

# The Battle for Worker Freedom in the States

## **GRADING STATE PUBLIC SECTOR LABOR LAWS**

3RD EDITION

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**Priya M. Brannick**  
SENIOR FELLOW

**Andrew Holman**  
POLICY ANALYST

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## Authors

### **Priya M. Brannick** SENIOR FELLOW | LEAD 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, WHY?Y, the *Patriot News*, and the *Philadelphia Inquirer*.

### **Andrew Holman** POLICY ANALYST | RESEARCH ASSISTANT

Andrew Holman is a policy analyst with the Commonwealth Foundation. His research areas include labor policy, fiscal policy and regulation. His research has been featured in Fox News, Washington Examiner, *Daily Wire*, *National Review*, *RealClearPa* and the *Tribune Review*.

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## Key Points



In the four years following the *Janus v. AFSCME* U.S. Supreme Court ruling, the nation's four largest government unions—AFSCME, SEIU, NEA, and AFT—have lost almost 219,000 union members.



The *Janus* decision to end forced unionism for government workers accelerated a long-term decline in membership. In response, government unions are conducting aggressive campaigns to unionize new workers with recent successes in Virginia and Colorado.



On the other hand, Arkansas banned collective bargaining for most government workers, while West Virginia passed a version of paycheck protection in 2021.



While the legislative landscape is mixed, litigation efforts are making significant gains. For example, litigation brought by Pennsylvania government employees forced major unions including SEIU, PSCOA, UFCW, and AFSCME to drop resignation restrictions from state contracts. These unions represent 51,500 employees, nearly half of state employees.



Three states experienced major grade changes since our 2019 report. Virginia dropped from “A+” to “C” for instituting collective bargaining, while Arkansas jumped from “C” to “A+” for banning it. Missouri’s comprehensive labor reforms were officially struck down, moving the state back down from “B” to “C.”

## Introduction

In 2013, lifelong Pennsylvania public school teacher Jane Ladley was in a bind. The Pennsylvania State Education Association (PSEA) had just decided to impose fair share fees on nonmember teachers in her school district despite their refusals to join the union. The PSEA's decision reflected a nationwide, decades-long union trend toward extracting fees from nonmembers who had no requirements to pay dues.

Ladley elected to become a religious objector, meaning her agency fee would go to a charity of her choosing.

The problem? The law gave the PSEA power to approve or reject Ladley's choice, a scholarship fund for high school seniors interested in studying the US Constitution.

The PSEA rejected her choice and continued to take her money.

Ladley and another teacher in the same situation filed a lawsuit against the PSEA to challenge the union's policy of indefinitely holding fee objectors' money.

Years passed. Ladley retired. *Janus v. AFSCME* struck down fair share fees across the nation in 2018. The PSEA returned the teachers' money. But there was still no resolution to the PSEA's policy of simply keeping fair share fee money when the union disagreed with a teacher's choice of charity.

In the meantime, about 20 Pennsylvania school districts were still including fair share fee provisions in teacher contracts in an apparent violation of *Janus*. One teacher even continued receiving PSEA collection notices after he left the union—three years following *Janus*.

Then, in May 2022, a judge ruled in Ladley's case, clearly stating that Pennsylvania's fair share fee law was unconstitutional. "I believe union officials have been fighting to keep so-called 'fair share' fee provisions in contracts to confuse employees who don't know their rights," Ladley said. "Now, there's a court order that should stop union officials in their tracks if they try to collect those fees."<sup>1</sup>

It took eight years for Ladley's case to reach a conclusion, even with the winds of *Janus* blowing in its sails.

As massive as the 2018 Supreme Court ruling was for worker rights, making freedom of association a reality for ordinary workers has involved a patchwork of state court rulings, executive orders, new legislation, and legal pressure from public interest law firms.

By 2021, a handful of states were in the midst of major labor policy debates (Colorado, Virginia, Missouri, and West Virginia). Presently, four years since the *Janus* ruling—government union executives and worker-freedom groups are still scrambling to dominate the new labor landscape.

Surprising advances, such as Arkansas banning collective bargaining for public sector workers, contrast with stunning reversals, such as Virginia legalizing collective bargaining for the first time in some 40 years. A form of paycheck protection passed in West Virginia while Colorado

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1 The Fairness Center, "Teachers Win Eight-Year Battle with PSEA: Judge Says 'Fair Share' Law Unconstitutional," May 26, 2022, [www.fairnesscenter.org/teachers-win-eight-year-battle-with-psea-judge-says-pa-fair-share-law-unconstitutional/](https://www.fairnesscenter.org/teachers-win-eight-year-battle-with-psea-judge-says-pa-fair-share-law-unconstitutional/).

officially unionized state and county employees for the first time. Through a November 2022 ballot question, Illinois will vote to enshrine collective bargaining as a right in the state's constitution.<sup>2</sup> In contrast, Tennessee voters will decide whether to elevate right-to-work from state law to the state constitution.<sup>3</sup>

In this ever-changing landscape, one trend is clear: wins in the new labor frontier go to the side bold enough to stake new ground through laws, court rulings, and executive actions.<sup>4</sup> This report will examine recent trends in state labor policy and emphasize how essential workers' rights are to America's future prosperity.

## A Big Labor Counter-Reformation?

### VIRGINIA: NEW COLLECTIVE BARGAINING FOR LOCAL GOVERNMENT WORKERS

The most dramatic government union victory of the post-*Janus* legal frontier came in Virginia in 2020. There, a Democratic trifecta (Democrats controlled both legislative chambers and the governorship) reversed the state's four-decade ban on collective bargaining for government workers. The new law became effective May 1, 2021. It grants counties, cities, school boards, and other local governments the authority to collectively bargain with workers via a resolution or ordinance.<sup>5</sup>

The first city to advance unionization was the City of Alexandria, which in April 2021 passed its ordinance authorizing collective bargaining for about 1,600 employees,<sup>6</sup> including firefighters and police.<sup>7</sup> Within months others followed: Arlington County with 4,000 employees;<sup>8</sup> Fairfax County with 12,500 employees;<sup>9</sup> and Loudon County with 3,000 employees.<sup>10</sup> Despite the speed bump of not having a statewide collective bargaining law, public-sector labor unions were quick to unionize these heavily blue and densely populated DC-Metro suburbs.

When the City of Alexandria initially drafted its collective bargaining ordinance, officials limited the scope of bargaining to wages and benefits. They argued such limits were necessary to maintain flexibility and high customer service standards. "The recent COVID-19 pandemic is a large-scale macrocosmic example of how the City government needs to respond to crises and needs large and small, often immediately," City Manager Mark Jinks said in a Feb. 3, 2021

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2 Ballotpedia, "Illinois Right to Collective Bargaining Amendment (2022)," [ballotpedia.org/Illinois\\_Right\\_to\\_Collective\\_Bargaining\\_Amendment\\_\(2022\)](https://ballotpedia.org/Illinois_Right_to_Collective_Bargaining_Amendment_(2022)).

3 Ballotpedia, "Tennessee Right-to-Work Amendment (2022)," [ballotpedia.org/Tennessee\\_Right-to-Work\\_Amendment\\_\(2022\)](https://ballotpedia.org/Tennessee_Right-to-Work_Amendment_(2022)).

4 Ian Kullgren and Aaron Kessler, "Unions Fend Off Membership Exodus in 2 Years Since *Janus* Ruling," *Bloomberg Law*, Jun 26, 2020, [news.bloomberglaw.com/daily-labor-report/unions-fend-off-membership-exodus-in-2-years-since-janus-ruling](https://news.bloomberglaw.com/daily-labor-report/unions-fend-off-membership-exodus-in-2-years-since-janus-ruling).

5 Va. Code Ann. § 40.1-57.2, [law.lis.virginia.gov/vacode/title40.1/chapter4/section40.1-57.2/](http://law.lis.virginia.gov/vacode/title40.1/chapter4/section40.1-57.2/).

6 City of Alexandria, "Collective Bargaining," January 28, 2022, [www.alexandriava.gov/city-employment/collective-bargaining](http://www.alexandriava.gov/city-employment/collective-bargaining).

7 Mark Jinks, Memorandum from City of Alexandria Manager, "Public Hearing, Second Reading and Final Passage of an Ordinance to amend Title 2 of the Code of the City of Alexandria, Virginia, General Government, Chapter 5, Officers and Employees, by adding Article E, Collective Bargaining. [ROLL-CALL VOTE]," April 12, 2021, [alexandria.legistar.com/LegislationDetail.aspx?ID=4910340&GUID=B7F6740A-1D80-4383-AD70-535F4A4ED3F1&FullText=1](https://alexandria.legistar.com/LegislationDetail.aspx?ID=4910340&GUID=B7F6740A-1D80-4383-AD70-535F4A4ED3F1&FullText=1).

