The Battle for Worker Freedom: GRADING STATE PUBLIC SECTOR LABOR LAWS

4TH EDITION

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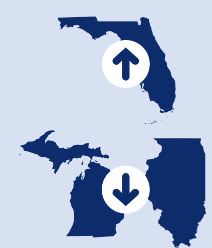
Key Points

The four largest government unions—American Federation of Teachers (AFT), American Federation of State, County and Municipal Employees (AFSCME), National Education Association (NEA), and Service Employees International Union (SEIU)—**lost more than 100,000 members since 2022 and a total of 320,421** since the 2018 *Janus v. AFSCME Council 31* decision. These membership losses represent $106.8 million in annual dues and fees.

To counter these losses, **union executives are engaging in aggressive campaigns to change laws that will help them recruit new members and increase union revenue**. In this respect, unions gained considerable ground in Illinois, Michigan, and Maryland over the past two years.

Florida set a new gold standard for pro-worker, pro-taxpayer public sector labor reform. Arkansas, Kentucky, and Tennessee also made notable efforts to protect workers and taxpayers from government union executives.

Litigation related to the Supreme Court's *Janus* decision has narrowed in the past two years. However, public interest law firms still **successfully defended public employees'** *Janus* **rights** and found new, creative ways to litigate for public sector employees against union overreach.



Since 2022, **three states have had significant legislative developments** that changed the landscape of public sector labor relations in these states. As a result, Florida's grade increased from a "C" to an "A," Michigan's grade decreased from a "B" to a "D," and Illinois fell from a "D-" to an "F."

Introduction

On November 8, 2022, Illinois voters headed to the polls to vote in the federal midterm elections. Important statewide positions—including governor, attorney general, comptroller, and secretary of state—were up for election.

Also on the ballot was a seemingly benign measure, known as Amendment 1, to make collective bargaining a fundamental right. The measure passed with 58.7 percent voter approval. Now, almost two years later, this constitutional amendment exerts a greater impact on Illinois workers and taxpayers than any state or federal election.

Amendment 1 added the following text to Article 1 of the Illinois Constitution:

> *Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.*[1]

For voters, this constitutional amendment may have seemed harmless—perhaps nothing more than an affirmation of existing law. However, the language helps union executives make the case for unrestricted collective bargaining, placing labor contracts above the law.

Unfortunately, union executives in other states are beginning to take notice. Since Illinois passed Amendment 1, lawmakers in four other states—Iowa, Minnesota, Pennsylvania, and Vermont—have proposed constitutional amendments with the same or similar language. Workers, taxpayers, and other stakeholders in these states should be aware of the dangers of this amendment.

Likewise, states should notice the big wins for workers and taxpayers in Florida. Gov. Ron DeSantis enacted Chapter 2023-35, a public sector labor reform bill, into law on May 9, 2023.[2] Among other reforms, Chapter 2023-35 promotes union accountability by requiring unions to run for reelection and to notify workers of their rights. The law also benefits taxpayers by making unions responsible for collecting their dues and fees rather than relying on the taxpayer-funded public payroll system.

This report will examine these and other public sector labor law developments since our last report in 2022,[3] providing a comprehensive state-by-state analysis of union power and worker freedom. Admittedly, the finer points of a state's labor laws occur on the ground, making it difficult to fully evaluate the effectiveness of any one feature. Therefore, this report does not attempt to capture every aspect of labor law in every state; instead, it focuses on each state's statutory regime and compares states, using letter grades, based on enacted legislation. Case law, administrative rules, and common practices are relevant but largely beyond the scope of this report.

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1 Ballotpedia, "Illinois Amendment 1, Right to Collective Bargaining Measure (2022), accessed June 15, 2024, https://ballotpedia.org/Illinois_Amendment_1,_Right_to_Collective_Bargaining_Measure_(2022).

2 Sen. Blaise Ingoglia, 2023 CS/CS/SB 256: Employee Organizations Representing Public Employees (Chapter 2023-25), Florida Senate, May 10, 2023, https://www.flsenate.gov/Session/Bill/2023/256/?Tab=BillText.

3 Priya Brannick and Andrew Holman, "The Battle for Worker Freedom in the States, Grading Public Sector Labor Laws (3rd Edition)," Commonwealth Foundation, September 22, 2022, https://www.commonwealthfoundation.org/research/grading-state-public-sector-labor-laws/.

Part 1: Public Sector Labor Law's Biggest Legislative Developments

Union executives won significant legislative victories in Illinois, Maryland, and Michigan. Taxpayers and workers achieved victories in Florida, Arkansas, Kentucky, and Tennessee.

UNION EXECUTIVES GAINING GROUND: ILLINOIS

Before the election that adopted Amendment 1, several prominent news outlets advised voters to reject it because it was difficult to predict how its broad, ambiguous language might be applied.[4] For union executives, this ambiguity was a feature, not a bug.

Illinois Amendment 1 helps union executives make the case for unchecked power over workers and taxpayers. By creating a "fundamental right" to collective bargaining, Amendment 1 extends collective bargaining to every workplace in the public sector, including the legislature and other government workplaces previously seen as inappropriate for unionization. The amendment could also allow collective bargaining agreements to trump any provision of state law on any subject. Under this reading, unions could potentially agree to contracts that undertake sweeping changes to state law in ways not envisioned by the voters who approved it.

Leaked documents obtained by the Illinois Policy Institute show that one of the country's most powerful teacher unions is already pressing this aggressive reading of Amendment 1.[5] In its first contract negotiation since Amendment 1, the Chicago Teachers Union (CTU) issued an unprecedented list of demands, including affordable housing, homeless shelters in schools, all-electric bus fleets, and abortion care funding.

As more Illinois unions negotiate their first contracts under Amendment 1, expect to see similar lists of demands from emboldened union executives. As a result, residents can anticipate increased taxes to offset the costs of expensive collective bargaining agreements, even as they lose transparency and accountability in the policymaking process.

Ironically, the expansion of union power in Illinois will likely come at great cost to the workers whom voters intended to help. Politicized demands with little direct impact on workers draw attention and resources away from core issues, such as workers' salaries, benefits, and working conditions. Additionally, workers may find it even more difficult to exercise individual autonomy, especially when holding union leadership accountable or withdrawing their union membership. If unions write these arrangements into collective bargaining agreements, Amendment 1 effectively constitutionalizes them.

Illinois lawmakers also enacted Public Act 103-0308, which expands Illinois teacher unions' right to "release time."[6] This practice "releases" certain employees from their regular job duties to work full time for the union, with full taxpayer-funded pay and benefits. Public Act 103-0308 expands release time by granting teachers 10 days of paid leave to do federal advocacy work on behalf of their union. Under the bill, Illinois taxpayers are responsible for paying the teachers' salaries while they work for the union, and the union must pay for any substitute.

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4 Patrick Andriesen, "5 News Outlets Say Voters Should Reject Amendment 1," Illinois Policy Institute, November 2, 2022, https://www.illinoispolicy.org/5-news-outlets-say-voters-should-reject-amendment-1/.

5 Mailee Smith and Hannah Schmid, "Chicago Teachers Union Contract Demands About Politics, Bosses' Power," Illinois Policy Institute, April 11, 2024, https://www.illinoispolicy.org/chicago-teachers-union-contract-demands-about-politics-bosses-power/.

6 Rep. Sue Scherer et al., Public Act 103-0308 (House Bill 2392), Illinois 103rd General Assembly, July 28, 2023, https://www.ilga.gov/legislation/BillStatus.asp?DocNum=2392&GAID=17&DocTypeID=HB&SessionID=112&GA=103.

Before the 2022 election, Illinois union executives already held significant legal privileges that enabled them to overpower workers and taxpayers. With the addition of Amendment 1 and Public Act 103-0308, these privileges now reach unprecedented levels. Illinois serves as an important case study in understanding the impacts of unchecked union executive power.

UNION EXECUTIVES GAINING GROUND: MICHIGAN

The 2022 election saw historic victories for Democrats in Michigan. Financed by millions of dollars in funding from public sector union executives, union-backed Democrats took control of Michigan's governorship and state legislature for the first time since 1983.[7] With this newfound power, lawmakers launched a public sector union comeback.

The first course of action for the new, union-backed majority was to roll back workers' rights. In early 2023, lawmakers enacted Public Acts 8 and 9 of 2023,[8, 9] which permit unions to force employees into "fair share" fee arrangements to keep their jobs. Because immediate enforcement of this provision would contravene the *Janus* decision, the new law involves a "trigger," which will go into effect if either the Supreme Court overturns or limits *Janus* or a federal constitutional amendment supersedes *Janus*. The legislation also stripped private sector employees of their right to work without financially supporting a union.

Next, lawmakers repealed Michigan's "paycheck protection" law, which prevented government unions from using the taxpayer-funded public payroll system to collect union dues, political action committee deductions, and other fees. Public Act 114 of 2023 removes the prohibition on collecting union dues, while Public Act 243 of 2023 removes the ban on collecting political action committee deductions.[10, 11] These changes force Michigan taxpayers to directly subsidize union operations and make it more difficult for workers to withdraw union support for union executives they no longer see as representative of their needs.

Michigan lawmakers continued by adopting a policy that will help union executives recruit union members and collect dues. Public Act 236 of 2023 requires public employers to furnish unions with employees' personal contact information—including their home address, personal email addresses, and personal phone numbers, among other information—to a union within 30 days of a new employee's hire date.[12] The employer must update the information every 90 days. Public Act 237 of 2023, another handout to unions, expanded collective bargaining rights to school administrators and graduate student assistants, part of increasingly common efforts to expand bargaining to employees previously prohibited from bargaining.[13]

7 Andrew Holman and David Osborne, "The Battle for Worker Freedom: How Government Unions Fund Politics Across the Country," Commonwealth Foundation, December 4, 2023, https://www.commonwealthfoundation.org/research/government-unions-fund-politics/.

8 Sen. Darrin Camilleri et al, Public Act 8 of 2023 (Senate Bill 34), Michigan Legislature, April 11, 2023, https://legislature.mi.gov/Bills/Bill?ObjectName=2023-SB-0034.

9 Rep. Regina Weiss et al., Public Act 9 of 2023 (House Bill 4004), Michigan Legislature, March 23, 2023, https://legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-4004.

10 Rep. Jamie Churches et al., Public Act 114 of 2023 (House Bill 4233), Michigan Legislature, August 22, 2023, https://legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-4233.

11 Rep. Jimmie Wilson et al., Public Act 243 of 2023 (House Bill 4230), Michigan Legislature, December 31, 2023, https://legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-4230.

12 Sen. John Cherry, Public Act 236 of 2023 (Senate Bill 169), Michigan Legislature, December 29, 2023, https://legislature.mi.gov/Bills/Bill?ObjectName=2023-SB-0169.

13 Sen. Jeff Irwin et al, Public Act 237 of 2023 (Senate Bill 185), Michigan Legislature, December 29, 2023, https://legislature.mi.gov/Bills/Bill?ObjectName=2023-SB-0185.

Finally, Michigan relaxed campaign finance restrictions on labor unions. Public Act 244 of 2023 permits labor unions to make independent expenditures, allowing them to spend "any amount advocating for the election or defeat of a candidate, or the qualification, passage, or defeat of a ballot question," something that state law previously prohibited.[14]

With these changes, lawmakers upended Michigan's protections for public sector employees. Michigan became the first state in nearly six decades to overturn right-to-work protections and the first state to legislatively overturn a "paycheck protection law."[15] Michigan's first-of-its-kind fair share fee trigger law could serve as an example for union-backed lawmakers in other battleground states.[16]

UNION EXECUTIVES GAINING GROUND: MARYLAND

Maryland enacted 14 public sector labor bills throughout its 2023 and 2024 legislative sessions. Most notably, Chapter 513 created a tax deduction for union dues,[17] allowing Maryland union members to deduct the full amount of their union dues from their state income tax. A tax deduction incentivizes employees to become dues-paying members by mitigating the costs of union membership. As it stands, Maryland already has one of the highest state government union membership rates in the country.[18]

Maryland also enacted several pieces of legislation expanding public sector collective bargaining into new government workplaces. Chapter 794 and Chapter 795 permit sworn deputy sheriffs to collectively bargain.[19, 20] Chapter 968 permits collective bargaining for state attorneys, and Chapter 132 permits collective bargaining for public library employees.[21, 22] Lawmakers also extended collective bargaining rights to supervisory state employees (Chapter 133 and Chapter 134) and to supervisory employees in Dorchester County public schools (Chapter 381).[23, 24, 25] This expansion of collective bargaining will pay dividends for the state's union executives by increasing the share of unionized public employees and expanding union power overall.

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14 Rep. Penelope Tsernoglou et al., Public Act 244 of 2023 (House Bill 4234), Michigan Legislature, December 31, 2023, https://legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-4234.

15 In 2018, Missouri passed a comprehensive labor reform bill that included "paycheck protection" that the Missouri Supreme Court later struck down.

16 Lawmakers in Kentucky have already introduced similar legislation. See: Rep. Al Gentry, House Bill 487, Kentucky General Assembly, 2023 Regular Session, https://apps.legislature.ky.gov/record/23RS/hb487.html#actions; BillTrack50, "KY HB487: An Act Relating to Employment," accessed July 2, 2024, https://www.billtrack50.com/billdetail/1581549/22322.

17 Del. Jazz Lewis, Chapter 513 (House Bill 2), Maryland General Assembly, 2023 Regular Session, May 8, 2023, https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0002?ys=2023RS.

18 David Osborne and Andrew Holman, "State of the Unions: Examining Union Membership in State Government," Commonwealth Foundation, March 11, 2024, https://www.commonwealthfoundation.org/research/union-membership-state-government/.

19 Washington County Delegation, Chapter 794 (House Bill 637), Maryland General Assembly, 2023 Regular Session, May 16, 2023, https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0637?ys=2023RS.

20 Washington County Delegation, Chapter 795 (Senate Bill 428), Maryland General Assembly, 2023 Regular Session, May 16, 2023, https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0428?ys=2023RS.

21 Montgomery County Delegation, Chapter 968 (House Bill 1402), Maryland General Assembly, 2024 Regular Session, May 16, 2024, https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB1402?ys=2024RS.

22 Del. Jared Solomon, Chapter 132 (House Bill 609), Maryland General Assembly, 2024 Regular Session, April 25, 2024, https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0609?ys=2024RS.

23 Del. Mark Chang, Chapter 133 (House Bill 260), Maryland General Assembly, 2024 Regular Session, April 25, 2024, https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0260?ys=2024RS.

24 Sen. Benjamin Kramer, Chapter 134 (Senate Bill 192), Maryland General Assembly, 2024 Regular Session, April 25, 2024, https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0192?ys=2024RS.

25 Dorchester County Delegation, Chapter 381 (House Bill 1409), Maryland General Assembly, 2024 Regular Session, April 25, 2024, https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB1409?ys=2024RS.

UNION EXECUTIVES GAINING GROUND: EMPLOYEES' PERSONAL INFORMATION

Since the 2018 *Janus* ruling, 14 states enacted legislation requiring public employers to furnish union executives with public employees' personal contact information. These requirements are becoming more widespread, with seven states enacting this requirement in the past four years alone. The growing popularity of this type of legislation demonstrates it is a top priority for union executives. Requiring employers to disclose employee contact information provides union executives with unprecedented access to employees. With this access, it is easier for union executives to organize employees to support their bargaining or political objectives.

While this legislation may help union executives, it can have adverse impacts on public employees. For one, this legislation opens public employees' personal information to potential mishandling, as recently seen in California. In 2017, California enacted Chapter 21, giving union executives access to employees' personal cellphone numbers, personal telephone numbers, personal email addresses, and home addresses.[26] In early 2024, after years of collecting such data, SEIU Local 1000, which represents California state employees, was the victim of a ransomware cyberattack.[27] In this attack, criminals gained access to over 308 gigabytes of data, including employees' personal email addresses, home addresses, and Social Security numbers. Despite these concerns, since 2022, lawmakers in three states approved this legislation, while six others introduced this legislation.

