conditions	Secret ballot election only	No; some police and teachers may be represented by multiple unions	No
Montana	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Nebraska	Yes	Work conditions, grievances	Secret ballot election only	Yes	Yes

Are there union membership opt-out windows?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Is there paycheck protection?	Right-to-Work	Legality of public worker strikes
Written in union contracts	Must be open	No	Partial: No collection of union political money	Yes	Illegal for teachers
Written in union contracts	No	No	Partial: No payroll deduction without authorization	Yes	Illegal
No	No	No	No	Yes	Legal for all except police/firefighters
Written in union contracts	May be closed	Yes, once requested	No	No	Illegal
Written in union contracts	No	Yes, for teachers and local agency employees once requested	No	No	Illegal
Written in union contracts	May be closed	Yes, once requested	No	No	Illegal
No	May be closed	Yes, for police and firefighters	Yes, for school employees	For all except most public safety employees	Illegal
Written in union contracts	Must be open	Yes, once requested by essential employees such as police and firefighters	No	No	Legal for teachers
Not outlined in law	Must be open	Not outlined in law	Not outlined in law	Yes	Illegal
No	Must be open	No	No, but requires annual dues deduction authorization	Yes	Illegal
Written in union contracts	Must be open	Yes, once requested	No	No	Legal for teachers and general government workers
Written in union contracts	Must be open	No	No	Yes	Illegal

State	Is collective bargaining legal for government workers?	What items may be negotiated in collective bargaining?	How unions are certified	Do unions have a right to exclusive representation of workers?	Are there provisions permitting union release time?
Nevada	Yes	Wages, hours, other work conditions	Optional card check	Yes	Yes
New Hampshire	Yes, required	Wages, fringe benefits, hours, other work conditions	Secret ballot election only	Yes	Written in union contracts
New Jersey	Yes, required	Wages, fringe benefits, hours, other work conditions	Mandatory card check	Yes	Written in union contracts
New Mexico	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
New York	Yes, required	Wages, fringe benefits, hours, other work conditions	Mandatory card check	Yes	Written in union contracts
North Carolina	No	N/A	N/A	N/A	N/A
North Dakota	Yes	Wages, other work conditions	Not outlined in law	Yes	Not outlined in law
Ohio	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Oklahoma	Yes, required	Wages, fringe benefits, hours, other work conditions	Mandatory card check for teachers. Secret ballot election only for other workers.	Yes	Written in union contracts
Oregon	Yes, required	Wages, fringe benefits, hours, other work conditions	Mandatory card check	Yes	Yes
Pennsylvania	Yes, required	Wages, fringe benefits, hours, other work conditions	Optional card check	Yes	Written in union contracts
Rhode Island	Yes, required	Wages, limited fringe benefits, other work conditions	Optional card check	Yes	Written in union contracts
South Carolina	No	N/A	N/A	N/A	N/A
South Dakota	Yes, required	Wages, some pension benefits, fringe benefits, hours, other work conditions	Secret ballot election only	Yes	Written in union contracts

Are there union membership opt-out windows?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Is there paycheck protection?	Right-to-Work	Legality of public worker strikes
Written in union contracts	Must be open	Only required for some public employees	No	Yes	Illegal
Written in union contracts	No	No	No	No	Illegal
Written in union contracts	May be closed	Yes, once requested by police and firefighters	No	No	Illegal
Written in union contracts	No	Yes, once requested	No	No; banned locally	Illegal
Written in union contracts	May be closed	Yes, once requested by law enforcement, firefighters and some transit workers	No	No	Illegal
N/A	N/A	N/A	N/A	Yes	Illegal
Not outlined in law	Must be open	Yes, once put into contracts for teachers	No	Yes	Illegal for teachers
Written in union contracts	No	Yes, for essential employees such as law enforcement and firefighters	No	No	Legal for teachers and general government workers
Written in union contracts; not for school employees	May be closed	Yes, once requested by police and firefighters	Yes, for state workers	Yes	Illegal
Written in union contracts	May be closed	Yes, for public safety workers such as police and firefighters	No	No	Legal for teachers and general government workers
Yes	May be closed	Yes	No	No	Legal for teachers
Written in union contracts	May be closed	Yes	No	No	Illegal
N/A	N/A	N/A	N/A	Yes	Illegal
Written in union contracts	May be closed	No	No	Yes	Illegal

State	Is collective bargaining legal for government workers?	What items may be negotiated in collective bargaining?	How unions are certified	Do unions have a right to exclusive representation of workers?	Are there provisions permitting union release time?
Tennessee	No for police/firefighters; "collaborative conferencing" permitted for teachers	Wages, fringe benefits, hours, work conditions	Secret ballot election only	No; unions awarded representation proportionally	Yes
Texas	Legal only for police and firefighters	Wages, hours, fringe benefits, other work conditions	Optional card check	Yes	Written in union contracts
Utah	Yes	Wages, hours, pension benefits, fringe benefits, other work conditions	Optional card check	Yes	Yes
Vermont	Yes, required	Salaries, fringe benefits, hours, other work conditions	Optional card check for teachers. Secret ballot election only for other workers.	Yes	Written in union contracts
Virginia	No	N/A	Secret ballot election only	No; workers may negotiate individually	Written in union contracts
Washington	Yes, required	Wages, some pension/fringe benefits, hours, other work conditions	Mandatory card check	Yes	Yes
West Virginia	Yes	Not outlined in law	Not outlined in law	No, workers may negotiate individually	Not outlined in law
Wisconsin	Yes	Limited to base wages only, except for public safety workers	Secret ballot election only. Annual recertification required.	Yes	Written in union contracts
Wyoming	Yes	Wages, hours, fringe benefits, work conditions	Secret ballot election only	Yes	Written in union contracts

Are there union membership opt-out windows?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Is there paycheck protection?	Right-to-Work	Legality of public worker strikes
Yes	Must be open	No	Partial: No collection of union political money	Yes	Illegal
Not outlined in law	Must be open	Yes, for public safety workers such as police and firefighters	No	Yes	Illegal
Not outlined in law	May be closed	Yes, for firefighters	Partial: No collection of union political money	Yes	Illegal for firefighters
Written in union contracts	May be closed	Yes, for judiciary employees; for teachers and municipal workers, if both negotiating sides submit to arbitration	No	No	Legal for teachers and municipal employees
Not outlined in law	N/A	No	N/A	Yes	Illegal
Yes, permitted in law if written into contracts.	No	Yes, for police, firefighters, public transit and other uniformed personnel.	No	No	Illegal
Not outlined in law	Not specified	Not outlined in law	No	Yes	Illegal for teachers; not outlined for other workers
Yes, for public safety employees only	Partial	Yes, once requested by municipal and public safety workers	Yes, except public safety employees	Yes, except public safety/transit workers may pay fair share fee	Illegal
Not outlined in law	May be closed	No	No	Yes	Determined by contract