8 Teo Armus, "Arlington County Approves Collective Bargaining for County Employees, Marking Shifting Tides on Labor in Virginia," *Washington Post*, July 17, 2021, [www.washingtonpost.com/dc-md-va/2021/07/17/arlington-collective-bargaining-prevailing-wage/](https://www.washingtonpost.com/dc-md-va/2021/07/17/arlington-collective-bargaining-prevailing-wage/).

9 Antonio Olivo, "Fairfax County Approves Collective Bargaining Ordinance," *Washington Post*, October 20, 2021, [www.washingtonpost.com/local/virginia-politics/fairfax-county-approves-collective-bargaining-ordinance/2021/10/20/c3e401dc-310a-11ec-9241-aad8e48f01ff\\_story.html](https://www.washingtonpost.com/local/virginia-politics/fairfax-county-approves-collective-bargaining-ordinance/2021/10/20/c3e401dc-310a-11ec-9241-aad8e48f01ff_story.html).

10 Margaret Barthel, "Loudon County Supervisors Approve Collective Bargaining for Public Employees," WAMU 88.5 | American University Radio, December 8, 2021, [dcist.com/story/21/12/08/loudon-county-approves-collective-bargaining-public-employees/](https://dcist.com/story/21/12/08/loudon-county-approves-collective-bargaining-public-employees/).



memorandum on the first ordinance draft.<sup>11</sup> “COVID-19 required major shifts in how work was undertaken, immediate safety protocol development and implementation, reassignment of many City employees to new tasks not in their job descriptions, and dramatically changed work environments.”

However, the American Federation of State, County and Municipal Employees (AFSCME) and other unions said limiting the scope of collective bargaining “silenced” worker voices. “The city manager’s proposal is closely modeled after the same limiting policy imposed by Scott Walker, the anti-worker former governor of Wisconsin,” AFSCME argued.<sup>12</sup>

In the end, the unions succeeded in including issues such as grievance resolution, safety, hours, and other working conditions in the final ordinance. Jinks warned that despite the Virginia law giving local bodies the authority to decline or repeal funding for collective bargaining agreements, that safety valve was insufficient:

“...after making a good faith pledge, there will be significant employee and union pressure to maintain it, and it will be politically very difficult for a governing body to reverse that pledge, even in the case of an economic emergency. For example, the unions (using their parent union’s national staff) may present their own advocacy analyses of the fiscal situation, arguing that the situation is not as dire or that the City has other options. In the end, while Council retains the legal authority to not fund a collective bargaining agreement, there will be significant pressure on a Council to continue to fund collective bargaining agreements once they are approved even if the City is fiscally under stress.”<sup>13</sup>

As unionization of Virginia’s local government workers proceeds, personnel costs will rise and likely put pressure on officials to raise taxes on state residents. That is why this report emphasizes the importance of banning or strongly limiting government worker collective bargaining.

The City of Alexandria’s wrangle also highlights how the nation’s large national unions took the lesson of Wisconsin’s Act 10 to heart.<sup>14</sup> Not only are they aggressively moving to unionize new groups of government workers, especially in the wake of the *Janus* ruling, their agreements are also becoming more comprehensive. New collective bargaining laws are essentially the pro-labor reverse image of Act 10, locking in many bargaining issues in granular detail and securing union workplace privileges such as payroll deduction of dues and easy access to workers.

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11 Mark Jinks, Memorandum from City of Alexandria Manager, “Introduction and First Reading. Consideration. Passage on First Reading of an Ordinance to amend Title 2 of the Code of the City of Alexandria, Virginia, General Government, Chapter 5, Officers and Employees, by adding Article E, Collective Bargaining.” February 3, 2021, [alexandria.legistar.com/LegislationDetail.aspx?ID=4775842&GUID=2BE7FFCF-33C7-4B5F-AEA5-FCAD4F80A701&FullText=1](https://alexandria.legistar.com/LegislationDetail.aspx?ID=4775842&GUID=2BE7FFCF-33C7-4B5F-AEA5-FCAD4F80A701&FullText=1).

12 AFSCME Virginia, “AFSCME Virginia Members Oppose City Manager’s Proposed Collective Bargaining Ordinance: City Workers Want an Ordinance That Gives Workers a Real Voice,” press release, February 10, 2021, [www.afscmeva.org/news/afscme-virginia-members-oppose-city-manager-s-proposed-collective-bargaining](https://www.afscmeva.org/news/afscme-virginia-members-oppose-city-manager-s-proposed-collective-bargaining).

13 Jinks, Memorandum, “Public Hearing, Second Reading and Final Passage,” April 12, 2021.

14 Nathan Benefield and Elizabeth Stelle, “Why Pennsylvania Needs Wisconsin-Style Government Union Reform,” the Commonwealth Foundation, February 2022, [www.commonwealthfoundation.org/wp-content/uploads/2022/02/Why-Pennsylvania-Needs-Wisconsin-Style-Government-Union-Reform.pdf](https://www.commonwealthfoundation.org/wp-content/uploads/2022/02/Why-Pennsylvania-Needs-Wisconsin-Style-Government-Union-Reform.pdf).

## COLORADO: UNIONIZATION OF STATE AND COUNTY WORKERS

In the last two years, Colorado has provided another enlightening case study. Instead of unionizing local government workers “town to town,” Colorado passed a 2020 law that unionized the state’s 30,000 state government employees. Previously, a 2007 executive order permitted state workers to form unions and create non-binding “partnership agreements.”<sup>15</sup> The Colorado Partnership for Quality Jobs & Services Act, however, formally instituted collective bargaining which resulted in a first contract with the Colorado Workers for Innovative and New Solutions (COWINS), the statewide affiliate of the American Federation of Teachers (AFL) and Service Employees International Union (SEIU), in November 2021.<sup>16</sup> This three-year agreement is a union flagship full of large pay increases for state workers: a yearly 3 percent salary increase, \$15 minimum wage, and a guarantee that the state would cover the first \$20 million in any health insurance rate increases through 2025.<sup>17</sup>

In addition, the Colorado state law secures access to each covered employee’s work and personal contact details. The latter includes home and personal email addresses and cell phone numbers, unless the employee opts out of such information-sharing.<sup>18</sup> At least seven other states since 2019 (see Table 1) have enacted or introduced similar data grabs that make it much quicker and simpler to unionize government workplaces. Such legalized erosion of workers’ privacy—not to mention the opportunities it gives unions to harass workers to join or support their causes—is a deeply concerning trend.

Building on their success in obtaining collective bargaining for state workers, Colorado unions lost no time in pushing through a law that unionized county workers in May 2022. It applies to counties of 75,000 or more people, which amounts to 11 of 64 counties clustered in the Denver area.<sup>19</sup> The law is also a fascinating study in scope and specificity of achieving the goals of national union executives. For example, public sector collective bargaining state laws have historically used vague language that authorizes bargaining over “wages, hours and other terms and conditions of employment,” modeled on the 1935 National Labor Relations Act. The Collective Bargaining by County Employees Act, however, defines compensation into eight components:

- Base wage or salary;
- Any form of direct monetary payments;
- Health, accident, life, and disability insurance;
- Pension programs;
- Paid time off;
- Uniform and equipment allowances; and
- Expense reimbursement.<sup>20</sup>

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15 Gov. Bill Ritter, Executive Order D 028 07, “Authorizing Partnership Agreements with State Employees,” Colorado Office of the Governor, November 2, 2007, [spl.cde.state.co.us/artemis/goserials/go4113internet/2007/go41132007028internet.pdf](https://spl.cde.state.co.us/artemis/goserials/go4113internet/2007/go41132007028internet.pdf).

16 To the reader, see Colorado WINS Local 1876 Constitution and Bylaws at: [drive.google.com/file/d/1UMC6jy4Zk7iLATHbGMVF6fhUdKu5KxE9/view](https://drive.google.com/file/d/1UMC6jy4Zk7iLATHbGMVF6fhUdKu5KxE9/view).

17 Colorado Division of Human Resources, “Partnership Agreement Between the State of Colorado and Colorado Workers for Innovative and New Solutions,” (Articles 31.1, 31.4, and 28.1 respectively), November 18, 2021, [dhr.colorado.gov/about/labor-relations/partnership-agreement](https://dhr.colorado.gov/about/labor-relations/partnership-agreement).

18 Col. Rev. Stat. §§ 24-50-1111(3)(a), [advance.lexis.com/documentpage/?pdmfid=1000516&crd=6341ea29-6930-4f70-9db9-78b3e972eb14&pdistocdocslideraccess=true&config=014FJAAyNGJkY2Y4Zi1mNjgyLTRkN2YtYmE4OS03NTYzNzYzOTg0OGEKAFBvZENhdGFsb2d592qv2Kywlf8caKqYROP5&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A61P5-WVF1-DYDC-J36T-00008-00&pdcomponentid=234177&pdtnodeidentifier=AAYAAHAABAAMAAM&ecomp=pghckkk&prid=7e1bde42-a8a8-4a13-b839-277fbdea6f5f](https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=6341ea29-6930-4f70-9db9-78b3e972eb14&pdistocdocslideraccess=true&config=014FJAAyNGJkY2Y4Zi1mNjgyLTRkN2YtYmE4OS03NTYzNzYzOTg0OGEKAFBvZENhdGFsb2d592qv2Kywlf8caKqYROP5&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A61P5-WVF1-DYDC-J36T-00008-00&pdcomponentid=234177&pdtnodeidentifier=AAYAAHAABAAMAAM&ecomp=pghckkk&prid=7e1bde42-a8a8-4a13-b839-277fbdea6f5f).