Unfortunately, giving union recruiters the home address and personal contact information for prospective members makes it more likely that public employees will face intrusive, unwanted pressure to join the union—not to mention political materials and other solicitations. Unionized public employees have always experienced some degree of pressure to join or remain members. Yet, it was largely relegated to the workplace, where union recruiters are visible and subject to discipline. However, union executives are now securing the ability to solicit public employees at home, on their cellphones, and their personal email, far away from institutional constraints in the workplace.

UNION EXECUTIVES GAINING GROUND: TAX INCENTIVES FOR UNION DUES

In addition to Maryland, two other states, Delaware and California, enacted legislation with tax incentives for paying union membership dues.[28, 29]

Delaware's tax benefit is like Maryland's, offering a deduction for union dues. However, Delaware caps the deduction at $500 rather than the full amount.

California's incentive is a tax credit, which subtracts union dues from state taxes owed rather than from taxable income. Put simply, California's tax credit benefits dues paying union members more than Delaware or Maryland's tax-deduction incentives. Lawmakers in Michigan proposed a union dues tax credit, similar to California's, that covers the full amount of dues paid.[30]

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26 California House Budget Committee, Chapter 21, Statutes of 2017 (Assembly Bill 119), California Assembly, 2017–18 Regular Session, June 27, 2017, https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180AB119.

27 Maya Miller, "Data Breach at California State Worker Union Targeted Social Security Numbers, Home Addresses," *Sacramento Bee*, February 7, 2024, https://www.sacbee.com/news/politics-government/the-state-worker/article285161727.html#storylink=cpy

28 Sen. Nicole Poore, "Act to Amend Title 30 of the Delaware Code Relating to Personal Income Tax (Senate Substitute 2 for Senate Bill 72)," 152nd Delaware General Assembly, August 31, 2023, https://legis.delaware.gov/BillDetail/140431.

29 Assemblymember Phil Ting, Chapter 737 (Assembly Bill 158), California Assembly, 2021–22 Regular Session, September 29, 2022, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB158.

30 Rep. Alabas Farhat et al., House Bill 4235 of 2023, Michigan Legislature, https://legislature.mi.gov/Bills/Bill?ObjectName=2023-HB-4235; BillTrack50, "MI HB4235," accessed July 2, 2024, https://www.billtrack50.com/billdetail/1596242/22325.

Tax-benefit legislation is a recent arrival. Prior to 2022, no state offered tax incentives for union dues. Such tax incentives help union executives convince employees to become dues-paying members, lessening the net costs of joining the union. However, while union members may pay less, the tax burden only shifts to the general public, requiring taxpayers to subsidize union operations. At the same time, these tax benefits make it easier for union executives to raise dues, especially in states where the benefits are uncapped, leading to an upward cost for taxpayers.

UNION EXECUTIVES GAINING GROUND: BRINGING COLLECTIVE BARGAINING TO NEW PUBLIC SECTOR WORKPLACES

After *Janus*, organizing new groups of employees became a priority for union executives, and legislative changes have helped them achieve this goal.

Since 2022, California, Michigan, Oregon, and Washington approved legislation that expanded the types of workers who could be unionized as public employees while 12 other states introduced legislation. Interestingly, these measures were more focused than the broad-based extensions of collective bargaining seen in Virginia and Colorado from 2020 to 2022, Instead, these states focused on imposing collective bargaining on employees not traditionally seen as appropriate for unionization, such as college students, state legislative employees, and supervisory employees.[31] The unions' growth strategy resembles the one used in the early 2000s, when unions successfully imposed unionization on homecare or daycare workers in at least 11 states.

In California, Chapter 313 creates the framework for unionizing legislative employees.[32] With this bill's enactment, California became the second state to statutorily authorize legislative staff unions after Washington.[33] Legislative employees in other states, such as Oregon, Illinois, and Massachusetts, have attempted to unionize—sometimes successfully—without enabling legislation.[34] Meanwhile, Washington expanded collective bargaining to management employees and student workers at public universities, and both Michigan and Maryland extended collective bargaining to certain supervisory employees.[35, 36, 37]

Considering public sector unions' significant membership losses over the past six years, union executives' interest in finding new workplaces to unionize was predictable. Imposing collective bargaining on large numbers of employees in previously nonunionized workplaces gives unions an opportunity to recoup their losses, even if overall membership rates do not return to previous levels.

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31 Brannick and Holman, "The Battle for Worker Freedom in the States."

32 Assemblymember Tina Mckinnor et al., Chapter 313, Statues of 2023 (Assembly Bill 1), California Assembly, 2023–24 Regular Session, October 7, 2023, https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202320240AB1.

33 Rep. Marcus Riccelli et al., Chapter 283, Laws of 2022 (House Bill 2124), Washington State Legislature, 2022 Regular Session, March 31, 2022 [effective: June 9, 2022], https://app.leg.wa.gov/billsummary?BillNumber=2124&Initiative=false&Year=2021.

34 Sanya Mansoor, "State Legislative Staffers Across the U.S. Push to Unionize," *Time*, October 5, 2023, https://time.com/6320952/state-legislative-staffers-unionize-illinois-california/.

35 Rep. Beth Doglio et al., Chapter 136, Laws of 2023 (Second Substitute House Bill 1122), Washington State Legislature, 2023 Regular Session, April 20, 2023, https://app.leg.wa.gov/billsummary?BillNumber=1122&Year=2023&Initiative=false.

36 Sen. Rebecca Saldaña et al, Chapter 115, Laws of 2023 (Substitute Senate Bill 5238), Washington State Legislature, 2023 Regular Session, April 20, 2023, https://app.leg.wa.gov/billsummary?BillNumber=5238&Year=2023&Initiative=false.

37 Sen. Jeff Irwin et al., Public Act 237 of 2023 (Senate Bill 185), Michigan Legislature, December 29, 2023, https://legislature.mi.gov/Bills/Bill?ObjectName=2023-SB-0185.

VICTORIES FOR WORKERS AND TAXPAYERS: FLORIDA

Under Chapter 2023-35, Florida revived important labor reform concepts proven successful under Wisconsin's Act 10.[38] Most notably, the bill requires unions to stand for election when union membership drops below 60 percent of employees in a bargaining unit. Unpopular unions are already losing their certifications as representatives.[39]

The remaining unions stand on their own, collecting dues and fees by themselves after losing the privilege to collect dues and fees through the public payroll system. At the same time, Florida requires union executives to disclose important information to workers, including notification of workers' constitutional right to refrain from financially supporting a union. Additionally, Florida officially allows workers to resign their union membership at any time, the sixth state to statutorily recognize this right.

Florida public employees now have several mechanisms to hold their union executives accountable. A union executive's influence and power are now determined by the workers they represent rather than special legal privileges entrenched by state law. Other states should look to Florida as an example of how to level the playing field between government unions and the workers and taxpayers they are supposed to serve.

VICTORIES FOR WORKERS AND TAXPAYERS: "PAYCHECK PROTECTION"

Since the *Janus* decision, seven states have enacted "paycheck protection" legislation that limits when unions can use the public payroll system to collect union dues, political action committee deductions, and other fees.[40] As it stands, nine states restrict when unions can use the public payroll system to collect dues, while twelve states restrict collecting political action committee deductions or other fees.

This reform has seen renewed interest over the past two years. Since 2022, four states—Arkansas, Florida, Kentucky, and Tennessee—have enacted legislation to stop taxpayer subsidies for union activity, and seven others have introduced similar legislation. States have taken different approaches to the popular reform.

Florida's reform, Chapter 2023-35, took the most aggressive approach, completely prohibiting dues and fee collection through the public payroll system.[41] Notably, the bill contained an exemption for public safety unions, such as those representing police officers, corrections officers, and firefighters. The legislation amends section 447.303, Florida Statutes, to read:

> *[A]n employee organization that has been certified as a bargaining agent may not have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees in the unit. A public employee may pay dues and uniform assessments directly to the employee organization that has been certified as the bargaining agent.*[42]

38 Elizabeth Stelle and Nathan Benefield, "Why Pennsylvania Needs Wisconsin-Style Government Union Reform," Commonwealth Foundation, February 24, 2022, https://www.commonwealthfoundation.org/research/pennsylvania-needs-wisconsin-style-government-union-reform/.

39 Daniel Rivero, "Tens of Thousands of Workers in Florida Have Just Lost Their Labor Unions. More Is Coming," *WLRN*, February 15, 2024, https://www.wlrn.org/wlrn-investigations/2024-02-15/florida-labor-union-membership-teachers-public-sb-256.

40 Missouri is one of the seven states that had its "paycheck protection" law deemed unconstitutional after passage.

41 Ingoglia, 2023 CS/CS/SB 256.

42 § 447.303, Fla. Stat. (2024), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0447/Sections/0447.303.html.

Kentucky's Chapter 133 took a similar approach, though without the additional union accountability reforms.[43] Chapter133 prohibits public employers from collecting dues, fees, assessments, and other charges. Upon its initial passage, Gov. Andy Beshear vetoed the legislation, but the legislature overrode his veto. Like Florida's legislation, Kentucky's bill includes an exemption for public safety unions.

Arkansas and Tennessee took a different approach, targeting teacher union deductions while giving teachers significant salary increases. Arkansas, which already has a public sector collective bargaining ban, passed Act 776,[44] prohibiting school districts from deducting dues and fees on behalf of "any professional or labor organization or political fund." The bill passed on the heels of the Arkansas LEARNS Act, an omnibus education reform bill that, among other reforms, increased minimum teacher pay to $50,000 per year.[45]

Tennessee enacted Chapter 437, which prohibits school districts from deducting "dues from the wages of the local education agency (LEA)'s employees for a professional employees' organization, including, but not limited to, a professional employees' organization that is affiliated with a labor organization exempt under 26 U.S.C. § 501(c)(5)."[46] Chapter 437 also established new minimum teacher salaries that increase annually until reaching $50,000 for the 2026–27 school year.

Organized labor pushed back against these new laws through litigation. In Florida, a group of unions, led by the Florida Education Association (FEA), challenged Act 2023-35 in both state and federal courts.[47] The state suit, brought by the FEA-affiliate United Faculty of Florida, alleges that the law violates Florida's constitutionally protected right to collectively bargain and that the public safety exemption violates equal protection. The federal suit alleges First Amendment, equal protection, and contract violations.[48] Both suits are ongoing at the time of this writing.

At the same time, union executives in Wisconsin are yet again challenging Act 10, the state's decade-old public sector labor reform law.[49] Despite the law surviving numerous prior legal challenges, the current suit alleges that the public safety exemption in Act 10 violates the state's equal protection clause.

Union executives challenged Kentucky's Chapter 133 on similar grounds, alleging that the public safety exemption violates equal protection.[50] After a Franklin County Circuit Judge struck down Chapter 133, the lawsuit is on appeal.[51] Despite the significant pay raise for teachers,

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43 Sen. Robby Mills and Sen. Lindsey Tichenor, Acts Chapter 133 (Senate Bill 7), Kentucky General Assembly, 2023 Regular Session, March 29, 2023, https://apps.legislature.ky.gov/record/23RS/sb7.html.

44 Sen. Josh Bryant, Act 776 (Senate Bill 473), Arkansas State Legislature, 94th General Assembly—Regular Session 2023, April 12, 2023, https://www.arkleg.state.ar.us/Bills/Detail?id=sb473&ddBienniumSession=2023%2F2023R.

45 Sen. Breanne Davis, Act 237 (Senate Bill 294, LEARNS Act), Arkansas State Legislature, 94th General Assembly—Regular Session 2023, March 8, 2023, https://www.arkleg.state.ar.us/Bills/Detail?id=sb294&ddBienniumSession=2023%2F2023R.

46 Sen. Jack Johnson et al., Public Chapter 437 (Senate Bill 281, companioned by House Bill 329), Tennessee General Assembly, May 24, 2023, https://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=SB0281&ga=113.

47 Michelle Berger, "Unions Allege DeSantis Violated Their State Constitutional Rights," OnLabor (blog), November 2, 2023, https://onlabor.org/unions-allege-desantis-violated-their-state-constitutional-rights/#:~:text=DeSantis'%20Assault%20on%20Public%20Sector,dues%20through%20automatic%20paycheck%20deductions.

48 Jim Saunders, "Florida Teacher Unions Sue, Saying New Law Is Retaliation by DeSantis," *Tampa Bay Times*, May 10, 2023, https://www.tampabay.com/news/florida-politics/2023/05/10/desantis-teachers-union-dues-law-retaliation-election/.

49 Sarah Lehr, "Dane County Judge Hears Arguments in Lawsuit Challenging Act 10," *Wisconsin Public Radio*, May 28, 2024, https://www.wpr.org/news/dane-county-judge-hears-arguments-in-lawsuit-challenging-act-10#:~:text=But%20restrictions%20.

50 Liam Niemeyer, "Teachers Union Asks Judge to Block New Kentucky Law Barring Payroll Deductions to Pay Union Dues," *Kentucky Lantern*, May 1, 2023, https://kentuckylantern.com/2023/05/01/teachers-union-asks-judge-to-block-new-kentucky-law-barring-payroll-deductions-to-pay-union-dues/.

51 Liam Niemeyer, "Kentucky Ban on Collecting Some Union Dues by Payroll Deduction Struck Down," *Kentucky Lantern*, September 13, 2023, https://kentuckylantern.com/2023/09/13/kentucky-ban-on-collecting-some-union-dues-by-payroll-deduction-struck-down/.

Tennessee unions sought to strike down Act 776 ultimately dropping the suit after three judges deemed it was unlikely to succeed.[52] Arkansas' law remains unchallenged.

NOTABLE DEVELOPMENTS: STRIKING

Over the last two years, union executives and reformers have waged significant state-level policy battles over the ability of public sector unions to call, launch, or maintain a strike. Since 2022, six states—California, Kentucky, Massachusetts, New York, Oregon, and Vermont—have introduced legislation to create or expand the supposed "right" to strike in the public sector. Meanwhile, five states—Missouri, Ohio, Oregon, Washington, and Wyoming—have introduced legislation to restrict or ban strikes.

Surely, union executives hope enhanced striking capabilities will further tilt the bargaining table in favor of unions, leaving employers with the unenviable choice of shutting down important government programs or giving in to union executives' contract demands.

Interestingly, union executives and union-backed lawmakers also attempted to secure taxpayer subsidization of strikes. Since 2022, five states—Pennsylvania, California, Delaware, Hawaii, and Rhode Island—have introduced legislation to provide taxpayer-funded unemployment benefits to employees choosing not to work. California passed this legislation, but Gov. Gavin Newsom vetoed it.[53]

NOTABLE DEVELOPMENTS: COLLECTIVE BARGAINING

Other battles focus on the expansion or contraction of traditional collective bargaining. Union executives sought to overturn North Carolina's ban on public sector collective bargaining.[54] Lawmakers in Georgia, Virginia, and Texas attempted to eliminate existing restrictions on collective bargaining, with Georgia seeking to authorize collective bargaining for all public employees.[55] Virginia lawmakers attempted to extend bargaining rights to state and municipal employees, while lawmakers in Texas aimed to extend bargaining rights to teachers.[56, 57] On the other end of the spectrum, lawmakers in Louisiana introduced legislation to outlaw public sector collective bargaining, with an exception for public safety employees.[58] Oklahoma has two similar bills, outlawing bargaining for teachers and state employees.[59, 60]

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52 Spencer Irvine, "Tennessee Teachers Union Drops Lawsuit over Dues Deductions Law," Americans for Fair Treatment, August 17, 2023, https://americansforfairtreatment.org/2023/08/17/tennessee-teachers-union-drops-lawsuit-over-dues-deductions-law/.

53 Gov. Gavin Newsom, "Senate Bill 799 Veto Message," California Office of the Governor, September 30, 2023, https://www.gov.ca.gov/wp-content/uploads/2023/09/SB-799-Veto-Message.pdf.

54 Sen. Joyce Waddell, Senate Bill 561, North Carolina General Assembly, 2023–24 Regular Session, https://www.ncleg.gov/BillLookUp/2023/S561; LegiScan "North Carolina Senate Bill 561," accessed July 2, 2024, https://legiscan.com/NC/bill/S561/2023.

55 Sen. Nikki Merritt et al., Senate Bill 166, Georgia General Assembly, 2023–24 Regular Session, https://www.legis.ga.gov/legislation/64333; BillTrack50, "GA SB166," accessed July 2, 2024, https://www.billtrack50.com/billdetail/1572108/22313.

56 Sen. Jennifer Boysko, Senate Bill 374, Virginia General Assembly, 2024 Regular Session, https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+SB374; LegiScan, "Virginia Senate Bill 374," accessed July 2, 2024, https://legiscan.com/VA/bill/SB374/2024.

57 Rep. Erin Zwiener, House Bill 5257, Texas Legislature, 88th Regular Session, https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=HB5257; BillTrack50, "TX HB5257," accessed July 2, 2024, https://www.billtrack50.com/billdetail/1599450/22348.

58 Sen. Alan Seabaugh, Senate Bill 299, Louisiana State Legislature, 2024 Regular Session, https://www.legis.la.gov/legis/BillInfo.aspx?s=24rs&b=SB299&sbi=y; LegiScan, "Louisiana Senate Bill 299," accessed July 3, 2024, https://legiscan.com/LA/bill/SB299/2024.

59 Sen. Shane Jett, Senate Bill 928, Oklahoma State Legislature, 2023 Regular Session, http://www.oklegislature.gov/BillInfo.aspx?Bill=sb%20928&Session=2300; BillTrack50, "OK SB928," accessed July 3, 2024, https://www.billtrack50.com/billdetail/1533171/22341.

60 Sen. Nathan Dahm, Senate Bill 1802, Oklahoma State Legislature, 2024 Regular Session, http://www.oklegislature.gov/BillInfo.aspx?Bill=sb1802&Session=2400; LegiScan, "Oklahoma Senate Bill 1802," accessed July 3, 2024, https://legiscan.com/OK/bill/SB1802/2024.

NOTABLE DEVELOPMENTS: UNION EXECUTIVE ACCOUNTABILITY

In several states, labor reformers attempt to enhance union accountability to public employees by imposing "recertification" requirements on union executives. Aside from Florida, which enacted the reform, Louisiana, Connecticut, Utah, and Pennsylvania considered recertification requirements. Louisiana would have required recertification elections when a union's membership rate drops below 50 percent.[61] Meanwhile, the remaining states favored mandatory recertification elections at regular intervals. Connecticut would require recertification every four years, Utah every five years, and Pennsylvania every seven years.[62, 63, 64]

Labor reformers want to help employees navigate the post-*Janus* workplace by statutorily recognizing their right to resign union membership. Florida, through Senate Bill 256, is the only state since 2022 to implement right-to-resign legislation. Four other states—Arkansas, Louisiana, Montana, and Pennsylvania—have introduced similar legislation. Alaska, Louisiana, and Montana's legislation each explicitly state that a public employee has the right to stop financially supporting their union at any time.[65, 66, 67] Pennsylvania's legislation would repeal its "maintenance of membership" law and prohibit collective-bargaining agreements from limiting when an employee may resign.[68]

Janus rights-notification legislation is also increasingly popular. From 2020 to 2022, only two states, Pennsylvania and Connecticut, introduced this type of legislation. Since 2022, it has expanded to six states: Arkansas, Connecticut, Idaho, Louisiana, Montana, and Oklahoma. Each bill requires a government employer to add a section to union membership applications or authorizations that states employees have the right to refrain from union membership.

Figure 1 provides a comprehensive overview of relevant public sector labor legislation introduced and enacted since 2022. For legislation covering multiple issues, this report includes the bill in each category it covers.

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61 Rep. Roger Wilder, House Bill 523, Louisiana State Legislature, 2024 Regular Session, https://www.legis.la.gov/legis/BillInfo.aspx?s=24rs&b=HB523&sbi=y; LegiScan, "Louisiana House Bill 523," accessed July 3, 2024, https://legiscan.com/LA/bill/HB523/2024.

62 Rep. Craig Fishbein, House Bill 5343, Connecticut General Assembly, Session Year 2023, https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB05343&which_year=2023; BillTrack50, "CT HB05343," accessed July 3, 2024, https://www.billtrack50.com/billdetail/1521851/22310.

63 Rep. Jordan Teuscher, House Bill 285, Utah State Legislature, 2024 General Session, https://le.utah.gov/~2024/bills/static/HB0285.html; LegiScan, "Utah House Bill 285," accessed July 3, 2024, https://legiscan.com/UT/bill/HB0285/2024.

64 Rep. Dawn Keefer, House Bill 836, Pennsylvania General Assembly, 2023–24 General Session, https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2023&sind=0&body=H&type=B&bn=836; BillTrack50, "PA HB836," accessed July 3, 2024, https://www.billtrack50.com/billdetail/1617163/22343.

65 Rep. David Eastman, House Bill 311, Alaska State Legislature, 33rd Legislature (2023–24), https://www.akleg.gov/basis/Bill/Detail/33?Root=HB311; LegiScan, "Alaska House Bill 311," accessed July 2, 2024, https://legiscan.com/AK/bill/HB311/2023.

66 Sen. Alan Seabaugh, Senate Bill 264, Louisiana State Legislature, 2024 Regular Session, https://www.legis.la.gov/legis/BillInfo.aspx?s=24rs&b=SB264&sbi=y; LegiScan, "Louisiana Senate Bill 264," accessed July 2, 2024, https://legiscan.com/LA/bill/SB264/2024.

67 Rep. Bill Mercer, House Bill 216, Montana State Legislature, 2023 Regular Session, https://leg.mt.gov/bills/2023/billpdf/HB0216.pdf; BillTrack50, "MT HB216," accessed July 2, 2024, https://www.billtrack50.com/billdetail/1514758/22329.

68 Rep. Dawn Keefer et al., House Bill 834, Pennsylvania General Assembly, Regular Session 2023–24, https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?syear=2023&sind=0&body=H&type=B&bn=834; BillTrack50, "PA HB834," accessed July 2, 2024, https://www.billtrack50.com/billdetail/1617122/22343.

FIGURE 1: OVERVIEW OF PUBLIC SECTOR LABOR LEGISLATION SINCE 2022

Issue	Law	Enacted 2023–24	Introduced 2023–24
Collective Bargaining	Permits collective bargaining.		GA, NC, TX, VA
	Restricts/prohibits collective bargaining.	MO	LA, OK, UT
	Allows new groups of employees to bargain.	CA, MD, MI, OR, WA	AK, CT, FL, HI, IL, MA, MN, NV, NH, NY, PA, VT
	Expands subjects of bargaining.	IN, MD	IA, HI, MA, MI, MN, NV, OR, WA, WI
	Restricts subjects of bargaining.		CA, HI, MI, OR
	Creates fundamental right to collective bargaining.	IL	IA, MN, PA, VT
Dues Deduction	Permits dues or fee deduction.	MI	GA, IA, KY
	Prohibits dues or fee deduction.	AR, FL, KY, TN	UT, OK, LA, OR, PA, NC, MO
	Permits membership as a condition of employment.	MI	KY
	Recognizes right to resign.	FL	AK, LA, MT, PA
	Requires employees to be notified of Janus rights.		AR, CT, ID, LA, MT, OK
	Creates tax benefit for union dues.	CA, DE, MD	MI
Strikes	Permits or expands striking.		CA, KY, MA, NY, OR, VT
	Benefits for striking workers.		PA, CA, DE, HI, RI
	Restricts or bans striking.		MO, OH, OR, WA, WY
Release Time	Bans release time.		MT, MO, NJ, OH, UT
	Permits or expands release time.	IL	OK
Union Certification	Permits or expands card check.	ME, OR, VT	MI
	Protects secret ballots.		MO, ID, LA, MT
	Removes mandatory recertification.		IA, WI
Right to Work	Establishes Right to Work.		MI, MO NH, AK, NJ, NC
	Overturns Right to Work.	MI	AZ, NC, SC, WI
Employee Personal Information	Requires employer to furnish union with employees' personal contact information.	ME, MI, NY, WA	CO, MD, MI, MN, NV, PA
	Protects employee information from unions.		ID, OK

Source: Commonwealth Foundation review of public sector labor law legislation in each state.
Note: Appendix II offers greater detail on key provisions of public sector labor law in each state.

Part 2: Union Membership Losses

FIGURE 2: GOVERNMENT UNION MEMBERSHIP LOSSES SINCE *JANUS*

Union	Drop in Fee Payers	Active Members Minus Retirees, Pre-*Janus*	Active Members Minus Retirees, 2023	Drop in Membership	Drop in Members (Percent)	Estimated Annual Financial Impact
AFT	83,176	1,283,993	1,244,866	39,127	3%	$39,747,009
AFSCME	110,560	1,144,128	1,058,236	85,892	7.5%	$21,147,033
NEA	87,764	2,671,017	2,543,757	127,260	4.7%	$19,421,974
SEIU	98,359	1,853,612	1,785,470	68,142	3.7%	$26,519,044
Total	**379,859**	**6,952,750**	**6,632,329**	**320,421**	**4.6%**	**$106,835,060**

Source: U.S. Department of Labor, Office of Labor-Management Standards (OLMS), LM-2 reports 2017–2023.
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.

As a result of the U.S. Supreme Court's *Janus* decision, public sector unions cannot force employees to make union payments. The ruling required public sector unions to stop charging agency fees (or "fair share fees") to nonmembers, and members all over the country had the option to end all financial support for the union by resigning their membership.

Unsurprisingly, in the years following the *Janus* ruling, the four largest government unions have suffered significant membership losses. Figure 2 shows that the AFT, AFSCME, NEA, and SEIU have lost a combined 379,869 fee payers and 320,421 members since the 2018 decision. These membership losses represent $106.8 million in annual dues and fees.[69] Even six years after *Janus*, unions continue to lose members rapidly. In the past two years alone, the four largest government unions have combined to lose over 100,000 members due to significant losses for AFSCME and NEA.

Part 3: Legal Developments

UNION MEMBERSHIP AND RESIGNATION LITIGATION

Public interest law firms remain active in litigation over the meaning and extent of the 2018 *Janus* decision. The Commonwealth Foundation identified at least 218 lawsuits, largely brought on behalf of public employees, that question the constitutionality of restrictions on union membership resignations or dues deductions revocations. The results are mixed, with 55 settlements or decisions in favor of employees, 128 dismissals, and 35 ongoing lawsuits.

But the numbers do not tell the whole story, which includes individual victories for workers. Although not necessarily precedent-setting, these individual victories keep union executives accountable in states dominated by union interests. Without these triumphs, *Janus* and other cases have little practical relevance for workers. For example, in *Wilson v. Lucas County Department of Job and Family Services and AFSCME Council 8*, three Ohio family service employees informed union officials that they were resigning their union membership multiple

69 U.S. Department of Labor, Office of Labor-Management Standards (OLMS) – LM Reports and Constitutions and Bylaws, LM-2 reports 2017–23, accessed June 20, 2024, https://olmsapps.dol.gov/olpdr/?_ga=2.255663628.569172960.1656187953-1772710097.1656040378.

times. Yet, union officials failed to honor their resignations.[70] The unions denied each resignation because of an "escape period" that restricted resignations to a narrow period during the year. With the help of the National Right to Work Legal Defense Foundation and the Buckeye Institute, the employees sued, claiming that the arrangement violated *Janus*' prohibition on seizing union payments without affirmative employee consent. The lawsuit eventually resulted in a settlement. As part of the settlement, the union returned unlawfully seized dues to the three employees and can no longer use the public payroll system to collect union dues.

Similarly, in *Rorabaugh v. SEIU Local 668*, a Pennsylvania state employee resigned her union membership. However, the union delayed its effectiveness and told her it would continue to deduct dues from her paycheck until the union-designated revocation window opened.[71] With assistance from the Fairness Center, the employee filed a lawsuit, claiming that the seizure of union payments from her paycheck after her resignation violated the same principles underlying *Janus*. Shortly after she filed the suit, the union ceased dues deductions and returned all unlawfully seized dues with interest.

Tangentially, several lawsuits seeking to retroactively apply *Janus* were finally resolved over the past two years. Many courts analyzed these cases through the lens of state action, a requirement for civil rights cases rarely challenged in this pre-*Janus* context. Some courts held that state action was not present in suits seeking to retroactively apply *Janus*, while others assumed state action but relied on new "good faith" defenses raised by the unions involved.

OTHER PUBLIC SECTOR UNION LITIGATION

Meanwhile, public interest law firms have taken creative approaches to helping public employees in litigation that does not depend on interpreting *Janus*.

Gilmore v. Gallego, a case filed in Arizona state court, involves a challenge to a public sector union's release time practices. The case, filed by two nonmember City of Phoenix employees, advances constitutional claims that, because the union necessarily gave up items of value at the bargaining table to secure release time, nonmember employees are forced to subsidize the practice. Accordingly, the argument continues that this arrangement violates employees' freedom of association rights and their right to refrain from financially supporting a labor union. The case also argues that release time violates Article 9 Section 7 of the Arizona State Constitution, known as the gift clause.[72] The gift clause prohibits all levels of government from making donations or grants to any individuals or associations. After appeals, Arizona Supreme Court declared the City of Phoenix's release time provision unconstitutional under the gift clause.[73]

McFetridge v. AFSCME, Council 13 involves a claim that union officials breached their duty of fair representation by favoring male union officials and their families over Mindy McFetridge, a Pennsylvania transportation equipment operator, during the COVID-19 pandemic. The fair-representation doctrine imposes special, fiduciary-like duties on union officials, requiring that unions, among other responsibilities, represent all employees in a bargaining unit equally. Not

70 National Right to Work Legal Defense Foundation, "Lucas County Employees Win Back Unconstitutionally Seized Money from AFSCME Union," April 4, 2023, https://www.nrtw.org/news/lucas-county-Janus-settlement-04042023/.

71 The Fairness Center, "*Rorabaugh v. SEIU Local 668* Case Summary," accessed May 30, 2024, https://www.fairnesscenter.org/cases/rorabaugh-v-seiu-local-668/.

72 Goldwater Institute, "Preserving Workers' Free Speech Rights – *Gilmore v. Gallego*," April 2022, https://www.goldwaterinstitute.org/wp-content/uploads/2022/04/Gilmore-v-Gallego-Backgrounder.pdf; Arizona State Constitution, Article 9, Section 7, Arizona State Legislature, accessed July 9, 2024, https://www.azleg.gov/const/9/7.htm.

73 Justia US Law, Summary: Supreme Court of the State of Arizona, *Mark Gilmore et al. v. Kate Gallego* et al. (Filed July 31, 2024), https://law.justia.com/cases/arizona/supreme-court/2024/cv-23-0130-pr.html.

only did union officials appear to violate this requirement by favoring male employees, but they also refused to file a grievance, as McFetridge requested, to remedy the situation.[74]

Another suit, *Newman v. Elk Grove Education Association (EGEA)*, sees a public employee suing his union under Title VII of the Civil Rights Act. When attempting to run for his union's executive board, Isaac Newman, a suburban Sacramento history teacher, discovered that there was a board position reserved for a member of certain racial minority groups. The union required prospective candidates to affirm that they identified as a racial minority group. Newman, who is white, refused and filed a lawsuit, claiming that the union violated Title VII of the Civil Rights Act by denying him the opportunity to run for the executive board seat because of his race.[75]

Finally, in *Goldstein v. Professional Staff Congress*, several New York City college professors claimed their union's exclusive representation violates their First Amendment rights to freely associate.[76] After the union passed a resolution supporting the boycott, divestment, and sanctions movement against Israel, (which the professors view as anti-Semitic), Goldstein and other plaintiffs resigned their union membership. However, despite resigning their membership, exclusive representation mandates that the employees are still forcibly represented by the union. Additionally, a 2018 change to New York state law undermined the duty of fair representation—the supposed counterbalance to exclusive representation—so that nonmembers may face dire financial consequences for declining to join the union. Seeking to stop this forced representation, Goldstein filed suit, claiming that exclusive representation violates his freedom of association rights. Goldstein's attorneys, provided by the National Right to Work Legal Defense Foundation and the Fairness Center, have recently asked the U.S. Supreme Court to take the case.

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74 The Fairness Center, "Transportation Employee Battles Union Officials' Sexism, Self-Dealing," accessed July 9, 2024, https://www.fairnesscenter.org/cases/mcfetridge-v-afscme-council-13/.