19 U.S. Census Bureau, “Colorado: 2020 Census,” August 25, 2021, [www.census.gov/library/stories/state-by-state/colorado-population-change-between-census-decade.html](https://www.census.gov/library/stories/state-by-state/colorado-population-change-between-census-decade.html).

20 Colorado Senate Bill 22-230, § 8-3.3-102 (4), [leg.colorado.gov/sites/default/files/documents/2022A/bills/2022a\\_230\\_enr.pdf](https://leg.colorado.gov/sites/default/files/documents/2022A/bills/2022a_230_enr.pdf).

Such definitions leave little room for confusion or challenging which topics qualify for collective bargaining. Similarly, the statute defines privileges such as payroll deduction of union dues “and other payments” as exclusive to the workplace union.<sup>21</sup> So is an innovation to ensure heavy influence over new hires: as specified by law—not just through labor agreement or typical practice—the county must give the exclusive representative time to meet with new employees and deliver copies of its worker orientation materials.<sup>22</sup>

Colorado’s county collective bargaining law is similar to the state version by guaranteeing access to employees’ work and personal contact details. Since the *Janus* ruling, Connecticut, Illinois, Maryland, New Jersey, Oregon, Rhode Island, Vermont, and Washington have all enacted similar “access” provisions. Again, this is a specific way labor unions have secured continued access to both new and existing workers across the country.

## MISSOURI: UNIONS ROLL BACK RECENT MAJOR REFORMS

Labor unions worked steadily over five years to eviscerate Missouri’s comprehensive collective bargaining reforms. The state passed right-to-work reform in 2017, but a ballot initiative reversed it in 2018. Missouri also passed House Bill (HB) 1413 in 2018,<sup>23</sup> which set out several major changes: regular recertification elections for government unions; a ban on release time; detailed and public annual union reports on political and financial activities; and a ban on binding arbitration, among other things (see our 2019 report for a full analysis). A group of seven unions challenged the law in court, and it never went into effect. In May 2021, Missouri’s Supreme Court voided the entire law, ruling that HB 1413’s exemption of public safety officers violated the state constitution’s equal protection clause.<sup>24</sup>

The latest trends in Virginia, Colorado, and Missouri demonstrate that government unions are quickly adapting in the post-*Janus* world. When they succeed in unionizing major tranches of government workers, as they have in Nevada (2019), Virginia (2020), California (for childcare workers in 2021), and Colorado (2020 and 2022), they write collective bargaining laws to maximize union gains at the bargaining table and avoid legal ambiguity.

In June, national government union AFSCME wrote about labor’s success in unionizing some 100,000 new government workers in the above states. The Colorado county law “marked the fourth time in four years that public service workers have won a major expansion of collective bargaining rights,” they gushed.<sup>25</sup>

Indeed, the major unions have made inroads in both public and private sectors in the last four years, especially with a tighter labor market following the COVID-19 crisis. However, since *Janus*, overall membership has still declined between 1 and 4 percent in the largest four government unions, as Table 1 shows.

21 Colorado Senate Bill 22-230, § 8-3.3-104 (4).

22 Colorado Senate Bill 22-230, § 8-3.3-104 (3).

23 Rep. Jered Taylor, HB 1413, as passed on June 1, 2018, Missouri House of Representatives, [house.mo.gov/billtracking/bills181/hrbillspdf/4637S.14T.pdf](https://house.mo.gov/billtracking/bills181/hrbillspdf/4637S.14T.pdf).

24 Missouri Supreme Court, *Missouri National Education Association v. Missouri Department of Labor and Industrial Relations* SC 98412, opinion issued June 1, 2021, [www.courts.mo.gov/file.jsp?id=177736](https://www.courts.mo.gov/file.jsp?id=177736).

25 AFSCME, “Colorado Collective Bargaining Law is Latest Evidence of Surging Union Momentum,” June 3, 2022, [www.afscme.org/blog/colorado-collective-bargaining-law-is-latest-evidence-of-surging-union-momentum](https://www.afscme.org/blog/colorado-collective-bargaining-law-is-latest-evidence-of-surging-union-momentum).



The AFSCME, SEIU, National Education Association (NEA), and AFT lost almost 380,000 fee payers nationwide immediately following the *Janus* ruling. After some initial spikes in union member levels in 2019, the four unions saw a collective net loss of nearly 219,000 union members between 2017 (right before the *Janus* ruling) and 2021. Though the major national government unions have re-gained ground, they are still working against an historic decline lately exacerbated by *Janus*.

**TABLE 1 GOVERNMENT UNION MEMBER LOSSES SINCE *JANUS***

	Fee payers lost after <i>Janus</i> ruling	Active union members minus retirees, pre- <i>Janus</i> (2018)	Active union members minus retirees, 2021	Drop in union members
AFSCME	-110,018	1,144,128	1,128,566	-15,562
SEIU	-98,689	1,853,612	1,775,317	-78,295
NEA	-87,764	2,671,017	2,586,037	-84,980
AFT	-82,713	1,283,993	1,244,220	-39,773
<b>Total</b>	<b>-379,184</b>	<b>6,952,750</b>	<b>6,734,140</b>	<b>-218,610</b>

Source: U.S. Department of Labor, Office of Labor-Management Standards (OLMS), LM-2 reports 2017–2021 (olmsapps.dol.gov/olpdr/?\_ga=2.255663628.569172960.1656187953-1772710097.1656040378.)

Note: “Active” members are full- and part-time employees paying union dues. Retiree members typically do not pay dues. The latest pre-*Janus* financial report may fall in 2017 or 2018, depending on the union’s financial year.

## Wins for Workers and Taxpayers Since 2019

Virginia lost its collective bargaining ban for government workers, leaving only two states—North and South Carolina—with comprehensive bans. However, in April 2021, Arkansas banned collective bargaining for all government workers except police, firefighters, other public safety officers, and federal transit workers. Employees in state government, college systems, judiciary, legislature, and public schools may not bargain collectively.<sup>26</sup> The state now joins four others—Georgia, Texas, Indiana, and Tennessee—with broad prohibitions on collective bargaining. Arkansas’ letter grade in this report has thus jumped from a “C” to an “A+.”

Other progress has come through victories on single issues that increase worker freedom and reduce taxpayer burdens: paycheck protection, opt-out windows, strikes, and release time.

26 Ark. Code § 21-1-801 et seq., [advance.lexis.com/documentpage/?pdmfid=1000516&crd=54e87ed5-0a71-486e-89bb-811aa696a7e2&nodeid=AAVAABAAIAAC&nodepath=%2FROOT%2FAAV%2FAAAB%2FAAABAAI%2FAAABAAIAAC&level=4&haschildren=&populated=false&title=21-1-802.+Collective+bargaining+prohibited.&config=00JAA2ZjZiM2VhNS0wNTVILTQ3NzUtYjQzYy0yYWZmODJiODRmMDYKAfBvZENhdGFsb2fXiYCNsel0pllqgpYkw9PK&pddocfnullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A62F3-6JM0-R03N-12CB-00008-00&ecomp=vg1\\_kkk&prid=ac77e16c-6d12-4e70-8751-8112ca18c7d8](https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=54e87ed5-0a71-486e-89bb-811aa696a7e2&nodeid=AAVAABAAIAAC&nodepath=%2FROOT%2FAAV%2FAAAB%2FAAABAAI%2FAAABAAIAAC&level=4&haschildren=&populated=false&title=21-1-802.+Collective+bargaining+prohibited.&config=00JAA2ZjZiM2VhNS0wNTVILTQ3NzUtYjQzYy0yYWZmODJiODRmMDYKAfBvZENhdGFsb2fXiYCNsel0pllqgpYkw9PK&pddocfnullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A62F3-6JM0-R03N-12CB-00008-00&ecomp=vg1_kkk&prid=ac77e16c-6d12-4e70-8751-8112ca18c7d8).