75 The Fairness Center, "Teacher Alleges Discrimination, Segregation in Ca. Union," accessed July 9, 2024, https://www.fairnesscenter.org/cases/newman-v-egea/.

76 The Fairness Center, "Professors Seek Freedom from 'Anti-Semitic' Union's Representation," accessed July 9, 2024, https://www.fairnesscenter.org/cases/goldstein-v-professional-staff-congress-cuny/.

Part 4: Grading Public Sector Labor Laws

This report assigned state grades, illustrated in Figure 3, based on the following rubric:

A+ These states expressly prohibit collective bargaining for some or all classes of government workers. They also may feature other worker- or taxpayer-friendly laws seen in states with lower grades. **Arkansas, Georgia, Indiana, North Carolina, South Carolina, Tennessee**, and **Texas** earned an "A+."

A These states do not expressly prohibit or authorize collective bargaining in state law or have robust union accountability measures, such as mandatory recertification elections. These states also feature worker- and taxpayer-friendly laws seen in lower-graded states. States earning an "A" are **Florida, Iowa, Mississippi, West Virginia,** and **Wisconsin**.

B These states statutorily authorize collective bargaining, though they often limit it to certain classes of employees. On the other hand, these states also have protections for workers and taxpayers, such as prohibitions on deductions through the public payroll system and secret ballot union-certification elections. Many of these states have vague or nonexistent laws on certain topics that arguably give unions room to secure privileges through collective-bargaining agreements. **Alabama, Arizona, Idaho, Kansas, Kentucky, North Dakota, Oklahoma, Virginia,** and **Wyoming** earned a "B."

C States earning this grade statutorily authorize public sector collective bargaining. They also have union executive-friendly election procedures and statutory provisions that effectively subsidize union operations, such as payroll deductions. These states may also have vague laws that arguably give unions room to secure privileges through collective-bargaining agreements. In "C" states, state law protects only some or a few individual workers' and taxpayers' rights. The "C" states are **Louisiana, Missouri, Nebraska, Nevada, South Dakota,** and **Utah**.

D States that earn this grade have statutorily authorized collective bargaining without effective legal protections for workers. Often, they have union executive-friendly legal provisions authorizing striking, mandating disclosure of employee contact information, or allowing robust release time for union executives. **Alaska, Colorado, Connecticut, Delaware, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, Ohio, Pennsylvania,** and **Vermont** earned a "D."

D- These states lack legal protections for workers and have provisions in state law that undermine workers' rights, such as permitting unions to charge nonmembers for representation costs or refuse to represent them altogether. These states include **Hawaii, Massachusetts, New Jersey, New Mexico,** and **Rhode Island**.

F These states leave workers and taxpayers unprotected by giving extraordinary legal cover to union executives in state law. These states allow wider bargaining, often have mandatory card-check union certification, and grant unions several other special legal privileges. More recently, these states have moved to unionize more types of government employees and/or institute a fundamental right to collectively bargain. The states earning an "F" are **California, Illinois, Maryland, Oregon,** and **Washington**.

FIGURE 3: STATE LABOR LAW GRADES BY STATE

Note: Since the last installment of this report, the state evaluation process has changed. The “Is collective bargaining legal?” category has changed to “Is collective bargaining authorized in law?” to better evaluate states, such as Mississippi and West Virginia, where bargaining is neither authorized nor permitted by statute. The “paycheck protection” category breaks into two categories: one asking if a public employer can collect dues and one asking if a public employer can collect political money. The “right to exclusive representation” category is changed to “notable powers of exclusive representatives” to better capture recent trends with union access to employee contact information and charges to nonmembers for representation costs. There are now two additional categories, covering the duty to bargain and the statutory right to resign. These changes led to grade changes for Hawaii, Kansas, Massachusetts, Mississippi, New Jersey, Oklahoma, Rhode Island, Virginia, West Virginia, and Wyoming.

Figure 4 provides an overview of grade changes since 2022.

FIGURE 4: CHANGES IN STATE LABOR LAW GRADES SINCE 2022

State	2017 Grade	2019 Grade	2022 Grade	2024 Grade
Arkansas	C	C	A+	**A+**
Florida	C	C	C	**A**
Hawaii	D	D	D	**D-**
Illinois	D	D-	D-	**F**
Kansas	C	C	C	**B**
Massachusetts	D	D	D	**D-**
Michigan	B	B	B	**D-**
Missouri	B	B	C	**C**
Mississippi	B	B	B	**A**
New Jersey	D	D-	D-	**D-**
New Mexico	D	D-	D-	**D-**
Oklahoma	C	C	C	**B**
Oregon	D	F	F	**F**
Rhode Island	D	D	D	**D-**
Virginia	A+	A+	C	**B**
Washington	D	F	F	**F**
West Virginia	B	B	B	**A**
Wyoming	C	C	C	**B**

Our research also uncovered broad national patterns:

- Ten states statutorily prohibit dues deductions through the public payroll system, while 12 prohibit the collection of political money.
- Fourteen states require public employers to furnish unions with employees' personal contact information.
- Seven states allow unions to refuse to represent nonmember employees or charge them service fees for representation in collective bargaining or grievance proceedings.
- Eleven states expressly permit union release time, while two states explicitly prohibit it.
- Ten states statutorily permit membership opt-out windows, while six states protect an employee's right to resign membership at any time.
- Forty-one states burden public sector employers by establishing a duty to bargain with unions.
- Twenty-eight states provide for binding arbitration to resolve collective bargaining disputes.
- Thirteen states allow collective-bargaining agreement negotiations to be at least partially open to the public.
- Twelve states require that unions be certified through a secret ballot election. Thirteen states require that a union be certified after presenting membership cards.

Conclusion

Six years after the landmark *Janus* decision, public sector labor reforms continue to advance in state legislatures throughout the country. Since 2022, 23 states have enacted 57 public sector labor reform bills.

As union membership continues to decline, public sector unions have become even more aggressive in pursuing public policy changes to boost union power. Over the past two years, Illinois, Maryland, and Michigan have enacted several reforms that significantly boost unions' influence on government operations and the political process in these states. Meanwhile, Florida lawmakers enacted the most transformative public sector labor reforms of the past decade, protecting taxpayers and helping workers hold their unions accountable. Further reforms in Arkansas, Kentucky, and Tennessee will protect taxpayers.

As time passes, new labor laws that protect worker freedom will test legislative efforts to counter government union influence. In Florida, where union influence is already limited, the economy is booming, making it one of the fastest-growing states in the country.[77] The state's new union reforms will continue to keep government unions in check, empowering individual employees, protecting educational choice, maintaining low tax rates, and keeping Florida an attractive, affordable place to live.

In contrast, Illinois's Amendment 1 will likely constrain employees' freedom, drive up government budgets, and force officials to raise taxes in what is already the highest-taxed state in the nation.[78] Illinois has seen consistent population loss in almost every part of the state, driven by residents fleeing to economically prosperous states like Florida.[79]

The lesson is clear: Government union executives use their power to build immense political machines, control workplaces, and lobby against beneficial fiscal and educational reforms. Along the way, these union executives appear more concerned with achieving their organizational and political goals than defending the interests of the workers they represent. Protecting and empowering public employees—and safeguarding them from union overreach—is foundational to creating a more prosperous state.

The fourth edition of this report complements the research with profiles for each state and a table (Appendix II) summarizing each state's public sector labor laws. The profiles detail important information on each state's labor laws and short narratives that provide specific context on public sector labor law beyond the statutes themselves. The table provides an in-depth look at key provisions in each state's statutes, including collective bargaining, dues deduction, and union certification procedures.

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77 Kristie Wilder and Paul Mackun, "Sunshine State Home to Metro Areas Among Top 10 U.S. Population Gainers From 2022 to 2023," United States Census Bureau, March 14, 2024, https://www.census.gov/library/stories/2024/03/florida-and-fast-growing-metros.html.

78 Dylan Sharkey, "Illinois Families Pay Highest State, Local Taxes in Nation," Illinois Policy Institute, March 21, 2023, https://www.illinoispolicy.org/illinois-families-pay-highest-state-local-taxes-in-nation/.

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STATE BY STATE PROFILES:

STATE PUBLIC SECTOR LABOR LAWS

ALABAMA B

Alabama has no state statute authorizing collective bargaining for all public employees. Only state and municipal firefighters have a statutory right to collectively bargain, as long as neither they nor their union strike or threaten to strike (Ala. Code § 11-43-143). Otherwise, state law prohibits collective bargaining in the public sector. *See Nichols v. Bolding*, 277 So. 2d 868, 870 (Ala. 1973)("[A] public governing body cannot enter into a valid labor contract with a labor organization concerning wages, hours, and conditions of employment in the absence of express constitutional or statutory authority to do so.")

However, teacher unions are authorized to "consult" with local boards of education before adopting "rules and regulations for the conduct and management of the schools" (Ala. Code § 16-1-3). Alabama teacher unions have used this authority to affect local school policy and press for statewide legislative reforms. In fact, despite the lack of authorization for collective bargaining, the Bureau of Labor Statistics estimates that 21.5 percent of all public employees are union members (Hirsh, Macpherson, and Even 2024). At one point in 2023, the Alabama Education Association had 44 registered lobbyists involved in the state legislature, which has approved increased educational spending several times in the last decade.

Similarly, some teacher unions continue to receive automatic payroll deductions of dues and fees despite Alabama's version of "paycheck protection." Alabama's paycheck protection law ostensibly bans governmental entities from "arrang[ing] by salary deduction or otherwise" for dues payments to "membership organization[s]" that use "any portion of the dues for political activity" (Ala. Code § 17-17-5(b)) and even withstood at least three legal challenges in state and federal court. *See Ala. Educ. Ass'n v. State Superintendent of Educ.*, 746 F.3d 1135 (11th Cir. 2014); *White v. John*, 164 So.3d 1106 (Ala. 2014); *Davis v. Ala. Educ. Ass'n*, 92 So.3d 737 (Ala. 2012). Regardless, public employers continue to deduct dues and other union payments from public employees' wages, even while engaging in political activities.

Thanks to the Alabama Policy Institute for its contributions to this piece.

ALASKA D

Alaska's Public Employment Relations Act (PERA) (Alaska Stat. §§ 23.40.070 – 23.40.260) permits unions to organize and act as exclusive representatives of those employed by "state or a political subdivision" (Alaska Stat. § 23.40.250(7)). Alaska's Supreme Court has also stated that the First Amendment of the U.S. Constitution affirmatively protects public employees' rights to organize and collectively bargain. *See Kenai Peninsula Borough Sch. Dist. v. Kenai Peninsula Borough Sch. Dist*. Classified Ass'n, 590 P.2d 437, 440 (Alaska 1979).

Interestingly, Alaska's PERA permits "organized boroughs and political subdivisions of the state" to reject its application by ordinance or resolution (Alaska Stat. § 23.40.255), and some local governments have taken advantage of the opportunity. *See, e.g., Anchorage Mun. Emp. Ass'n v. Municipality of Anchorage*, 618 P.2d 575, 576 (Alaska 1980). However, the Alaska Supreme Court has at least twice rejected attempts by local governments to exempt themselves from PERA based on prior knowledge of union activities among employees. *See Kodiak Island Borough v. State*, 853 P.2d 1111 (Alaska 1993); *State v. City of Petersburg*, 538 P.2d 263 (Alaska 1975).

A public sector union's right to strike in Alaska depends on the composition of the bargaining unit it represents. State law prohibits strikes for "police and fire protection employees, jail, prison, and other correctional institution employees, and hospital employees" (Alaska Stat. § 23.40.200(b)). For other employees, the right to strike is qualified, and a union can only exercise the right after a majority of bargaining unit employees have voted to strike by secret ballot (*Id.* § at 200(d)). For "public utility, snow removal, sanitation, and educational institution employees other than employees of a school district, a regional educational attendance area, or a state boarding school," the union and employer must undergo mediation before calling a strike (*Id.* § at 200(c)). For employees of a "municipal school district, a regional educational attendance area, or a state boarding school," the union and employer must undergo advisory arbitration, avoid striking on certain days, and give one day's notice to the employer before striking (*Id.* § at 200(g)).

Although some state labor boards have adopted similar policies, Alaska has codified the criteria for determining the scope of a bargaining unit, specifically stating that "[b]argaining units shall be as large as is reasonable, and unnecessary fragmenting shall be avoided" (Alaska Stat. § 23.40.090). The Alaska Supreme Court has held that PERA allows public sector unions to represent both supervisory personnel and the employees they supervise simultaneously. *See City of Fairbanks v. Alaska Dep't of Labor*, 763 P.2d 976 (Alaska 1988).

In 2019, Alaska stopped dues deductions for all state employees based on its belief that the U.S. Supreme Court's 2018 decision in *Janus v. AFSCME*, Council 31 (hereafter *Janus*) required public sector unions to secure written consent from each employee before their respective deductions could continue. Soon thereafter, however, the Alaska State Education Association sued, and the courts permanently enjoined the measure. *See State v. Alaska State Emps. Ass'n/AFSCME, Local 52, AFL-CIO*, 529 P.3d 547, 550 (Alaska 2023), *cert. denied sub nom; Alaska v. Alaska Emps. Ass'n.*, No. 23-179, 2024 WL 156469 (U.S. Jan. 16, 2024).

Thanks to the Alaska Policy Forum for its contributions to this piece.

ARIZONA B

Arizona does not statutorily authorize collective bargaining for public sector unions. Indeed, the Arizona Office of the Attorney General has opined that, for local governments, "[a]n ordinance that allows collective bargaining, as that term is used in private industry, is invalid because an exclusive bargaining agreement would be an unlawful delegation of legislative authority." *In re County Meet-and-Confer Ordinances,* 2006 Ariz. Op. Att'y Gen. No. I06-004 (Oct. 30, 2006), 2006 WL 3223060, at *4.

On the other hand, unions often "meet and confer" with county and municipal governments to agree on memorandums of understanding. The Arizona Attorney General blessed this arrangement, opining that local governments can enact policies binding themselves to meet with a particular employee representative and draft memorandums of understanding. However, the government is ultimately responsible for decision-making and cannot treat the employee representative as the sole and exclusive representative for all employees. *See* 2006 Ariz. Op. Att'y Gen. No. I06-004 (Oct. 30, 2006), 2006 WL 3223060.

These meet-and-confer arrangements are, however, distinct from collective bargaining. A recent unreported case, *AFSCME, Local 2384 v. City of Phoenix*, 2023 WL 6818328 (Ariz. Ct. App. Oct. 17, 2023), suggests that local governments with meet-and-confer ordinances still retain

the flexibility to make certain decisions without consulting the union. In doing so, the court clearly distinguished between the local government's meet-and-confer obligations and those under collective-bargaining statutes. *See id.* at *4 ("[T]he Union relies on several decisions from state and federal courts addressing the National Labor Relations Act or state analogues. None of those cases, however, address a statute or agreement materially like the Code or the 2019 MOU.")

In 2022, Arizona enacted significant restrictions on union release time, which grants leave to union officials or members to engage in union and political activities while still receiving a public salary and benefits (Ariz. Stat. § 23-1431). Arizona lawmakers enacted this law, in part, to enforce a state constitutional provision prohibiting the expenditure of public funds for private purposes. *See* Ariz. Const. art 9, § 7.

Meanwhile, the Arizona Supreme Court recently determined that a release time arrangement for municipal employees in Phoenix violated the state's constitutional ban on providing subsidies to a private organization without a public purpose (*Gilmore* v. *Gallego*, No. CV-23-0130-PR, 2024 WL 3590669, at *7 (Ariz. July 31, 2024)). The ruling, secured by the Goldwater Institute, casts doubt on many other release time arrangements throughout Arizona.

Thanks to the Goldwater Institute for its contributions to this piece.

ARKANSAS A+

In 2021, Arkansas expressly prohibited collective bargaining for public employees, except law enforcement officers and firefighters (Ark. Stat. § 21-1-801). A public employer must terminate any striking public employee, except law enforcement officers and firefighters (Ark. Stat. § 21-1-803).