## PAYCHECK PROTECTION AND MEMBER RESIGNATION RESTRICTIONS

In 2021, West Virginia passed HB 2009, which prohibits government entities from deducting member dues for government unions via payroll.<sup>27</sup> Gov. Jim Justice vetoed a similar bill in 2017. But by 2021, worker freedom sentiment was strong. Government unions immediately requested and won a preliminary injunction against the law taking effect. However, the West Virginia Supreme Court struck down the injunction in November 2021.<sup>28</sup>

Following the *Janus* ruling, three states changed the payroll deduction of union dues to better protect workers' First Amendment rights. In Alaska, Gov. Michael Dunleavy issued a 2019 executive order permitting payroll deductions of union dues only if state government employees expressly opted in online via an authorization form.<sup>29</sup> However, the Alaska State Employees Association responded with a lawsuit challenging the order. And in 2021, a superior court struck it down and ordered the State of Alaska to pay the union \$186,000 in damages. The union continues to handle worker requests to halt payroll deductions.<sup>30</sup>

In Texas, Ken Paxton, the state's attorney general, issued a 2020 opinion that the state should explain worker rights and have an opt-in system. However, he further advised Texas to obtain payroll deduction authorizations every year.<sup>31</sup>

In 2022, Oklahoma Gov. J. Kevin Stitt issued an executive order urging the state's Board of Education to take action to ensure that public employees are aware of their right to not financially support or associate with any union. Additionally, the order urges the Board of Education to ensure that payroll deductions meet the standards of state and federal law.<sup>32</sup>

Indiana and Michigan also instituted paycheck protections to align with the *Janus* ruling in different ways. In 2021, Indiana passed a law that required teachers to authorize payroll deductions of union dues every year. The reform also effectively outlawed union opt-out windows with the provision that "a school employee has the right to resign from, and end any financial obligation to, a school employee organization at any time."<sup>33</sup> A union-led lawsuit shortly followed. The judge ruled with the plaintiffs that the first-person opt-out language in the law would likely violate workers' freedom of speech and partially blocked the act going into effect in 2021.<sup>34</sup> In response, the Indiana legislature amended the act, shifting the effective date to July 1, 2022, and changing opt-out language from "I am aware..." to "The State of Indiana wishes to make you aware that you have a First Amendment right, as recognized by the United States Supreme Court, to refrain from joining and paying dues to a union (school employee organization)."<sup>35</sup>

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27 Rep. Geoff Foster, HB 2009 [Final Version], West Virginia Legislature, passed March 19, 2021, [www.wvlegislature.gov/Bill\\_Status/bills\\_text.cfm?billdoc=HB2009%20SUB%20ENR.htm&yr=2021&sesstype=RS&i=2009](http://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=HB2009%20SUB%20ENR.htm&yr=2021&sesstype=RS&i=2009).

28 Ballotpedia News Union Station, "West Virginia Supreme Court of Appeals Overturns Circuit Court's Block of Union Dues Law," December 3, 2021, [news.ballotpedia.org/2021/12/03/union-station-december-3-2021/?\\_wcsid=6F6A1112379B552A2B17D4BB1295B4D9C0513475F39962AA](https://news.ballotpedia.org/2021/12/03/union-station-december-3-2021/?_wcsid=6F6A1112379B552A2B17D4BB1295B4D9C0513475F39962AA).

29 Gov. Michael Dunleavy, Administrative Order 312, Office of the Governor, September 26, 2019, [gov.alaska.gov/wp-content/uploads/sites/2/09262019-Administrative-Order-No-312.pdf](http://gov.alaska.gov/wp-content/uploads/sites/2/09262019-Administrative-Order-No-312.pdf).

30 Peter Segall, "Judge Says State Broke Law in Order Over Union Dues Lawsuit," *Juneau Empire*, February 10, 2021, [www.juneauempire.com/news/court-rules-in-unions-favor-over-dues-lawsuit/](http://www.juneauempire.com/news/court-rules-in-unions-favor-over-dues-lawsuit/).

31 Texas Attorney General Ken Paxton, "Application of the United States Supreme Court's *Janus* Decision to Public Employee Payroll Deductions for Employee Organization Membership Fees and Dues," Op. No. KP-0310, May 31, 2020, [www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2020/kp-0310.pdf](http://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2020/kp-0310.pdf).

32 Gov. J. Kevin Stitt, Executive Order 2022-18, Office of the Governor, August 19, 2022, [www.sos.ok.gov/documents/executive/2039.pdf](http://www.sos.ok.gov/documents/executive/2039.pdf).

33 Indiana General Assembly, "Senate Enrolled Act No. 251," April 22, 2021, [iga.in.gov/legislative/2021/bills/senate/251#document-95633585](http://iga.in.gov/legislative/2021/bills/senate/251#document-95633585).

34 Janie Valentine, "Indiana Gov. Signs Bill Amending Partially Blocked Teachers Union Dues Law," Ballotpedia, March 18, 2022, [news.ballotpedia.org/2022/03/18/indiana-gov-signs-bill-amending-partially-blocked-teachers-union-dues-law/](https://news.ballotpedia.org/2022/03/18/indiana-gov-signs-bill-amending-partially-blocked-teachers-union-dues-law/).

35 Enrolled Senate Act No. 257, Section 6 (c) 3, [iga.in.gov/legislative/2022/bills/senate/297#document-5df8143e](http://iga.in.gov/legislative/2022/bills/senate/297#document-5df8143e).

In 2020, Michigan amended its rules for deducting union dues for state employees by requiring employee authorizations every year, and annually informing workers of their right not to join a union and to resign membership at any time.<sup>36</sup>

Such legal steps on paycheck protection and opt-out windows may seem small, but they have a major impact on how workers understand their association rights.

As we have discovered in Pennsylvania, representatives often do not explain workers' rights and options well or at all. Experience indicates a basic understanding of their rights would cause union membership to decline further.<sup>37</sup> For example, the Freedom Foundation spent years canvassing, sending mailers, and otherwise educating government workers about their *Janus* rights initially in California, Oregon, and Washington and then in several other states. By 2022, they reported helping 117,000 workers to opt out of paying union dues.<sup>38</sup>

## RESTRICTING EXPENSIVE UNION RELEASE TIME

Arizona's Goldwater Institute has spent the last decade highlighting the problem of union release time both in-state and across the country. In 2016, a setback came when the Arizona Supreme Court ruled in favor of the Phoenix police union's use of release time.<sup>39</sup> In April 2022, however, Arizona passed a law banning release time for government workers. This major victory is the first law in the nation to address this expensive union privilege.

An employee on release time is "released" from regular job duties to perform labor union business—often while still receiving taxpayer-funded pay and benefits. Such union work involves handling grievances, attending union meetings, representation work, and political lobbying. The ban in the new Arizona law narrows the definition of "release time" to certain "union activities":

"'Union activities' means: (a) Political activities performed by a union that involve advocating for the election or defeat of any political candidate, and (b) Lobbying activities performed by a union that involve attempting to influence the passage or defeat of federal or state legislation, local ordinances or any ballot measure."<sup>40</sup>

The law also does not apply to police and firefighters. However, it represents an important guidepost to other states in addressing this flagrant union abuse of public funds.

36 Michigan Civil Service Commission, Section 6-7.2, "Michigan Civil Service Rules," April 15, 2022, [www.michigan.gov/mdcs/-/media/Project/Websites/mdcs/RULES/2022-4-15-Rules-Unannotated.pdf?rev=3b35ce1b086a4b278b7e24121f2a80e0&hash=61FF7DF0E57DE5BEBF407304EEBA6C7E](http://www.michigan.gov/mdcs/-/media/Project/Websites/mdcs/RULES/2022-4-15-Rules-Unannotated.pdf?rev=3b35ce1b086a4b278b7e24121f2a80e0&hash=61FF7DF0E57DE5BEBF407304EEBA6C7E).

37 Daniel DiSalvo, "Public-Sector Union Membership is Slowly Shrinking," City Journal, April 27, 2022, [www.city-journal.org/public-sector-union-membership-slowly-shrinking](http://www.city-journal.org/public-sector-union-membership-slowly-shrinking).

38 Freedom Foundation, "Freedom Foundation CEO Statement Celebrating the Fourth Anniversary of *Janus v. AFSCME*," June 27, 2022, [www.freedomfoundation.com/media-statement/freedom-foundation-ceo-statement-celebrating-the-fourth-anniversary-of-janus-v-afscme/](http://www.freedomfoundation.com/media-statement/freedom-foundation-ceo-statement-celebrating-the-fourth-anniversary-of-janus-v-afscme/).

39 Dustin Gardiner, "Arizona Court Ruling Oks 'Release Time,' for Public Employees' Union Work," AZCentral, September 13, 2016, [www.azcentral.com/story/news/local/arizona/2016/09/13/arizona-court-ruling-oks-release-time-public-employees-union-work/90311860/](http://www.azcentral.com/story/news/local/arizona/2016/09/13/arizona-court-ruling-oks-release-time-public-employees-union-work/90311860/).

40 Arizona State Legislature, SB 1166, approved by the governor April 6, 2022, [www.azleg.gov/legtext/55leg/2R/laws/0111.pdf](http://www.azleg.gov/legtext/55leg/2R/laws/0111.pdf).