In fact, the Arkansas Supreme Court has long held that Arkansas's right-to-work constitutional amendment does not establish a duty to bargain collectively for public employers. *See City of Fort Smith v. Arkansas State Council No. 38, AFSCME AFL-CIO*, 433 S.W.2d 153, 155 (Ark. 1968). In doing so, the Arkansas Supreme Court reasoned that—absent a statute creating a duty to bargain in the public sector—"the fixing of wages, hours, and the like is a legislative responsibility which cannot be delegated or bargained away" (*Id.*). Still, until the 2021 prohibition on collective bargaining, Arkansas courts suggested that local governments had implied authority to—voluntarily—collectively bargain. *See, e.g., AFSCME, Local 2957 v. City of Benton*, No. 4:04-CV-492 (RSW), 2006 WL 8444754, at *3 (E.D. Ark. Jan. 27, 2006).

Arkansas teachers have uniquely robust rights regarding their union membership. Public school employees have the right to join or terminate union membership "at any time," and unions representing them "may not place a restriction on the time that a public school employee may join or terminate membership" (Ark. Stat. § 6-17-120). In 2023, Arkansas disallowed the deduction of union dues, fees, or contributions from the wages of public school teachers and other school employees (Ark. Stat. § 6-17-805). Arkansas also allows direct teacher involvement in setting personnel policies in each school district. Under the statute, teachers elect at least five representative teachers to serve on a committee that sets personnel policies governing employment terms and conditions for all their school district's teachers (Ark. Stat. § 6-17-203).

Although collective bargaining is prohibited in most workplaces, Arkansas specifically permits public employees to "form associations for the purpose of promoting the public employees' interests before a public employer" (Ark. Stat. § 21-1-804). In addition, teachers have a statutory right to join a "professional organization" (Ark. Stat. § 6-17-202).

CALIFORNIA F

California has a thoroughly unionized public sector, with roughly 15 separate laws governing collective bargaining throughout all levels of government. Most notably, the State Employer-Employee Relations Act (SEERA or "Dills Act") (Cal. Gov't Code §§ 3512 – 3524) governs collective bargaining with the state government; the Educational Employment Relations Act (EERA) (Cal. Gov't Code §§ 3540 – 3549.3), governs collective bargaining in public schools and community colleges; and the Meyers-Milias-Brown Act (MMBA) (Cal. Gov't Code §§ 3500 – 3511) governs collective bargaining for most local governments. California is one of two states to statutorily authorize maintenance-of-membership provisions, which restrict union membership resignations via collective bargaining without individual consent (Cal. Gov't Code §§ 3515.7, 3524.59, 3540.1(i), 3599.59).

Still, California continues to make new workplaces or employees eligible to unionize. Most recently, in 2023, California enacted the "Legislature Employer-Employee Relations Act" (Cal. Gov't Code §§ 3599.50 – 3599.84), which allows the state legislature's rank-and-file employees to unionize and bargain with the Senate or Assembly Committee on Rules (Cal. Gov't Code § 3599.52(d)). The law imposes an otherwise traditional bargaining regime, including exclusive representation (Cal. Gov't Code § 3599.57) and unfair labor practices (Cal. Gov't Code §§ 3599.69 – 3599.70).

Last year, the California Senate introduced a proposed constitutional amendment similar to that approved by Illinois the year before. The provision states that "[a]ll Californians shall have the right to join a union and to negotiate with their employers, through their legally chosen representative" and "to protect their economic well-being and safety at work." It also ensures that lawmakers cannot enact laws that "interfere[ ] with, negate[ ], or diminish[ ] this right," effectively preventing any regulation of unions and "constitutionalizing" collective bargaining agreements. Unfortunately, this constitutional amendment would also incentivize enterprising lawyers to sue public and private sector employers over the smallest perceived threats to "economic well-being," a phrase that reads as a standalone right under the proposed measure (CA Senate Constitutional Amendment No. 7 2023).

This proposed constitutional right would add to what the state's courts have already held about public sector unionization rights in California. The California Supreme Court has recognized that public employees have a limited right to strike. To secure an injunction against a strike, the government must prove that the strike "poses an imminent threat to public health or safety" *(Cnty. Sanitation Dist. No. 2 v. L.A. Cnty. Emps. Ass'n*, 699 P.2d 835, 854 (Cal. 1985)). The California Supreme Court has also held that unions have a right to obtain the personal contact information, including home addresses and telephone numbers, of all public employees—members and nonmembers (*Cnty. of L.A. v. L.A. Cnty. Emp. Rels. Comm'n*, 301 P.3d 1102 (Cal. 2013)).

Thanks to the California Policy Center for its contributions to this piece.

COLORADO D

Public sector union executives have gained considerable ground in Colorado in recent years. In 2007, then-Gov. Bill Ritter issued an executive order that created a process for recognizing an employee organization as representative of state employees for the purpose of entering into what he termed a "partnership agreement with state employees" (CO Executive Order No. D02807 2007). Ever since, a union called "Colorado WINS"—a joint affiliate of the American Federation of Teachers (AFT) and Service Employees International Union (SEIU)—began pushing for codification of the arrangement, and in 2020 achieved that goal by securing a formal, public sector labor regime overseen by the Colorado Department of Labor (AFT 2020).

The 2020 law, called the "Colorado Partnership for Quality Jobs and Services Act" (Colo. Rev. Stat. §§ 24-50-1101 – 24-50-1117), effectively gave Colorado WINS exclusive representation power over some 28,000 state employees (AFT 2020), adding a duty to bargain for the state government as well (Colo. Rev. Stat. § 24-50-1112). Further, it gave union officials generous access to state employees and their personal contact information for purposes of recruiting. For example, union officials are entitled to in-person meetings with new employees, and, each month, the state is required to give the union each employee's updated "[h]ome address, home and personal cellular phone numbers, and personal e-mail address unless directed by the covered employee not to provide the same ... " (Colo. Rev. Stat. § 24-50-1111).

Two years later, in 2022, unions successfully lobbied to extend their ability to represent 38,000 more public employees working in county governments (Colo. Rev. Stat. §§ 8-3.3-101 – 8-3.3-116; Paul and Najmabadi 2022). Again, Colorado required that unions representing public employees receive access to employees' personal contact information and the right to in-person meetings with new employees (Colo. Rev. Stat. § 8-3.3-104).

Finally, in 2023, Colorado enacted the "Protections for Public Workers Act" (Colo. Rev. Stat. §§ 29-33-101 – 29-33-105). The law granted new privileges to public sector unions, including the right to organize employees working for municipalities, fire authorities, school districts, charter schools, public colleges and universities, library districts, special districts, public defender's offices, certain hospital authorities, the general assembly, a board of cooperative services, and other counties not previously covered. In contrast to previous measures, the Protections for Public Workers Act did not provide specific parameters for unionization. Instead, this act requires the Colorado Department of Labor and Employment to promulgate rules and issue guidance implementing the law (Colo. Rev. Stat. § 29-33-105(2)). In 2024, the Colorado League of Charter Schools successfully lobbied for an amendment to the Protections for Workers Act clarifying that managerial and confidential employees are not permitted to unionize, and no employee is allowed to cause material disruptions to public employer operations (Colo. Rev. Stat. § 29-33-103(3), (5)).

Thanks to the Independence Institute and Brad Miller at Miller Farmer Carlson Law, LLC, for their contributions to this piece.

CONNECTICUT

D

In Connecticut, public sector unionization is governed by several laws, including the State Employee Relations Act (SERA) (Conn. Gen. Stat. §§ 5-270 – 5-280), Municipal Employee Relations Act (MERA) (Conn. Gen. Stat. §§ 7-467 – 7-479), and School Board-Teacher Negotiations Act (TNA) (Conn. Gen. Stat. §§ 10-153 – 10-153o). These provisions permit traditional public sector unionization at all levels of government.

Along the way, Connecticut's labor laws give significant additional assistance to union officials. For example, SERA directs the state labor board to draw large bargaining units that include public employees positioned throughout the state (Conn. Gen. Stat. § 5-275(b)(1)(B), (b)(3)), mandates a robust system of binding arbitration (Conn. Gen. Stat. § 5-276a), ensures status quo obligations after expiration of a collective bargaining agreement (Conn. Gen. Stat. § 5-278a), and expressly permits payroll deductions for dues and fees (Conn. Gen. Stat. § 5-280). MERA, meanwhile, protects unions from competition by requiring any organizing union to be "in existence for not fewer than six months" (Conn. Genn. Stat. § 7-467a), mandates an accelerated schedule for negotiations, mediation, and binding arbitration (Conn Gen. Stat. § 7-472—7-473a), and authorizes payroll deductions of union dues and initiation fees (Conn. Gen. Stat. § 7-477). The TNA allows teachers and school administrators to trigger a union representation election with support from just twenty percent of the bargaining unit (Conn. Gen. Stat. § 10-153b(d)), and treats negotiated contracts as presumptively approved by the local or regional board of education (Conn. Gen. Stat. § 10-153d(b)).

Connecticut is unique in that public sector union officials bargain collectively over public pensions. *See* Conn. Gen. Stat. § 5-278(f). Fifteen public sector employee unions representing nearly 50,000 employees negotiate collectively, as the State Employees Bargaining Agent Coalition (SEBAC), to set retirement ages, cost of living adjustments, and terms of retiree healthcare, among other terms. The most recent agreement—technically an amendment to the 20-year agreement reached in 1997—was reached in 2022 (SEBAC 2022). Recent analysis showed the 2022 agreement increased the unfunded liability of the pension fund by $4.5 billion and increased state labor costs to a current annual running rate of $8.5 billion (Jahncke 2024).

Connecticut is one of at least eleven states that has unionized home care workers as partial public employees (Conn. Gen. Stat. §§ 17b-706a, 17b-706b). Under Connecticut's model, a union representing home care workers negotiates directly with a council within the state government, and these determinations impose terms and conditions of employment, including payroll deduction of dues, on home care workers and the individuals for whom they care (*Id.*).

More recently, Connecticut enacted a law designed to help union officials recruit and maintain membership (Conn. Gen. Stat. § 31-40bb). The new law requires all governmental employers to give union officials personal contact information on each employee, unsupervised time at new hire orientations, and one-on-one meetings between the union and employee (Conn. Gen. Stat. § 31-40bb). The information provided to union officials under this provision includes employees' names, work information, work telephone numbers, work email addresses, home addresses, and, if authorized by the employee, their home telephone number, personal cellphone number, and personal email address (Conn. Gen. Stat. § 31-40bb(a), (d)).

Thanks to the Yankee Institute for its contributions to this piece.

DELAWARE D

Delaware's Public Employment Relations Act (PERA) (Del. Code Ann. tit. 19, §§ 1301 – 1309) permits union officials to organize and act as exclusive representatives for most public employees in Delaware. Delaware has separate laws governing the unionization of police and firefighters (Del. Code Ann. tit. 19, §§ 1601-1618) and public school employees (Del. Code Ann. tit. 14, §§ 4001-4018).

Like many other states' public sector labor statutes, Delaware's PERA provides for exclusive representation (Del. Code Ann. tit. 14, § 4004(a); tit. 19, §§ 1304(a), 1604(a)), unfair labor practices (Del. Code Ann. tit. 14, § 4007; tit. 19, §§ 1307, 1607), and binding arbitration (Del. Code Ann. tit. 14, § 4015; tit. 19, §§ 1315, 1615). However, Delaware also permits payroll deduction for all unionized employees and imposes relatively unique restrictions on when public employees, except for first responders, may revoke their dues deduction authorization (Del. Code Ann. tit. 14, § 4004(c); tit. 19, §§ 1304(c)).

At least one Delaware Supreme Court case appears to stand for the proposition that a public sector employee can be required to maintain union membership as a condition of employment. *See Peterson v. Hall,* 421 A.2d 1350 (Del. 1980). However, the Delaware Supreme Court specifically noted that the employee in that case had failed to raise a timely claim that the arrangement violated his First Amendment rights and, therefore, declined to consider the employee's constitutional argument (*Id.* at 1354).

Delaware's PERA includes unique transparency language requiring unions to file annual reports as well as copies of the union's constitution and bylaws, with any changes to the constitution and bylaws to be "promptly reported" to the labor board (Del. Code Ann. tit. 19, § 1312). In addition, public employers are required to forward a copy of every collective bargaining agreement to the labor board, which, in turn, must "maintain a current file of all such agreements" (Del. Code Ann. tit. 19, § 1313(f)). For public sector employees, this means independent access to the most important documents affecting the terms and conditions of their employment.

FLORIDA A

Florida law governing public sector unions has undergone substantial changes in recent years, with the result that some of the country's most innovative, pro-worker reforms exist alongside an otherwise traditional Public Employment Relations Act (§§ 447.201 – 447.609, Fla. Stat.). For example, Florida law includes traditional protections on the right to form and participate in a union, but when adding new members, public sector union recruiters are now required to use a state-produced form that includes important information on union membership and notifies employees as to their constitutional rights not to join (§ 447.301, Fla. Stat.). Most public employees also now have the right to resign their union membership at any time (§ 447.301(1)(b)4, Fla. Stat.).

Florida's most interesting recent innovation is its revised recertification requirement (§ 447.305, Fla. Stat.). Beginning in 2018, Florida required teacher unions to run for re-election as the exclusive representative for a bargaining unit whenever membership dropped below 50 percent for the bargaining unit (Fla. Laws ch. 2018–6). However, this concept relied on unions' self-reporting of their membership and did not clearly articulate requirements for measuring membership.

Therefore, in 2023, when Florida increased the minimum membership threshold to 60 percent and extended recertification requirements to all public employees except for first responders, Florida required that union officials file detailed and time-sensitive reports of its membership composition, verified by an independent certified public accountant, with the state labor board (§ 447.305(3), Fla. Stat.). Failure to report this information on an annual basis constitutes a forfeiture of a union's certification as an exclusive representative (§ 447.305(5), Fla. Stat.). Union officials may be investigated and penalized for inaccurate reporting, and the law also allows public employers or employees to challenge union-reported information (§ 447.305(7), Fla. Stat.).

Florida's most recent version of paycheck protection prohibits any use of the public payroll system to collect union dues, except when it comes to first responders (§ 447.303, Fla. Stat.). However, first responders have the right to revoke any dues deduction authorizations upon 30 days' notice (§ 447.303(2)(a), Fla. Stat.).

Despite these reforms, Florida law contains a few relics that seem to favor public sector union officials over employees. For example, Article I, section 6, of the Florida Constitution states, "The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." This language effectively restricts the ability of the legislature to experiment with alternative forms of representation that do not include representation by labor union officials. Additionally, Florida law permits unions to refuse representation of nonmembers during grievance or arbitration proceedings, a feature which permits union officials to recruit members based on fear of adverse action (§ 447.401, Fla. Stat.).[1]

Thanks to the James Madison Institute for its contributions to this piece.

GEORGIA A+

Labor organizers have recently prioritized legislative changes in Georgia, where they hope to reverse the state's statutory ban on most public sector collective bargaining and aspire to unionize some 680,000 employees throughout the state (Chebium 2022). Senate Bill (SB) 166, introduced in the first half of Georgia's biennial legislative session, represents one such effort; the legislation would remove the prohibition on collective bargaining in favor of a traditional, public sector collective bargaining regime, replete with a new three-member, gubernatorially appointed "Georgia Public Employees Relations Board." The law is particularly unfavorable to workers, who would have no right to secret ballot elections, imposes automatic membership dues deductions, and requires binding arbitration (Merritt et al. 2023). A similar bill was introduced in 2022 (Nguyen et al. 2022).

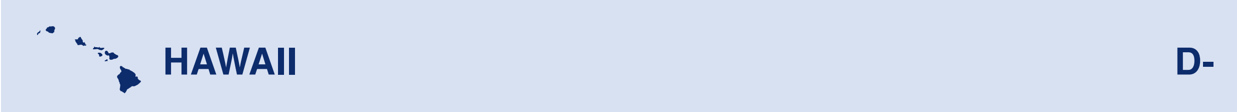
At this time, only firefighters can be exclusively represented for purposes of collective bargaining (Ga. Code §§ 25-5-1 – 25-5-14). In this context, either a union or an individual may be deemed the exclusive representative upon approval of a majority of the firefighters in the particular department (Ga. Code § 25-5-5). There are no stated protections, including secret ballot guarantees or unfair labor practice prohibitions,[2] for firefighters during this voting process. *See id.*

1 The Florida Supreme Court has recognized a nonmember's ability to litigate their grievances to arbitration if a union's refusal to represent them relies on nonmembership. *See Galbreath v. Sch. Bd. of Broward Cty.*, 446 So.2d 1045 (Fla. 1984).