In April 2022, Oklahoma passed a law allowing school boards to grant teachers unpaid leave for release time. The law explicitly prohibits a teacher on release time from getting a salary or benefits, accruing seniority or pension benefits, or using school district office space for union business.<sup>41</sup>

## PROHIBITING STRIKES

In the last four years, union hubris paved the way for significant reform in West Virginia. Teachers engaged in massive strikes in 2018 for two weeks over the amount of proposed pay raises, shuttering public schools across the state and forcing over 270,000 students out of class. They went on strike again in 2019 over an education omnibus bill. Sen. Eric Tarr, R- Putnam, asked, “How did it proceed that we have no consequence for the past couple of work stoppages that have happened?” About the strike ban, Tarr said, “Given this pandemic and with past teacher strikes, we have seniors in high school who have yet to see a full year of school due to the work stoppages that preceded the pandemic.”<sup>42</sup>

With a Republican trifecta, the West Virginia legislature passed a ban on public sector strikes in 2021. Previously, government worker strikes were considered illegal under the 1990 state Supreme Court ruling *Jefferson County Bd. of Educ. v. Jefferson County Education Association*. However, the state’s Senate Bill (SB) 11, codifies the ban and specifically addresses teacher strikes. The new law makes striking a firing offense. The law also prohibits teachers from using alternative instructional time to make up for lost school days or from using personal leave to participate in a strike.<sup>43</sup>

Arkansas also statutorily outlawed public sector strikes in its law banning collective bargaining for government workers. (Strikes were already illegal according to case law). The language in the new law requires government employers to fire workers who participate in a strike.<sup>44</sup> Thirty-three states now have full prohibitions on government worker strikes.

Table 2 provides a comprehensive overview. For broad legislation covering many issues the table emphasizes the most fundamental issue. For example, Colorado’s 2020 law to unionize state government employees also gives unions access to employee’s contact details.

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41 Sen. Lonnie Paxton and Rep. Kyle Hilbert, SB 1579,” Oklahoma State Legislature, approved by the governor April 29, 2022, [www.oklegislature.gov/BillInfo.aspx?Bill=sb1579&Session=2200](http://www.oklegislature.gov/BillInfo.aspx?Bill=sb1579&Session=2200); see final version at [webserver1.lsb.state.ok.us/cf\\_pdf/2021-22%20ENR/SB/SB1579%20ENR.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20ENR/SB/SB1579%20ENR.PDF).

42 Steven Allen Adams, “West Virginia Senate Sends Message: Strikes by Public Employees are Illegal,” *The Intelligencer*, February 23, 2021, [www.theintelligencer.net/news/top-headlines/2021/02/west-virginia-senate-sends-message-strikes-by-public-employees-are-illegal/](http://www.theintelligencer.net/news/top-headlines/2021/02/west-virginia-senate-sends-message-strikes-by-public-employees-are-illegal/).

43 Sens. Rucker, Roberts, Takubo, Maroney, and Swope, “Enrolled Committee Substitute for Senate Bill 11,” West Virginia Legislature, filed March 17, 2021, [www.wvlegislature.gov/Bill\\_Text\\_HTML/2021\\_SESSIONS/RS/signed\\_bills/senate/SB11%20SUB1%20ENR\\_signed.pdf](http://www.wvlegislature.gov/Bill_Text_HTML/2021_SESSIONS/RS/signed_bills/senate/SB11%20SUB1%20ENR_signed.pdf).

44 Ark. Code § 21-1-803, [advance.lexis.com/documentpage/?pdmfid=1000516&crd=1d9c7020-3ac0-44ea-9fad-a7477a53e6f4&pdistocdocslideraccess=true&config=00JAA2ZjZiM2VhNS0wNTVLTQ3NzUyQzYyOyYwZmODJiODRmMDYKAFBvZENhdGFsb2F2fXlYXNsel0pIlgqpYkw9PK&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A62F3-6JM0-R03N-12CC-00008-00&pdoccomponentid=234171&pdtocnodeidentifier=AAVAABAAIAAD&ecompgphckkk&prid=175d1d00-5b41-4375-b635-a6c5acfb24bb](http://advance.lexis.com/documentpage/?pdmfid=1000516&crd=1d9c7020-3ac0-44ea-9fad-a7477a53e6f4&pdistocdocslideraccess=true&config=00JAA2ZjZiM2VhNS0wNTVLTQ3NzUyQzYyOyYwZmODJiODRmMDYKAFBvZENhdGFsb2F2fXlYXNsel0pIlgqpYkw9PK&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A62F3-6JM0-R03N-12CC-00008-00&pdoccomponentid=234171&pdtocnodeidentifier=AAVAABAAIAAD&ecompgphckkk&prid=175d1d00-5b41-4375-b635-a6c5acfb24bb).

**TABLE 2 OVERVIEW OF PUBLIC SECTOR COLLECTIVE BARGAINING LAWS SINCE 2020**

Issue	Law	Enacted 2020-2022	Introduced 2020-2022
<b>Amendments to state constitution</b>	Right to Work for public sector workers.	TN (pending Nov. 2022 referendum)	
	Creates a constitutional right to collectively bargain.	IL (pending Nov. 2022 referendum)	MN
<b>Collective bargaining scope and permission</b>	Authorizes new collective bargaining for government workers.	VA (reversed ban)	
	Prohibits public sector bargaining for some or all employees.	AR	VA
	Unionizes new classes of employees.	CA, CO, DE, KY, MD, WA	AZ, CA, CO, DE, ID, IL, KY, MD, NV, OH, VA, WA, WI, WV
	Expands subjects of collective bargaining.	NJ, ME, OR	IA, NJ
<b>Union/employer influence</b>	Gives unions access to existing and new employees' contact details and/or makes it easier to unionize.	CT, IL, VT	CA, CT, IL, MA, MN, PA, VT
	Restricts employers from deterring or discouraging union membership.		CA, NH
<b>Release time</b>	Institutes release time.		CA, NJ
	Bans release time.	AZ, OK	PA
<b>Exclusive representation</b>	Permits unions to refrain from representing non-members.	NJ	HI, IL, OR
	Permits employees to represent themselves.		IL, OK, PA
<b>Opt-out windows</b>	Allows easier opt-outs.	IN	CA, FL, IN, KS, KY, MO, MT, NE, OK, PA, WA
	Institutes opt-out window.		OR
<b>Paycheck protection</b>	Institutes paycheck protection or limits on dues deduction.	WV	AK, IN, NJ, MT, OK
	Repeals paycheck protection.		IA
<b>Union recertification</b>	Requires regular recertification of unions.		FL, OK, PA
	Creates barriers to union re/de certification elections.		IA, WI



**TABLE 2 GRADING STATE PUBLIC SECTOR LABOR LAWS (CONTINUED)**

<b>Fair share fees</b>	Prevents lawsuits seeking repayment of fair share fees paid prior to <i>Janus</i> .		WA
	Institutes fair share fee alternative.		MI
	Statute prohibiting employers from requiring union membership or fees.		CO, MD, ME, MN, MO, MT, NC, NH
	Removes fair share fees from statute.		HI, IL, ME, OR
<b>Individual worker protections</b>	Requires notifying workers of right to join or not join a union.		CT, PA
<b>Transparency of contracts and labor negotiations</b>	Requires proposed contracts to be posted before ratification.		PA
	Further exempts CBA negotiations from the state's Right to Know law.		NH
<b>Worker strikes</b>	Bans public employee strikes.	AR, WV	OK
	Permits public employee strikes.		MA, ME
<b>Other</b>	Localizes election and certification procedures.	OK	

Source: Ballotpedia, "Public Sector Union Policy in the United States, 2018–Present."

## Grading State Labor Laws

Table 3 articulates the eleven policies analyzed in our rankings. These policies fall into two categories: Policies that impact taxpayers and state budgets and policies that directly impact individual workers' rights.