2 A recently enacted law, filed as SB 362, encourages secret ballot elections in private sector unionization but will not affect firefighter union representation elections (Hodges et al. 2024).

Even without legalized collective bargaining, public sector union officials in Georgia have found ways to impact state policy. For example, earlier this year, the Georgia Association of Educators, the state affiliate of the National Education Association, filed a lawsuit against local school officials for implementing state laws governing educational instruction and parental rights in education (Alfonseca 2024). The Bureau of Labor Statistics estimates that 14 percent of all public employees in Georgia are union members (Hirsh, Macpherson, and Even 2024).

Thanks to the Georgia Public Policy Foundation for its contributions to this piece.



HAWAII D-

Hawaii is one of several states that includes collective bargaining as an individual right in the state constitution (Haw. Const. art. XIII, § 2). However, according to the Hawaii Supreme Court, the state legislature retains "broad discretion in setting the parameters for collective bargaining" as long as it does not limit negotiation over "core subjects of collective bargaining, that is, wages, hours, and other conditions of employment" (*Malahoff v. Saito,* 140 P.3d 401, 419 (Haw. 2006)).

Hawaii's statutory scheme, the Hawaii Public Employment Relations Act (PERA),[3] permits unions to organize government employees and, along the way, grants considerable power to union officials (Haw. Rev. Stat. §§ 89-1 – 89-23). For example, Hawaii is one of the few states that has statutorily authorized a release time arrangement in which the state pays union officials to bargain against itself; Hawaii law provides that "[e]mployee participation in the collective bargaining process conducted by the exclusive representative of the appropriate bargaining unit shall be permitted during regular working hours without loss of regular salary or wages" (Haw. Rev. Stat. 89-8(c)). Under this provision, at least five public employees—and an additional one for every 500 bargaining unit members over 2,500—are given leave and a full salary to work for the union during contract negotiations (Haw. Rev. Stat. § 89-8(c)). According to a 2020 study by the Goldwater Institute, Hawaii does not track release time hours (Flatten 2020).

At the same time, under a 1997 Hawaii Supreme Court decision, state and local government officials face enormous barriers contracting union-performed government work to private entities (*Konno v. Cnty. of Hawaii,* 937 P.2d 397 (Haw. 1997)). In order to privatize a service traditionally performed by civil servants, the government must be able to point to specific, enabling legislation,

Interestingly, Hawaii's PERA may require the government to front dues money for union members who have declined to pay themselves. *See* Haw. Rev. Stat. § 89-4(a). Under PERA, government employers are required to pay the union an amount equivalent to full dues for every union member in a bargaining unit, and although the government may recover those payments by collecting dues by payroll deduction, the statute prohibits the government from making payroll deductions where the individual employee has not authorized it (Haw. Rev. Stat. § 89-4(a), (b)).

PERA also boosts union officials' efforts to recruit and retain members by entitling them to incredibly detailed information on each employee. For instance, Hawaii unions may request all employees' names, social security numbers, mailing addresses, work information, and leave history (Haw. Rev. Stat. § 89-16.6(a)).

Despite the privileges it has given to union executives, Hawaii has accorded some important protections to unionized public employees. For example, every dues-paying employee is

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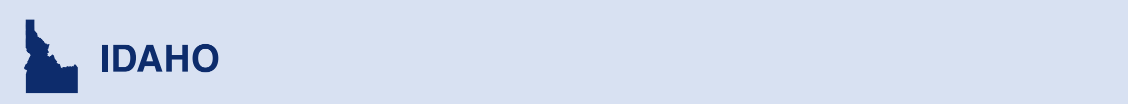
3 PERA purports to preempt all conflicting state and local governmental law (Haw. Rev. Stat. § 89-19).

statutorily entitled to receive an annual financial report certified by a certified public accountant. Haw. Rev. Stat. § 89-15. Additionally, the state supreme court has determined that unions are prohibited by the State Ethics Code from posting campaign materials endorsing candidates for public office on the union's workplace bulletin board. *In re Haw. Gov't Emps. Ass'n, AFSCME,* Local 152, AFL-CIO, 170 P.3d 324 (Haw. 2007). Finally, the federal district court for Hawaii has determined that a union can be considered a state actor for purposes of certain First Amendment claims, at least where the government is making payroll deductions for the union. *See Grossman v. Haw. Gov't Emps. Ass'n/AFSCME Local 152,* 611 F. Supp. 3d 1033, 1044 n.10 (D. Haw. 2020), *aff'd sub nom. Grossman v. Haw. Gov't Emps.' Ass'n*, 854 F. App'x 911 (9th Cir. 2021).

Thanks to the Grassroot Institute of Hawaii for its contributions to this piece.



In just a few short statutory provisions, Idaho authorizes collective bargaining in two important public sector workplaces: school districts (Idaho Code §§ 33-1271 – 33-1276) and fire departments (Idaho Code §§ 44-1801 – 44-1812). Yet, within these workplaces, Idaho fails to provide important protections to public sector employees, ultimately allowing unaccountable union officials to take advantage of their position as exclusive representatives.

Idaho requires school districts to bargain with a "local education organization," which is empowered as "exclusive representative for all professional employees in that district," and the negotiator must be a "member of the organization" (Idaho Code § 33-1273). Likewise, Idaho requires fire departments to bargain with an "exclusive bargaining agent" for firefighters within the department (Idaho Code § 44-1803). Although Idaho law requires majority support for teacher and firefighter unions, it does not articulate a process for selecting or removing them from their position.[4] *See* Idaho Code §§ 33-1271, 33-1272(2), 44-1803. Additionally, there are no unfair labor practices protecting dissenting public employees from discriminatory or arbitrary union conduct, and no express limits on what can be bargained over. *See Hunting v. Clark Cty. Sch. Dist. No. 161, 931* P.2d 628 (Idaho 1997) ("Idaho Code § 33–1271 does not limit what a school district can negotiate"). Strikes, however, are illegal in both settings (Idaho Code § 44-1811; S*ch. Dist. No 352 Onieda Cty. v. Oneida Educ. Ass'n,* 567 P.2d 830 (Idaho 1977)).

There is no provision in the Idaho Code that protects taxpayer funds from being used to support union activities. This includes using paid time for union activities, raising pay to support dues, or otherwise financially supporting legislative or political action. Additionally, school districts are barred from requiring teachers to make up hours spent on union meetings under §33-513, Idaho Code.

On the other hand, Idaho has enacted its own version of "paycheck protection," under which union dues are permissibly deducted from employees' wages, but deductions for "political activities" are not (Idaho Code § 44-2004). This provision became the subject of a union-filed lawsuit that went to the U.S. Supreme Court (*Ysursa v. Pocatello Educ. Ass'n,* 555 U.S. 353 (2009)). The union argued that ending payroll deductions for the union's political action committee violated the union's free speech rights. However, the Supreme Court upheld the law, reasoning that the

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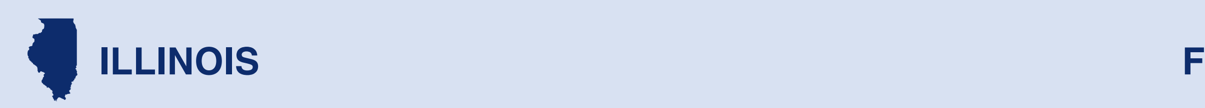
4 With regard to school districts, employers may challenge the union's majority status, but union officials can demonstrate majority status without an election, using unspecified "written evidence" (Idaho Code § 33-1271(3)).

First Amendment "does not confer an affirmative right to use government payroll mechanisms for the purpose of obtaining funds for expression" (*Id.* at 355).

Notably, municipal employees in Idaho have collectively bargained despite any statutory authorization. Presumably, such bargaining is done on the basis of guidance from the Idaho Attorney General in 1989 that municipalities have "implied authority ... to engage in collective bargaining with city employees if it so chooses and in the manner it so chooses, [provided it] does not conflict with the city's own ordinances or with state law" (Nelson 1989).

Thanks to the Idaho Freedom Foundation for its contributions to this piece.



ILLINOIS F

Illinois labor law is aggressively pro-union, even to the point of harming individual public sector employees ostensibly represented by union officials. And the worst may be yet to come; Illinois workers have yet to experience the full impact of a recent amendment to the state constitution creating a new "fundamental right" to unionization (Ill. Const. art I, § 25).

Public sector bargaining in Illinois is authorized under the Illinois Public Labor Relations Act (IPLRA) (5 Ill. Comp. Stat. §§ 315/1 – 315/28) and the Illinois Educational Labor Relations Act (IELRA) (115 Ill. Comp. Stat. §§ 5/1 – 5/21). Like other traditional public sector labor regimes, these laws provide for the election of an exclusive representative, impose a duty to bargain with public employers and establish a labor board charged with overseeing representational and unfair labor practice proceedings. Unfortunately, Illinois also allows for card checks (5 Ill. Comp. Stat. § 515/9(a-5)), a qualified right to strike (*Id.* at § 315/17), and payroll deductions (*Id.* at § 315/6(f)). Illinois is one of at least eleven states that has forcibly unionized home care workers (5 Ill. Comp. Stat. § 315/3(o)).

Yet, Illinois' new "Worker's rights" amendment would make matters worse, technically trumping any existing limits on union power in the IPLRA or IELRA (Ill. Const. art I, § 25). The amendment creates a new "fundamental right" to organize, collectively bargain, and "protect [one's] economic welfare and safety at work" (*Id.*). The amendment also prohibits the passage of any law "that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety" (*Id.*).

Although the implications of this new language have yet to be fully understood, it may mean that union officials can organize and bargain collectively free of any restrictions of any kind, even unfair labor practice prohibitions. It may also mean that all collective bargaining agreements, once executed, could supersede state law on any subject. Additionally, Amendment 1 extends collective bargaining to every public sector workplace, which could include the legislature and other government workplaces previously seen as inappropriate for unionization.

Recently leaked documents published by the Illinois Policy Institute suggest the Chicago Teachers Union views Amendment 1 as an opportunity to demand not only large salary increases but also policy changes well outside the traditional scope of bargaining, like affordable housing and rental assistance, all-electric bus fleets, solar panels at schools, transgender-affirming policies, in-school union political rallies, and changes to the pension system that would comply with Environmental, Social and Governance (ESG) guidelines (Smith and Schmid 2024).

Thanks to the Illinois Policy Institute for its contributions to this piece.

INDIANA A+

Indiana allows unions to collectively bargain for teachers and public safety employees (Ind. Code §§ 20-29-1-1 – 20-29-9-5; §§ 36-8-22-1 – 36-8-22-16). Collective bargaining for unions representing state employees is expressly prohibited (Ind. Code § 4-15-17-4).

The scope of teacher unions' bargaining power has been increasingly limited over the last 15 years, effectively cabining collective bargaining to salary and benefits (Ind. Code § 20-29-6-4.5). Indiana has also restricted the timeframe for collective bargaining to generally coincide with the state's two-year budget period, with numerous deadlines for completion of various stages of bargaining (Ind. Code §§ 20-29-6-4.7, 20-29-6-12). Along the way, parties must submit various reports on their progress to the Indiana Education Employment Relations Board (IEERB). The IEERB also oversees representational elections (Ind. Code § 20-29-5-4), adjudicates unfair labor practice charges (Ind. Code § 20-29-7-5), and assists in the resolution of bargaining impasses (Ind. Code § 20-29-8-7), among other things.

Collective bargaining for public safety employees—generally, police and firefighters—is far less regulated. For example, public employers conduct representational elections without state assistance (Ind. Code § 36-8-22-9), and during contract negotiations, either party may request an advisory opinion and/or mediation from the state's labor department, but the employer may terminate its duty to bargain by majority vote of the governing body or after failing to reach an agreement (Ind. Code §§ 36-8-22-12, 36-8-22-13).

IOWA A

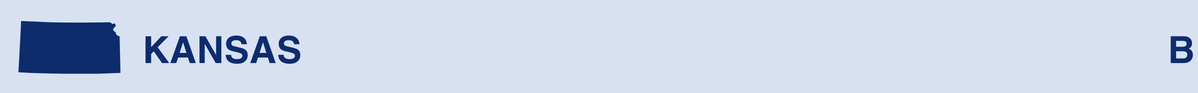
Iowa broadly permits collective bargaining in the public sector under its Public Employment Relations Act (PERA) (Iowa Code §§ 20.1 – 20.33). However, in 2017, Iowa enacted several important protections for individual public employees, including recertification elections (Iowa Code § 20.15(2)), as well as a prohibition on union payroll deductions and mandatory bargaining only for "base wages" for most public employees (Iowa Code §§ 20.9(1), 20.26(4), 70A.19).

Iowa's recertification scheme is particularly innovative. Under Iowa's version of recertification, the labor board is required to conduct an election for each bargaining unit throughout the state in the year prior to the expiration of the unit's collective bargaining agreement (Iowa Code § 20.15(2)(a)). The question on each ballot is "whether the bargaining unit representative of the public employees in the bargaining unit shall be retained and recertified" as such, with the union retaining its status only if a majority of public employees in the bargaining unit vote in the union's favor (Iowa Code § 20.15(2)(a), (b)). If the union loses the election, the labor board is required to "immediately decertify" the union following time for written objections, and the employees are no longer exclusively represented (Iowa Code § 20.15(2)(b)(2)). Iowa law also creates a two-year contract bar for any unit that votes to decertify or the union fails to pay the required election fee for the unit (Iowa Code § 20.15(1)(c)).

These reforms have not upended public sector unions' legal status. In fact, in the first round of recertification elections, 436 of 468 unions retained their certification (Pfannenstiel 2017). And those trends continue; in the two most recent rounds of recertification elections, 179 of 196 unions (IA PERB 2023) and 163 of 177 unions (IA PERB 2022) received votes necessary to avoid decertification.

Unfortunately, not all employees receive a chance to vote over recertification. As the result of an administrative rule issued by the Iowa Public Relations Board, if an employer fails to submit a list of workers eligible to vote in a recertification election, the state labor board is not prompted to conduct an election. According to the *Iowa Gazette*, from 2020 to 2022, over 40 percent of union representation elections were not conducted as intended (Murphy 2024). A bill, now known as Senate File 2374 (IA Senate Committee on Workforce 2024), was introduced during this legislative session to address this issue. The bill failed upon adjournment.

Thanks to the Iowans for Tax Relief Foundation for its contributions to this piece.



KANSAS B

Kansas broadly authorizes collective bargaining in the public sector under the Public Employer-Employee Relations Act (PEERA) (Kan. Stat. §§ 75-4321 – 75-4350), which applies to public employees generally, and the Professional Negotiations Act (PNA), which applies to teachers (Kan. Stat. §§ 72-2218 – 72-2244). The laws create roughly similar regimes, including exclusive representation (Kan. Stat. §§ 72-5415, 75-4327), unfair labor (termed "prohibited") practices (Kan. Stat. §§ 72-2236, 75-4333), and impasse resolution measures (Kan. Stat. §§ 72- 2231 – 72-2233, 75-4332).

However, the two laws differ in important respects. For example, PEERA prohibits membership dues deducted by payroll deduction from being used for political purposes, whereas the PNA affirmatively protects union officials' right to bargain for and receive membership dues deductions (Kan. Stat. §§ 72-2241, 75-4338). More broadly, separate governmental bodies implement and adjudicate each law, with distinctly different relationships to the political system. The Kansas Department of Labor, which houses the state's labor board, a five-member body of gubernatorial appointees with rolling terms, administers PEERA (Kan. Stat. § 75-4323). By statute, one member must be a representative of public employers; one member must be a representative of public employees; and the remaining three must be representative of the public at large, with no more than three members hailing from the same political party (Kan. Stat. § 75-4323). Meanwhile, the PNA is administered by the Secretary of Labor (a gubernatorial appointee confirmed by the state senate and a member of the governor's State Cabinet) who may designate another to act in his place (Kan. Stat. §§ 72-2218(m), 72-2237, 75-5701). Incidentally, Kansas courts have held that monetary awards for prohibited practices are only available to parties under the PNA, not PEERA. *See Fort Hays State Univ. v. Fort Hays State Univ. Chapter, Am. Assoc. of Univ. Professors*, 228 P.3d 403 (Kan. 2010).