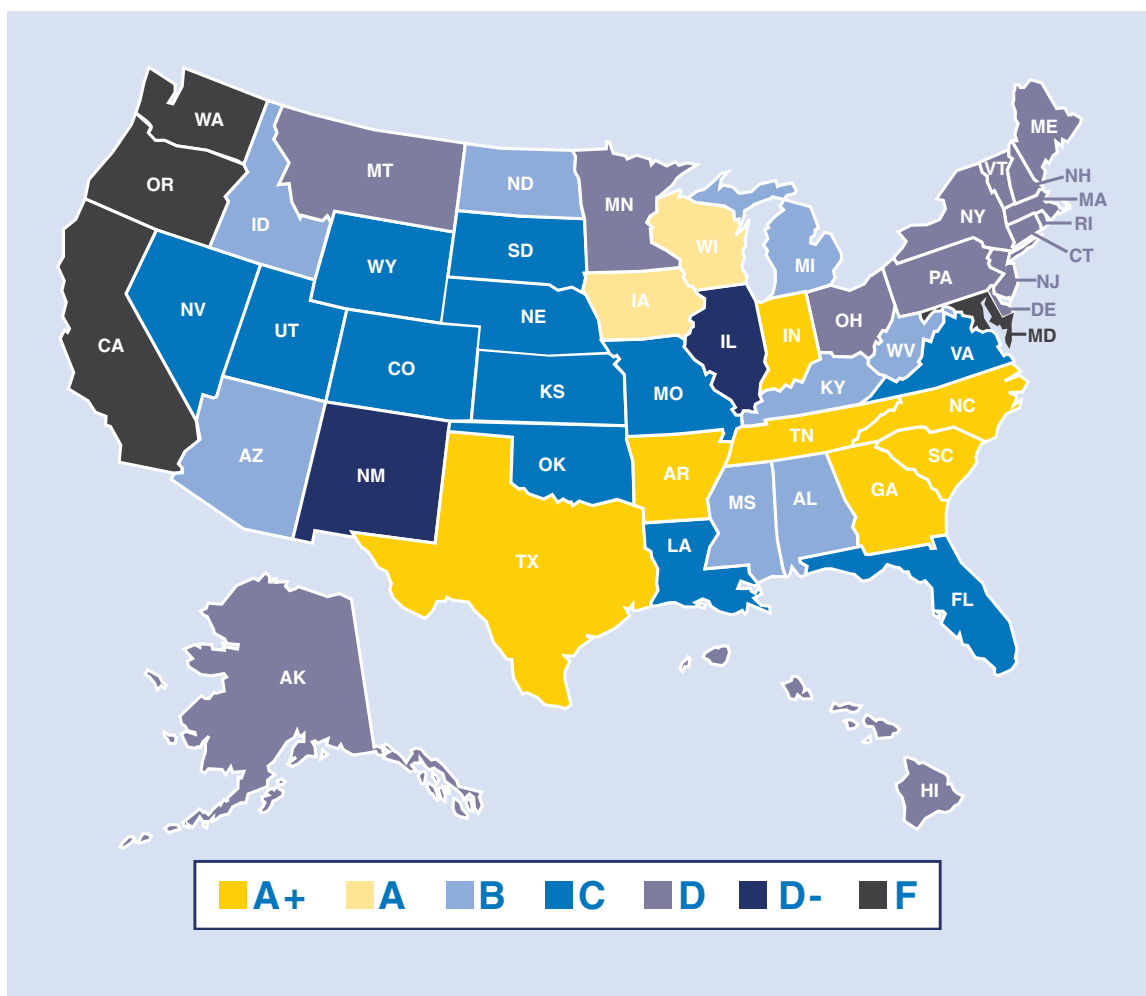
**TABLE 3 PUBLIC SECTOR LABOR LAWS**

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 (maintenance of membership).
Union release time.	Exclusive representation/agency fees.
Legality of worker strikes.	Paycheck protection.
Binding arbitration.	Right-to-work.
Union contract negotiation transparency.	

The following rubric assesses state labor laws on each policy measure. The analysis considers 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 the right-to-work status, revealing a wider spectrum of reforms that guarantee greater protections of individual workers’ freedom of association, and shield taxpayers from overspending.

**FIGURE 1 STATE LABOR LAW GRADES BY STATE**



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 again receive this grade, but the composition has changed: Virginia has fallen due to its 2020 law allowing local collective bargaining, while **Arkansas** has risen from a “C” to “A+” for its new ban on collective bargaining for all government workers except police, firefighters, and federal transit workers. Currently, only **North Carolina** and **South Carolina** have a blanket prohibition on collective bargaining for all public sector workers. Meanwhile, **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,<sup>45</sup> are the only states that meet this standard.

**B:** These states are right-to-work and protect most taxpayer and individual worker rights either explicitly or through bylaws that are silent on issues such as the scope of collective bargaining, opt-out windows, release time, and how a union receives certification. However, vague or non-existent laws also count against states because they often permit unions to gain certain workplace privileges through contract negotiations. Eight states meet this designation: **Alabama, Arizona, Idaho, Kentucky, Michigan, Mississippi, North Dakota, and West Virginia**. Missouri has fallen to a “C” grade after the state supreme court 2021 strike down of important reforms, such as greater 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, defined protections in state law for both taxpayers and workers. Twelve states received this grade: **Colorado, Florida, Kansas, Louisiana, Missouri, Nebraska, Nevada, Oklahoma, South Dakota, Utah, Virginia, and Wyoming**. Though Virginia has fallen from A+ to C, it has the potential to slip even further because its new law allows each locality to determine the scope of bargaining, giving labor unions the ability to significantly expand privileges.

**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 *Janus* greatly improved individual worker rights, other labor policies still undermine worker and taxpayer rights and continue to merit a “D” grade. This is the largest category, containing 15 states: **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 post-*Janus* category with 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 recently passed reforms that harm individual workers. These states 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 a mandatory card check for many workers. More recently, these states have moved to unionize more types of government employees. For example, in 2022 Maryland extended collective

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45 William Petroski and Brianne Pfannenstiel, “Iowa House, Senate Approve Sweeping Collective Bargaining Changes,” *Des Moines Register*, February 16, 2017, [www.desmoinesregister.com/story/news/politics/2017/02/16/amid-marathon-debate-iowa-legislature-barrels-towards-passage-collective-bargaining-bill/97984338/](http://www.desmoinesregister.com/story/news/politics/2017/02/16/amid-marathon-debate-iowa-legislature-barrels-towards-passage-collective-bargaining-bill/97984338/).

bargaining rights to public defenders and transit authority police sergeants and supervisors. Washington extended collective bargaining to legislative branch employees in 2022, and administrative law judges in 2020.<sup>46</sup>

Table 4 summarizes the up and down changes in the grades for states.

**TABLE 4 CHANGES IN STATE LABOR LAW GRADES**

	2017	2019	2022
<b>Oregon</b>	D	F	F
<b>New Mexico</b>	D	D-	D-
<b>Washington</b>	D	F	F
<b>Missouri</b>	B	B	C
<b>Arkansas</b>	C	C	A+
<b>Virginia</b>	A+	A+	C
<b>Illinois</b>	D	D-	D-

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 as a mandatory measure or by union request.
- Three states, Florida, Iowa, and Wisconsin, require incumbent government unions to go through a recertification election or process. Most government unions nationwide achieved certification in the 1960s or 1970s and have never faced an election.<sup>47</sup>
- 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—covered by case law rather than state collective bargaining statute—may have multiple union representatives.<sup>48</sup> Tennessee awards unions that earn 15 percent or more of employees’ votes proportional representation at the bargaining table.<sup>49</sup> States overwhelmingly give a single union the designation of “exclusive bargaining representative” for all employees in a unit of similar workers.
- Thirteen states—two more since 2019—now have some form of paycheck protection. This list now includes Texas, which issued orders to ensure state workers provided clear, ongoing

46 Ballotpedia, “Public Sector Union Policy in the United States, 2018-Present,” [ballotpedia.org/Public-sector\\_union\\_policy\\_in\\_the\\_United\\_States,\\_2018-present](https://ballotpedia.org/Public-sector_union_policy_in_the_United_States,_2018-present).

47 To the reader, 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: [labor.hawaii.gov/hlrp/files/2013/05/2016-04-25-EMPLOYEE\\_ORGANIZATIONS-Public-Sector.pdf](https://labor.hawaii.gov/hlrp/files/2013/05/2016-04-25-EMPLOYEE_ORGANIZATIONS-Public-Sector.pdf).

48 To the reader, *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, [showmeinstitute.org/sites/default/files/201503%20A%20Primer%20on%20Government%20Labor%20Relations%20in%20Missouri%20-%20Wright\\_0.pdf](https://showmeinstitute.org/sites/default/files/201503%20A%20Primer%20on%20Government%20Labor%20Relations%20in%20Missouri%20-%20Wright_0.pdf).

49 Tenn. Code Ann. § 49-5-605, [www.lexisnexis.com/hottopics/tncode/](https://www.lexisnexis.com/hottopics/tncode/).

approval for payroll deduction of dues. Alaska's effort to do the same was struck down in court. Six 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: West Virginia (in 2021), Wisconsin,<sup>50</sup> Iowa,<sup>51</sup> Michigan (for teachers and other public-school employees),<sup>52</sup> Oklahoma (whose 2015 statute covers state employees),<sup>53</sup> and Indiana (which banned dues deductions for state workers by executive order in 2005).<sup>54</sup>

- Union dues are implicitly political because they can fund ideologically partisan issues and independent expenditure committees, or SuperPACs.<sup>55</sup> Four states, Alabama,<sup>56</sup> Idaho,<sup>57</sup> Kansas,<sup>58</sup> Tennessee,<sup>59</sup> and Utah,<sup>60</sup> prohibit unions from using taxpayer-funded government payroll systems to collect political contributions or funds for use on political purposes. Additionally, Kentucky passed a version of paycheck protection that prohibits the automatic deduction of union dues and political contributions without authorization from members.<sup>61</sup>
- Twelve states require union contract negotiations to be open to the public while still generally allowing agencies to go into executive session to determine negotiation strategy. They are: Colorado (for public schools only),<sup>62</sup> Florida,<sup>63</sup> Georgia,<sup>64</sup> Kansas,<sup>65</sup> Minnesota,<sup>66</sup>

50 Wis. Stat. § 111.70(3g), docs.legis.wisconsin.gov/statutes/statutes/111/IV/70/3g, Wis. Stat. § 111.845, docs.legis.wisconsin.gov/statutes/statutes/111/V/845.

51 Iowa Code § 20.26, coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=iowaCode&ga=83&input=20.26; Iowa Code § 731.5, coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=iowaCode&ga=83&input=731#731.5.

52 Mich. Comp. Laws § 423.210, www.legislature.mi.gov/(S(4oyc3ho3dgv5mcbcf54yhh4n))/mileg.aspx?page=GetObject&objectname=mcl-423-210.

53 Okla. Stat. tit. 62 § 34.70.1, www.oscn.net/applications/OCISWeb/DeliverDocument.asp?CitelID=476351.

54 Gov. Mitch Daniels, Executive Order 05-14, Executive Department Indianapolis [Indiana], January 11, 2005, in.gov/governorhistory/mitchdaniels/files/EO\_05-14\_Complaint\_State\_Employees.pdf.

55 To the reader, 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*.

56 Ala. Code 1975 § 17-17-5, codes.findlaw.com/al/title-17-elections/al-code-sect-17-17-5.html.

57 Idaho Code Ann. § 44-2004, legislature.idaho.gov/idstat/Title44/T44CH20SECT44-2004.htm.

58 Kan. Stat. Ann. § 44-808, www.ksrevisor.org/statutes/chapters/ch44/044\_008\_0008.html; Kan. Stat. Ann. § 75-4333, www.ksrevisor.org/statutes/chapters/ch75/075\_043\_0033.html.

59 Tenn. Code Ann. § 49-5-608, law.justia.com/codes/tennessee/2014/title-49/chapter-5/part-6/section-49-5-608.

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

61 KRS Chapter 336, www.lrc.ky.gov/statutes/chapter.aspx?id=38883; KRS Chapter 337 www.lrc.ky.gov/statutes/chapter.aspx?id=38890.

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

63 Fla. Stat. § 447.605, www.flsenate.gov/Laws/Statutes/2012/447.605; Fla. Stat. § 286.011, www.leg.state.fl.us/Statutes/index.cfm?App\_mode=Display\_Statute&Search\_String=&URL=0200-0299/0286/Sections/0286.011.html.

64 Ga. Code Ann. § 50-14-1, advance.lexis.com/documentpage/?pdmfid=1000516&crd=88b53c3c-109b-49b0-b34a-9f6f8265782f&config=00JAA1MDBIYzczZi1YjFILTQxMTgtYWE3OS02YTgyOGM2NWJIMDYKAFBvZENhdGFsb2feed0oM9qoQOMC SJFX5qkd&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A6348-G0T1-DYB7-W1SD-00008-00&pdcontentcomponentid=234186&pdteaserkey=sr0&pditab=allpods&ecomps=vs65kkk&earg=sr0&prid=c ee98861-9b93-4228-9f54-ca7dd9bd134b.

65 Kan. Stat. Ann. §§ 75-4317—75-4320a, kslegislature.org/li\_2012/b2011\_12/statute/075\_000\_0000\_chapter/075\_043\_0000\_article/.

66 Minn. Stat. § 13D.01, www.revisor.mn.gov/statutes/?id=13D.01.



Mississippi,<sup>67</sup> Montana,<sup>68</sup> Nebraska,<sup>69</sup> Nevada,<sup>70</sup> North Dakota,<sup>71</sup> Tennessee,<sup>72</sup> and Texas.<sup>73</sup> Montana is the only state to require executive sessions be open as well. Indiana also passed important new transparency measures for school district collective bargaining. While the law does not require negotiations be open to the public, it does oblige school officials to call a public meeting 72 hours ahead of ratifying a tentative proposal and also post the proposed agreement online.<sup>74</sup>

## The Growth of Post-*Janus* Litigation

Public interest firms have been active in filing lawsuits to defend the First Amendment rights *Janus* secured. Table 5 shows that a large proportion of lawsuits were filed after the *Janus* ruling seeking refunds for fair share fees already paid. So far, no court has agreed that *Janus* could apply retroactively, and the statutes of limitations relevant to such claims have largely lapsed.

However, workers were generally successful in fair share fee suits filed before the *Janus* ruling. Five cases were decided or settled in favor of public employees, six were dismissed because of immediate union compliance with *Janus*, while just two were dismissed in favor of unions.

The courts are protecting workers from current violations of *Janus*. In Connecticut, UNITE HERE Local 217 settled with school cook Tina Curtis after requiring her to pay fees as a nonmember.<sup>75</sup> The union refunded Curtis's fees and removed the illegal language from the union's contract.

The most active litigation category is ensuring unions honor workers' resignations immediately. In Pennsylvania, litigation brought by public employees forced major unions including the SEIU, Pennsylvania State Corrections Officers Association (PSCOA), United Food and Commercial Workers (UFCW), and AFSCME to drop resignation restrictions from state contracts.

These unions represent 51,500 employees, or nearly half of Pennsylvania state employees, who are now able to leave the union when they wish.<sup>76</sup>

Though the use of litigation to establish *Janus* rights remains active, courts have so far proven inclined to side with unions on retroactive refunds of fees and exclusive bargaining.

67 Miss. Code §§ 25-41-1—25-4-17, [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).

68 Open Meetings, Mont. Code Ann. § 2-3-203, [leg.mt.gov/bills/mca/title\\_0020/chapter\\_0030/part\\_0020/section\\_0030/0020-0030-0020-0030.html#:~:text=2%2D3%2D203.,to%20public%20%2D%2D%20exceptions%2C%20MCA;GreatFallsTribunev.GreatFallsPublicSchools,841P.2d502\(S.C.MT1992\),cite.case.law/set-cookie/?next=%2Fmont%2F255%2F125%2F](http://leg.mt.gov/bills/mca/title_0020/chapter_0030/part_0020/section_0030/0020-0030-0020-0030.html#:~:text=2%2D3%2D203.,to%20public%20%2D%2D%20exceptions%2C%20MCA;GreatFallsTribunev.GreatFallsPublicSchools,841P.2d502(S.C.MT1992),cite.case.law/set-cookie/?next=%2Fmont%2F255%2F125%2F).

69 Neb. Rev. Stat. §§ 84-1408, 84-1410, [nebraskalegislature.gov/laws/browse-chapters.php?chapter=84](http://nebraskalegislature.gov/laws/browse-chapters.php?chapter=84).

70 Nev. Rev. Stat. § 288.153, [www.leg.state.nv.us/nrs/NRS-288.html#NRS288Sec153](http://www.leg.state.nv.us/nrs/NRS-288.html#NRS288Sec153).

71 N.D. Cent. Code § 44-04-19, [www.legis.nd.gov/cencode/t44c04.pdf](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).

72 Tenn. Code Ann. § 8-44-201, [law.justia.com/codes/tennessee/2010/title-8/chapter-44/part-2/8-44-201](http://law.justia.com/codes/tennessee/2010/title-8/chapter-44/part-2/8-44-201).

73 Tex. Bus. & Com. Code § 174.108, [www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.174.htm](http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.174.htm).

74 Legiscan, "Indiana Senate Bill 390," 2019 Regular Session, [legiscan.com/IN/text/SB0390/id/2001230](http://legiscan.com/IN/text/SB0390/id/2001230).

75 The Fairness Center, "Curtis New Haven BOE Settlement Agreement Executed," [www.fairnesscenter.org/wp-content/uploads/2022/07/T.-Curtis-New-Haven-BOE-Settlement-Agreement-Eexecuted.pdf](http://www.fairnesscenter.org/wp-content/uploads/2022/07/T.-Curtis-New-Haven-BOE-Settlement-Agreement-Eexecuted.pdf).

76 Americans for Fair Treatment, "More State Unions Drop Exit Windows," October 9, 2019, [americansforfairtreatment.org/2019/10/09/more-state-worker-unions-drop-exit-windows/](http://americansforfairtreatment.org/2019/10/09/more-state-worker-unions-drop-exit-windows/).