Additionally, Kansas' PEERA allows local governments unilateral autonomy under PEERA. That is, by default, PEERA does not apply to any public employer other than the state government until it affirmatively votes to adopt, or "opt in" to PEERA (Kan. Stat. § 75-4321(c)). Once adopted, the same public employers are permitted to "opt out" by majority vote (*Id.; see also Wing v. City of Edwardsville,* 341 P.3d 607 (Kan. Ct. App. 2014)).

Notably, Kansas does not allow union members to leave the union whenever they wish. State employees are restricted from resigning their union membership by statute; to resign, one's dues withholding authorizations must be in effect for at least 180 days (Kan. Stat. § 75-5501). In addition, many collective bargaining agreements applicable to teachers stipulate that employees may only resign their union membership in August of each year.

Thanks to the Kansas Policy Institute for its contributions to this piece.

KENTUCKY B

Since 2017, Kentucky has generally authorized collective bargaining in the public sector (Ky. Rev. Stat. § 336.130(1)). It also expressly mandates that "consolidated local governments" and certain counties bargain with unions representing police officers (Ky. Rev. Stat. §§ 67C.404, 78.470), that certain counties and cities bargain with sheriffs' deputies (Ky. Rev. Stat. § 70.262), and that "urban-county" governments bargain with unions representing police officers, firefighter personnel, firefighters, and corrections personnel (Ky. Rev. Stat. § 67A.6903).

Last year, Kentucky adopted prohibitions on the use of the public payroll system to collect union dues or funds for political activities over a gubernatorial veto (Ky. Rev. Stat. § 336.134; Horsley 2023). The Kentucky Education Association and other unions quickly filed suit and ultimately secured a ruling from a county court judge striking down the provision as a violation of equal protection (*Ky. Educ. Ass'n v. Link,* No. 23-CI-00343 (Ky. Cir. Ct. Aug. 30, 2023)). According to the judge, the legislature did not have a rational basis to prohibit deductions for some unions while permitting them for others. The ruling is now on appeal to the Kentucky Court of Appeals (*Bechanan v. Ky. Educ. Ass'n,* No. 2023-CA-1194 (Ky. Ct. App. filed Oct. 6, 2023)).

Kentucky's Supreme Court has held that public universities are under no obligation to recognize or bargain with a union representing university employees, but they may choose to do so (*Bd. of Trustees of Univ. of Kentucky v. Pub. Emp. Council No. 51, AFSCME, AFL-CIO,* 571 S.W.2d 616 (Ky. 1978)). At the same time, the court stated that public universities cannot choose to recognize an exclusive representative due to the fact that it would compromise the trustees' statutory jurisdiction, power, and control over university employment (*Id.*). These principles were later applied to teachers and school boards by the lower courts (*see Fayette Co. Ed. Ass'n v. Hardy,* 626 S.W.2d 217 (Ky. Ct. App. 1980)), before collective bargaining was extended by statute.

LOUISIANA C

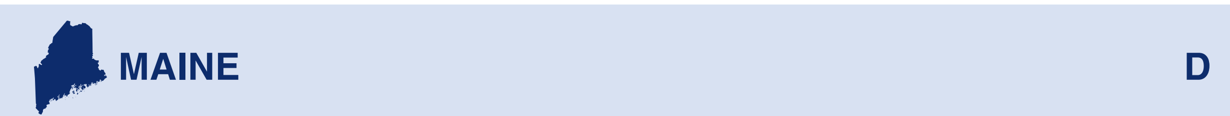
Louisiana has recently taken an enormous interest in public sector labor policy. This year, the new governor prompted the legislature to consider at least nine pieces of legislation to limit union executives' authority. House Bill (HB) 919 and SB 331 deal with union dues deductions (Chenevert 2024; Seabaugh 2024a), HB 523 and SB 292 with recertification (Wilder 2024; Seabaugh 2024b), HB 571 with paid release time (Crews 2024a), and HB 956 with secret ballot union representation elections (Crews 2024b). Meanwhile, SB 264, HB 572, and HB 712 seek prohibitions on collective bargaining in certain public sector workplaces (Seabaugh 2024c; Crews 2024c; Crews 2024d). Despite the opportunity, the legislature failed to pass a single measure.

Such policies would bring reform and certainty to a legal regime primarily directed by Louisiana's courts. Since the 1970s, Louisiana courts have held that union officials can claim representational status over various government employees, even without basic features of traditional labor law, like elections and unfair labor practice prohibitions. *See La. Teachers' Ass'n v. Orleans Par. Sch. Bd.*, 303 So. 2d 564 (La. Ct. App. 1974), *writ denied,* 305 So. 2d 541 (La. 1975); *see also* La. Op. Atty. Gen., No. 92-432 (Oct. 30, 1992). These decisions were generally based on the court's assumption that a government employer has "power and authority to conduct its employee relations," which includes the ability to collectively bargain with a representative (La. Teachers' Ass'n, 303 So. 2d at 568).

However, Louisiana courts have also issued decisions that effectively limit the government—school districts in particular—from exercising this "authority." For example, one court held that a school district had no authority to lay off teachers in a manner that would penalize striking teachers because of a previously signed agreement (*St. John the Baptist Par. Ass'n of Educators. v. St. John the Baptist Par. Sch. Bd.*, 494 So.2d 553 (La. Ct. App. 1986)). And in 1990, the Louisiana Supreme Court reversed longstanding precedent by holding that school districts cannot secure an injunction to end employee strikes if they are "peaceful" (*Davis v. Henry,* 555 So.2d 457 (La. 1990)).

Moreover, school districts routinely agree to collective bargaining provisions that restrict employees' freedom. For example, according to the Pelican Institute, many collective bargaining agreements limit teachers' ability to resign their union membership to a "very narrow window each year" (Harbison 2023). One agreement the organization examined allowed employees to receive paid release time, and another required the administration to consider a teacher's racial, ethnic, or gender group when conducting layoffs.

Thanks to the Pelican Institute for Public Policy for its contributions to this piece.



MAINE D

Maine broadly authorizes collective bargaining in the public sector through several statutory provisions, including the State Employee Labor Relations Act (Me. Rev. Stat. tit. 26, §§ 979 – 979-S) and Municipal Public Employees Labor Relations Act (Me. Rev. Stat. tit. 26, §§ 961 – 974). The latter also governs teachers, who are considered municipal employees.

Since the U.S. Supreme Court's 2018 *Janus* decision, Maine has given union officials increasing levels of unsupervised access to employees and employee information (Me. Rev. Stat. tit. 26, §§ 975, 979-T, 1037, 1295). Union officials now have the right to meet with new employees for at least thirty minutes, to meet one-on-one with employees during the workday, to conduct workplace meetings, and to use the public email system to send messages to all employees. Union officials are also entitled to every employee's name, workplace information, home address, personal telephone and cellphone numbers, and personal email address.

More recently, in 2024, Maine amended its public sector labor statutes to strengthen union officials' ability to organize new workplaces by allowing union officials to gain recognition through a practice known as "card check" (Tipping 2024). Maine's version of card check allows union officials to avoid a secret ballot election for employees if the state labor board director believes that the union has collected enough signatures from the employees the union wishes to represent. However, there are no built-in protections to ensure the signatures reflect employees' free, informed choice; instead, the practice incentivizes union officials to pressure employees and provide them with limited information about unionization or the nature of the document they are signing.

MARYLAND F

Public sector union executives have gained considerable ground in Maryland over the last 25 years. A relatively recent adopter of public sector unionization, Maryland now has the highest public sector union membership rate (97.43 percent) among select states in a recent Commonwealth Foundation study (Osborne and Holman 2024). It has also unionized various classes of "partial public employees," including home care and day care workers (Md. Code, Health-Gen. §§ 15-901 – 15-907; Md. Code, Educ. §§ 9.5-701 – 9.5-707).

In 2023, Maryland consolidated several of the disparate sets of collective bargaining laws for state employees, school, and higher education employees into a new provision known as the "Maryland Public Employee Relations Act" (Md. Code, State Gov't §§ 22-101 – 22-601 (PERA)). Although many workplace-specific provisions remain, PERA extended "card check" to all covered public employees, gave union officials the right to meet with new employees and present at orientation, and ensured dues deductions by government payroll (Md. Code, State Gov't §§ 22-207, 22-209).

Importantly, PERA created a new "State Labor Relations Board" (SLRB) (Md. Code, State Gov't §§ 22-102). This necessitated the appointment of five new board members to replace all existing members of the three predecessor boards (Kurtz 2023). But PERA also created a clean slate for the new SLRB by making clear that it was not bound by predecessor board decisions and was instead expected to follow decisions issued by the National Labor Relations Board (Md. Code, State Gov't §§ 22-102(c), 22-103, 22-309).

The following year, lawmakers introduced a spate of legislation to expand public sector collective bargaining even further. Already, Maryland has enacted extensions of PERA to allow for unionization of certain public library employees and state supervisory employees (Solomon et al. 2024; Chang 2024), and it is considering two cross-filed bills, HB0493 and SB0823, that would do the same to certain university faculty, part-time faculty, post-doctoral associates, and graduate assistants (Foley et al. 2024). Maryland also enacted a provision allowing union dues to be deducted from one's income for purposes of state taxes (Md. Code, Tax-Gen. § 10-207(oo)).

MASSACHUSETTS D-

Massachusetts was one of the first states to invite unions to organize public sector employees. In 1958, Massachusetts enacted a provision giving union officials the ability to represent state and local government employees, at least "to present proposals relative to salaries and other conditions of employment" (Mass. Gen. Laws ch. 149, § 178D (1958 Mass. Acts 308)). The law underwent several revisions until 1973, when it reached roughly its present form (Mass. Gen. Laws ch. 150E, §§ 1 – 15).

Massachusetts' response in 2019 to *Janus* exemplified a radical approach taken by several states to help union officials organize and collect funds from nonmembers and new government employees. First, Massachusetts made public employees' contact information—including their home address, personal email address, home phone number, and cellphone number—available as public records to any union "whose written aims and objectives on file with the department of labor relations are to represent public employees in collective bargaining" (Mass. Gen. Laws ch. 66, § 10B; ch. 150E, § 5A(c), (d)). However, the law also

prohibited any other organization—for example, a nonprofit organization seeking to inform public employees of their rights under *Janus*—from obtaining the same information (Mass. Gen. Laws ch. 66, § 10B).

Second, Massachusetts permitted union officials to charge nonmembers for the costs of grievances and arbitration while still allowing them to negotiate over the collective bargaining agreement provisions that would define the substance and process of grievances and arbitration (Mass. Gen. Laws ch. 150E, § 5; ch. 161A, § 26).

Third, Massachusetts requires public employers to give union officials "access" to new and existing employees (Mass. Gen. Laws ch. 150E, § 5A(b), (c)). Under the new provision, union officials have the right to meet with individual employees during the workday and to hold group meetings at the workplace during breaks and before or after the workday (*Id.*).

Fourth, Massachusetts gave union officials the right to use government email and buildings for union purposes, limited only if union officials create an "unreasonable burden on network capability or system administration" or "interfere[nce] with governmental operations," respectively (Mass. Gen. Laws ch. 150E, § 5A(e), (f)). Unions' access to email must be given free of charge, and their use of government facilities can be charged only to the extent it results in costs that would not otherwise have been incurred by the government (Mass. Gen. Laws ch. 150E, § 5A(f)).

Finally, Massachusetts altered the payroll deduction arrangements in a manner that both prohibits employees from revoking payroll deduction authorizations and prevents *Janus*-related lawsuits (Mass. Gen. Laws ch. 180, § 17A). Instead, once employees provide authorization to the union, the authorization is irrevocable for one year, and then with either 60 days' notice or on potentially more restrictive terms set by the union (*Id.*). At the same time, the law requires public employers to accept union officials' representations as to whether an employee has given payroll deduction authorization, effectively delegating state action and putting union officials in charge of determining whether an employee has joined or resigned from the union (*Id.*).

MICHIGAN — D

Earlier this year, Michigan's repeal of its Right to Work law took effect, allowing private sector union executives to impose agency fees on nonmembers. For public sector union executives, Michigan also added a first-of-its-kind "trigger" law that would appear to allow for agency fees (or so-called "fair share" fees) in the event *Janus* is overturned or superseded (Mich. Comp. Laws § 423.210(5)).

Michigan's new trigger law specifically permits unions and public employers to include in collective bargaining agreements a provision that purports to require nonmembers to pay agency fees (Mich. Comp. Laws § 423.210(1)(c)). However, the law does not require union executives to disclose information about the present unenforceability of such a provision, meaning that employees may see an agency fee provision in their collective bargaining agreement but not be aware that such a provision is unconstitutional. Therefore, employees may be misled into believing that union payments are a condition of employment and may "unwittingly" consent to union membership on the mistaken basis that they could not avoid payments.

Michigan also made it far easier to recruit members and secure payment of union dues by repealing its "paycheck protection" laws (Mich. Comp. Laws §169.211(1), 423.210(5)) and the

handing over personal information on each government employee to union executives (Mich. Comp. Laws § 423.211a).

Interestingly, this increased access to public employees' personal information runs counter to relatively recent court decisions protecting such information—home address and telephone number, in particular—from disclosure (*Mich. Fed'n of Teachers & Sch. Related Pers., AFT, AFL-CIO v. Univ. of Mich.*, 753 N.W.2d 28, 31 (Mich. 2008)). Likewise, Michigan courts categorically protect union officials' emails—even using government email addresses—from public disclosure unless the emails relate to a "public purpose." *See Howell Ed. Ass'n, MEA/NEA v. Howell Bd. of Ed.*, 789 N.W.2d 495, 505 (Mich. Ct. App. 2010) ("Such communications do not involve teachers acting in their official capacity as public employees, but in their personal capacity as HEA members or leadership. Thus, any e-mail sent in that capacity is personal.").

Despite these recent changes, Michigan still has encouraging case law protecting public employees' rights in a unionized workplace. *See, e.g., Tech., Pro., & Officeworkers Ass'n of Mich. v. Renner*, No. 162601, 2024 WL 1725631, at *16 (Mich. Apr. 22, 2024) ("[W]e decline to erode the duty of fair representation in the manner the Union asks of the Court today"); *Saginaw Educ. Ass'n v. Eady-Miskiewicz*, 902 N.W.2d 1, 17 (2017) ("[T]he agreements on which [the unions] rely did not constitute such explicit and unmistakable waivers of the [employees'] statutory right to refrain from union membership at any time.")

Thanks to the Mackinac Center for Public Policy for its contributions to this piece.

MINNESOTA D

Minnesota's Public Employment Labor Relations Act ("PELRA") (Minn. Stat. §§ 179A.01 – 179A.60) permits unions to organize public employees at various levels of government. Like many other states' public sector labor statutes, Minnesota's PELRA allows for exclusive representation (Minn. Stat. § 179A.12), unfair labor practices (Minn. Stat. § 179A.13), and binding interest arbitration (Minn. Stat. § 179A.16). Minnesota also permits payroll deduction for all unionized employees and requires that unions indemnify the government for any lawsuits over unauthorized payroll deductions (Minn. Stat. § 179A.06).

Minnesota is one of at least eleven states to forcibly unionize home care workers (or "individual providers of direct support services") as partial public employees (Minn. Stat. § 179A.54). Their unionization in 2014 led to extensive litigation over home care workers' constitutional, statutory, and constitutional rights, yet Minnesota's scheme ultimately survived (*Bierman v. Dayton,* 900 F.3d 570 (8th Cir. 2018), cert. denied, 139 S.Ct. 2043 (2019); *Greene v. Dayton,* 806 F.3d 1146 (8th Cir. 2015), cert. denied, 578 U.S. 976 (2016); *Greene v. Minn. Bureau of Mediation Servs.,* 948 N.W.2d 675, 677 (Minn. 2020)). Two years later, however, when AFSCME attempted to unionize child care providers under a similar model, the union lost in a landslide election (Steward 2016).