**TABLE 5 SNAPSHOT OF POST-JANUS LAWSUITS**

Lawsuit Type	States with Lawsuits	Total	Status	Noteworthy Victories
<b>Return of fees taken before <i>Janus</i> ruling, filed before <i>Janus</i>.</b>	CA, MD, MA, MN, NY, NJ, OH, OR, PA, RI, WA	13	5 decided or settled, 8 dismissed.	<i>Ladley v. PSEA</i> led to ruling Pennsylvania's fair share fee statute unconstitutional.
<b>Return of fees taken before <i>Janus</i> ruling, filed after <i>Janus</i>.</b>	AK, CA, CT, DE, IL, MD, MI, MN, NH, NJ, NY, OH, OR, PA, RI, WA	50	25 dismissed or closed, 19 pending, 6 settled.	In <i>Pennington v. CWA</i> , the union agreed to stop enforcing the escape period provision for all employees that opted out and refunded all dues for those who revoked authorization.
<b>Honor union resignation and cease dues deduction.</b>	AK, CA, CT, HI, IL, MI, MN, NV, NJ, NM, NY, OH, OR, PA, TN, TX, WA	79	21 dismissed or closed, 31 pending, 27 settled.	In <i>Kabler v. UFCW 1776</i> , the union voluntarily removed the maintenance of membership provision from its contract. Pressure from other Pennsylvania worker lawsuits forced SEIU, AFSCME, and other state worker unions to drop exit windows in latest contracts, affecting about 51,500 employees.
<b>Challenge exclusive representation.</b>	IL, ME, MA, MN, NY, OH, WA	10	7 dismissed, 3 pending.	N/A
<b>Challenge mandatory state bar membership.</b>	LA, MI, ND, OK, OR, TX, WI	9	3 dismissed, 6 pending.	N/A
<b>Accusation of forged signature on union membership card.</b>	OR, WA, PA	4	2 pending, 4 settled.	In <i>Ocha v. SEIU Local 775</i> , the union paid Ocha \$15,000, plus \$13,000 in attorney's fees.
<b>All Post-<i>Janus</i> Lawsuits.</b>	<b>28 States</b>	<b>177</b>	<b>69 dismissed or closed, 71 pending, 37 settled.</b>	-

Sources: Liberty Justice Center ([libertyjusticecenter.org/cases/](http://libertyjusticecenter.org/cases/)); The Fairness Center ([www.fairnesscenter.org](http://www.fairnesscenter.org)); National Right To Work Legal Defense Foundation ([myjanusrights.org](http://myjanusrights.org)); Law360 ([www.law360.com/](http://www.law360.com/)); and Ballotpedia ([ballotpedia.org/Public-sector\\_union\\_policy\\_in\\_the\\_United\\_States,\\_2018-present#Relevant\\_legislation\\_in\\_state\\_legislatures](http://ballotpedia.org/Public-sector_union_policy_in_the_United_States,_2018-present#Relevant_legislation_in_state_legislatures)).

Note: This table may not capture every lawsuit; includes lawsuits dismissed, settled, or appealed. Current as of August 2022.

## Conclusion: The Future of Worker Freedom

When it comes to government union reform, Wisconsin's Act 10 remains the gold standard, continuing to yield huge benefits more than decade later. Individually, workers could finally choose to be in a union and participate in union elections regularly. We also cannot overstate the tax relief and benefits ordinary citizens have enjoyed since the costs of collective bargaining have plummeted.

With Act 10, former Gov. Scott Walker managed to turn a pension-driven, \$3.6-billion-deficit into surpluses and tax breaks. The MacIver Institute estimates the reforms saved Wisconsin taxpayers \$5 billion a year. A Commonwealth Foundation analysis found savings of \$7 billion in 2018 alone and \$8.5 billion in total tax relief. Walker was able to reduce property taxes, offer tax credits to families with children, and provide tax credits to small businesses.

Furthermore, without the traditional stranglehold of teachers' unions on education policy, Wisconsin was able to end burdensome seniority rules and reward good teachers. Better teachers led to an improvement in student achievement including math scores across a variety of communities.<sup>77</sup>

These are just a handful of Act 10's benefits, and they serve as a window into the importance of reducing outsized government union influence across the country. Public labor unions have made important gains in the last few years, but free-market advocates should press on with their work. Incremental reform through legislative and judicial channels continues. In Pennsylvania, litigation brought by public employees forced major unions including SEIU, PSCOA, UFCW, and AFSCME to drop resignation restrictions from state contracts. These unions represent 51,500 employees, or nearly half of state employees, who are now able to leave the union when they wish. In 2018, about 5 million government workers nationwide had their right to free association restored through *Janus*, and ongoing reforms will help all government workers and taxpayers for decades to come.

In the current moment, with gas prices and inflation at historic highs, the importance of protecting taxpayers' pocketbooks has never been more necessary. Collective bargaining reforms in many states are the key to keeping local and state budgets in check, while also protecting Americans' constitutional right to associate freely. With unionization rates for state government workers (33 percent) and local government workers (44 percent) slowly declining,<sup>78</sup> Big Labor must become even more aggressive to stay relevant.

*Janus* was just the beginning of the fight to empower workers across the country.

An online, interactive version of the 50-state table is available online: [www.commonwealthfoundation.org/state\\_labor\\_laws/](http://www.commonwealthfoundation.org/state_labor_laws/).

77 Nathan Benefield and Elizabeth Stelle, "Why Pennsylvania Needs Wisconsin-Style Government Union Reform," February 2022, [www.commonwealthfoundation.org/wp-content/uploads/2022/02/Why-Pennsylvania-Needs-Wisconsin-Style-Government-Union-Reform.pdf](http://www.commonwealthfoundation.org/wp-content/uploads/2022/02/Why-Pennsylvania-Needs-Wisconsin-Style-Government-Union-Reform.pdf).

78 Barry Hirsch and David Macpherson, "All Public Sector, 2021," from "Union Membership Coverage, Density, and Employment, 1973-2021" tables, Unionstats.com.

## APPENDIX I 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. The US Supreme Court ruled Fair share fees in *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 representation 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.

**Factfinding:** 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 seemingly 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 has permission 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 by paying dues for the duration of a collective bargaining agreement, a year, or some other specified period. Resigning outside of the designated window is not allowed. Courts have ruled that employees who opt-out may be forced to pay dues after resigning if they had committed to paying dues through a certain date.

**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 for federal government unions. 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.



## APPENDIX II Summary of State Public Sector Labor Laws

State	Is collective bargaining legal for government workers?	What items may be negotiated in collective bargaining?	How are unions 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	Union release time is banned
Arkansas	Illegal except for public safety employees	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, Unions re-certified at end of contract period	Yes	Written in union contracts
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

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?	Is the state a Right-to-Work state?	Are public worker strikes legal?
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	Must be open	Not outlined in law	No	Yes	Illegal
Written in union contracts	Not specified	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, no opt-out windows for teachers	Partial	No	Yes, for state workers	Yes	Illegal
No	Partial	Yes, once requested	Yes	Yes	Illegal
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

APPENDIX II Summary of State Public Sector Labor Laws (continued)

State	Is collective bargaining legal for government workers?	What items may be negotiated in collective bargaining?	How are unions certified?	Do unions have a right to exclusive representation of workers?	Are there provisions permitting union release time?
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	Secret ballot election only	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	Written in union contracts
Nevada	Yes	Wages, hours, other work conditions	Optional card check	Yes	Written in union contracts
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 as long as they are not prohibited by statute	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

WORKER FREEDOM IN THE STATES

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?	Is the state a Right-to-Work state?	Are public worker strikes legal?
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	May be closed	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
Written in union contracts	Must be open	Must be written in contracts	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

# APPENDIX II Summary of State Public Sector Labor Laws (continued)

State	Is collective bargaining legal for government workers?	What items may be negotiated in collective bargaining?	How are unions certified?	Do unions have a right to exclusive representation of workers?	Are there provisions permitting union release time?
<b>South Carolina</b>	No	N/A	N/A	N/A	N/A
<b>South Dakota</b>	Yes, required	Wages, some pension benefits, fringe benefits, hours, other work conditions	Secret ballot election only	Yes	Written in union contracts
<b>Tennessee</b>	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
<b>Texas</b>	Legal only for police and firefighters	Wages, hours, fringe benefits, other work conditions	Optional card check	Yes	Written in union contracts
<b>Utah</b>	Yes	Wages, hours, pension benefits, fringe benefits, other work conditions	Optional card check	Yes	Yes
<b>Vermont</b>	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
<b>Virginia</b>	Legal only for local government employees	Not outlined in law	Not outlined in law, determined locally	Yes	Written in union contracts
<b>Washington</b>	Yes, required	Wages, some pension/fringe benefits, hours, other work conditions	Mandatory card check	Yes	Yes
<b>West Virginia</b>	Yes	Not outlined in law	Not outlined in law	No, workers may negotiate individually	Not outlined in law
<b>Wisconsin</b>	Yes	Limited to base wages only, except for public safety workers	Secret ballot election only, Annual recertification required.	Yes	Written in union contracts
<b>Wyoming</b>	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?	Is the state a Right-to-Work state?	Are public worker strikes legal?
N/A	N/A	N/A	N/A	Yes	Illegal
Written in union contracts	May be closed	No	No	Yes	Illegal
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	May be closed	No	Not outlined in law	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	Yes	Yes	Illegal
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



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