Recent Minnesota Supreme Court cases reflect privileges in state law for union executives. For example, in a case of first impression, the court determined that a municipality committed an unfair labor practice in reorganizing its fire department to eliminate full-time firefighters, even though the move was a matter of inherent managerial policy and there was no evidence of antiunion animus (*Firefighters Union Local 4725 v. City of Brainerd,* 934 N.W.2d 101, 111 (Minn. 2019)). And more recently, the court reversed the state labor agency's bargaining unit determination based in part on PELRA's deference to union organizers (*Anoka Cnty. v. L. Enf't Labor Servs., Inc.,* 3 N.W.3d 586, 600–01 (Minn. 2024) (Thissen, J., concurring)

("PELRA expresses a preference for the wishes of the employees seeking to organize and their representatives.")).

Thanks to the Upper Midwest Law Center for its contributions to this piece.

MISSISSIPPI — A

Mississippi does not authorize collective bargaining in the public sector, yet the Bureau of Labor Statistics estimates that 12.8 percent of all public employees in Mississippi are union members (Hirsh, Macpherson, and Even 2024). Many of these union members are surely teachers. According to their websites, the Mississippi Professional Educators (MPE) and Mississippi Association of Educators (MAE) collectively represent over 18,000 educators and staff, though not in collective bargaining negotiations. The two reported $1.28 million (MPE 2023) and $2.1 million (MAE 2023) in revenue, respectively, in their most recent available tax filings.

This may be attributable to the widespread belief that Mississippi case law permits the unionization of teachers. However, although the Mississippi Supreme Court has held that certain public employees have an individual constitutional right to join a union or engage in union activities, it has not given unions the right to bargain or exclusively represent teachers for purposes of collective bargaining (*Jackson v. Hazlehurst Mun. Separate Sch. Dist.*, 427 So. 2d 134, 137 (Miss. 1983)).

In fact, the Mississippi Supreme Court has specifically rejected traditional collective bargaining, at least for municipal governments. *See Biloxi Firefighters Ass'n v. City of Biloxi,* 810 So.2d 589 (Miss. 2002). Municipal governing authorities may be able to enter into temporary union arrangements but do not have the authority to bind their successors in recognizing an employee representative or honoring a collective bargaining agreement. *Id.* at 595 ("A collective bargaining agreement is policy-oriented, reflecting the will of a certain administration. To hold that such action as a matter of law binds a subsequent administration would violate well-settled Mississippi case law"; *see also NE Mental Health-Mental Retardation Comm'n v. Cleveland,* 187 So. 3d 601, 604 (Miss. 2016) ("Under the common law in Mississippi, governing bodies, whether they be elected or appointed, may not bind their successors in office by contract, unless expressly authorized by law, because to do so would take away the discretionary rights and powers conferred by law upon successor governing bodies."). Mississippi law also appears to allow the government to prohibit union membership among certain supervisory personnel (*Local 2263, IAFF, AFL-CIO v. City of Tupelo,* 439 F. Supp. 1224, 1231 (N.D. Miss. 1977)).

Thanks to the Empower Mississippi Foundation for its contributions to this piece.

MISSOURI — C

In 2021, the Missouri Supreme Court struck down the state's recent public sector labor reforms as violations of its equal protection clause, effectively sending the state back to a minimalistic labor regime enacted in the 1960s (*Mo. Nat'l Educ. Ass'n v. Missouri Dep't of Labor & Indus. Rels.,* 623 S.W.3d 585, 587 (Mo. 2021)). The result is a state labor law with compulsory bargaining and few protections for public employees.

This was not the Missouri Supreme Court's first decision invalidating Missouri labor law. In 2020, the court struck down a provision prohibiting public employees from picketing. *See Karney v.*

Dep't of Labor & Indus. Rels., 599 S.W.3d 157, 165 (Mo. 2020). And in 2007, after decades of upholding the state's statutory restrictions on unionization of certain employees, including teachers, the Missouri Supreme Court reversed course and construed the state constitution to permit union representation of any public employee in Missouri. *See Indep.-Nat. Educ. Ass'n v. Indep. Sch. Dist.*, 223 S.W.3d 131, 139 (Mo. 2007). ("[A]rticle I, section 29 applies to 'employees,' regardless of whether they are in the private or public sector ...").

Unfortunately, as it stands today, Missouri's public sector labor laws leave much to the imagination. Missouri does not articulate any unfair labor practices, and employees are not specifically granted any rights to refuse union representation. Also, there are no statutory processes for electing an exclusive representative or defining the workplace it represents, though the state board of mediation may adjudicate these disputes (Mo. Rev. Stat. § 105.525 (2017)).

Finally, there is little transparency for public sector unions in Missouri. For example, there is no requirement under Missouri state law for the reporting of any financial activity by public sector unions and no accountability for providing any information to union members or the public. Union bylaws, constitutions, and records are not required to be discussed or available to members or the public. Likewise, election data is not required to be made available to members or the public.

Thanks to the Show Me Institute for its contributions to this piece.

MONTANA D

Montana's Public Employees Collective Bargaining Act (MPECBA) (Mont. Code § 39-31-101 – 39-31-505) permits unions to organize public employees at virtually every level of government. Like many other states' public sector labor statutes, Montana's MPECBA allows for exclusive representation (Mont. Code § 39-31-205), unfair labor practices (Mont. Code §§ 39-31-401 – 409), and binding interest arbitration (Mont. Code § 39-31-310). Montana also specifically allows for the automatic deduction of union dues from members' paychecks (Mont. Code § 39-31-310).

Montana is one of few states to permit public employees to file duty of fair representation claims in the state court's original jurisdiction. *See Folsom v. Montana Pub. Employees' Ass'n*, Inc., 400 P.3d 706 (Mont. 2024). Under longstanding precedent, employees can choose between pursuing a claim in court or before the Board of Personnel Appeals. *See Teamsters, Local No. 45 v. State ex rel. Bd. of Pers. Appeals*, 635 P.2d 1310, 1313 (Mont. 1981). At least one justice on the Montana Supreme Court believes that punitive damages against public sector unions may also be available to public employees. *See Folsom,* 400 P.3d at 626-29 (Sandefur, J., concurring).

Interestingly, Montana was one of the only states to legislatively implement the U.S. Supreme Court's holding in *Janus*. In 2021, Montana amended the MPECBA to remove language allowing for the imposition of agency fees and repealed a statute that once allowed religious objectors to avoid paying agency fees (Regler et al. 2021). Former Gov. Steve Bullock vetoed HB 323, an identical measure, in 2019, stating that signing it "would be to celebrate the [*Janus*] decision, not to implement it" (Bullock 2019).

More recently, in 2023, the Montana House of Representatives considered HB 216, which would have required notice to public employees of their constitutional rights, mandated affirmative authorization of dues deductions, and allowed public employees to withdraw their union membership and payments at any time (Mercer 2023). The bill received a committee hearing but failed to advance to the floor.

NEBRASKA C

Nebraska broadly allows for collective bargaining in the public sector through the State Employees Collective Bargaining Act (SECBA) (Neb. Rev. Stat. §§ 81-1369 – 1388), which is applicable only to state employee workplaces, and the Industrial Relations Act (IRA) (Neb. Rev. Stat. §§ 48-801 – 842), which applies to all government workplaces except the National Guard or state militia. Technically, the two provisions of law read together, with SECBA supplementing the IRA and controlling in the event of a conflict (Neb. Rev. Stat. § 81-1372).

Beginning with SECBA in 1987, Nebraska adopted several reforms that made its public sector unionization system more efficient. For example, SECBA standardized collective bargaining with the state, including the imposition of set wage rates and a rigid schedule for negotiations centered around the state's budget (Neb. Rev. Stat. §§ 81-1377, 1383), as well as the creation of a single "chief negotiator" for the state (Neb. Rev. Stat. § 81-1370). Later, in 2011, the IRA was amended to include its own rigid annual bargaining schedule and established wage rates for teachers, other educators, and certain community college employees (Neb. Rev. Stat. §§ 48-818.01 – .02).

Nebraska's system may be relatively efficient, but it has not necessarily safeguarded the rights of employees. For example, Nebraska has not statutorily protected public employees' right to resign their union membership or end automatic payroll deductions. In 2021, the Nebraska legislature introduced legislation giving public school employees the right to join or terminate their union membership at any time, but the legislation did not advance (Clements 2021).

Thanks to the Platte Institute for its contributions to this piece.

NEVADA C

Nevada's Government Employee-Management Relations Act (GEMRA) (Nev. Rev. Stat. §§ 288.010 – 288.715) broadly permits unions to organize public employees in state and local government. Like many other states' public sector labor statutes, Nevada's law allows for exclusive representation (Nev. Rev. Stat. §§ 288.160, 288.540), unfair labor practices (Nev. Rev. Stat. §§ 288.270, 288.620), and binding interest arbitration (Nev. Rev. Stat. §§ 288.215, 288.217, 288.580). Nevada also specifically allows for the automatic deduction of union dues from members' paychecks (Nev. Rev. Stat. §§ 288.150, 288.500). There is no express authority for the Nevada System of Higher Education to engage in collective bargaining with non-classified employees, including professors.

The unionization of state employees was a relatively recent development. In 2019, after AFSCME Nevada invested heavily in electoral politics, Nevada enacted legislation allowing unions to organize some 22,000 state employees (Lucia 2019). Nevada soon had to deal with the consequences (Sauvageau and Solis 2023); when it reached an impasse in negotiations with one of the first unions organized under the new provision, an arbitrator ordered a 2 percent statewide pay raise despite a lack of available funding. When Nevada failed to follow through on the raise, AFSCME Local 4041 filed a lawsuit in state court, arguing that the arbitrator's award must be binding under GEMRA (Solis 2023). The lawsuit was finally settled in May 2024 (*AFSCME, Local 4041 v. Lombardo*, No. 87926 (Nev. order noting settlement May 29, 2024)), with the result that Nevada must make longevity payments to certain workers and issue an 11 percent wage increase in 2024 (Flores 2024).

The Nevada Supreme Court has also granted extraordinary privileges to public sector union executives. In 2000, the court interpreted GEMRA to allow public sector union officials to charge nonmembers service fees for the costs of workplace representation (*Cone v. Nevada Serv. Emps. Union/SEIU Local 1107*, 998 P.2d 1178, 1182 (Nev. 2000)). Although this decision has not been formally overruled, it was based on legal reasoning later rejected by the U.S. Supreme Court in *Janus*. *See Tech., Pro., & Officeworkers Ass'n of Mich. v. Renner*, No. 162601, 2024 WL 1725631, at *13 (Mich. Apr. 22, 2024) (questioning *Cone* as inconsistent with *Janus*).

Thanks to Nevada Policy for its contributions to this piece.

NEW HAMPSHIRE — D

New Hampshire's Public Employee Labor Relations Act (PELRA) (N.H. Rev. Stat. §§ 273-a:1 – a:17) broadly permits unions to organize public employees in state and local government. Like many other states' public sector labor statutes, New Hampshire's law allows for exclusive representation (N.H. Rev. Stat. § 273-A:11) and unfair labor practices (N.H. Rev. Stat. § 273-A:5).

For state employees, New Hampshire mandates that unions form a joint bargaining committee under which union representatives from each bargaining unit serve together in negotiations with the state, with the goal of arriving at a master agreement for all state employees. See N.H. Rev. Stat. § 273-A:9(I). The governor sits on the other end of the bargaining table, aided by an "advisory committee" and potentially an "official state negotiator" he or she appoints (*Id.*, at (II-III)). Recently, the New Hampshire Supreme Court held that, in the event one or more unions reaches an impasse in negotiations, all unions must undergo impasse resolution procedures, including mediation (Appeal of New England Police Benevolent Ass'n, Inc., 198 A.3d 905 (N.H. 2018)).

New Hampshire has been a hotbed for legislation that would expand the power and influence of public sector unions. Last year, for example, the legislature considered HB 134, a measure to unionize legislative staff (Schultz and Edgar 2023), and HB 150, an initiative to make smaller bargaining units eligible for unionization (Bordes et al. 2023). Five years ago, Gov. Chris Sununu vetoed a provision that would have guaranteed union officials the right to unsupervised meetings with employees—including one full hour with new employees—and to receive every employee's personal contact information, including home address, personal email address, and cell phone number (NH General Court 2019). The provision would have also required that prospective union members be advised of their "right to accept or decline union membership" as well as the amount of union dues.

NEW JERSEY — D-

New Jersey's state constitution embraces unionism for all public sector workplaces, giving individuals "in public employment" rights to organize, grieve, and make proposals to the government "through representatives of their choosing" (N.J. Const., art. I, ¶ 19). Pursuant to this provision, the New Jersey Legislature has broadly permitted collective bargaining through the New Jersey Employer-Employee Relations Act (EERA) (N.J. Stat. §§ 34:13A-1 – 34:13A-64). Like many other states' public sector labor statutes, EERA allows for exclusive representation

(N.J. Stat. § 34:13A-5.3), unfair labor practices (N.J. Stat. § 34:13A-5.4), and binding arbitration in the event of an impasse (N.J. Stat. § 34:13A-7). New Jersey also specifically allows for the automatic deduction of union dues from members' paychecks (N.J. Stat. § 34:13A-5.6).

New Jersey was one of the first states to enact legislation intended to blunt the *Janus* impact. *See* N.J. Stat. § 34:13A-5.11 (Governor's Statement Upon Signing). The "Workplace Democracy Enhancement Act" (WDEA), signed just prior to *Janus* in 2018, gave union officials unsupervised time with public employees—including a minimum of 30 minutes with new employees—and the right to receive every employee's personal contact information, including home address, personal email address, and cell phone number. This contact information is exclusively in the possession of an employee's union and cannot be obtained through open records requests. *See* N.J. Stat. § 34:13A-5.13. It also gave union officials the right to use public email systems and the use of government buildings for union purposes (*Id.*). At the same time, the WDEA placed new constraints on school districts, effectively prohibiting them from informing new teachers of their right to decline union membership, with the penalty of having to make the union whole for the lost dues (N.J. Stat. § 34:13A-5.14).

The WDEA also placed new limits on a public employee's ability to end agency fee payments (N.J. Stat. § 52:14-15.9e). Once *Janus* was decided, this provision was unsuccessfully challenged, even though it was likely unconstitutional as applied to nonmembers just after the *Janus* decision. *See Smith v. New Jersey Educ. Ass'*n, 425 F. Supp. 3d 366, 369 (D. N.J. 2019), *aff'd sub nom. Fischer v. Governor of New Jersey,* 842 F. App'x 741 (3d Cir. 2021). In 2022, this particular provision was amended and replaced with a more complicated scheme that appears to allow unions to solicit and deduct dues with even more onerous terms than previously permitted.

In 2022, New Jersey enacted the "Responsible Collective Negotiations Act" for the stated purpose of expanding the scope of bargaining for public employees. However, the new law also contains a provision allowing unions to force public employees to pay for the costs of any arbitration proceedings if they refuse to become union members (N.J. Stat. §34:13A-61). At the same time, it makes clear that the employee would not have the right to proceed to arbitration without the union's approval. This arbitration provision does not apply to school districts (N.J. Stat. §34:13A-62).

Although the state constitution enshrines public sector unionism, the New Jersey Legislature has considerable room under the state constitution to change course and adopt policies that protect public employees. For one, New Jersey's courts have distinguished between the "collective negotiations" process afforded to public sector unions and the "collective bargaining" process afforded to their private sector counterparts, suggesting that collective negotiations are a less rigid form of reaching agreement (*Mount Holly Twp. Bd. of Educ. v. Mount Holly Twp. Educ. Ass'n*, 972 A.2d 387, 391 (N.J. 2009)). And second, New Jersey courts have long remarked that the rights described in Article I of the state constitution are not self-executing but require "implementing legislation," ostensibly taking a variety of possible forms (*Bowman v. Hackensack Hosp. Ass'n*, 282 A.2d 48, 54 (N.J. Super. Ct. Ch. Div. 1971)).

Thanks to the Garden State Initiative and Sunlight Policy Center for their contributions to this piece.

NEW MEXICO D-

New Mexico's Public Employee Bargaining Act (PEBA) (N.M. Stat. §§ 10-7E-2 – 10-7E-25) broadly permits unions to organize public employees in state and local government. Like many other states' public sector labor statutes, PEBA allows for exclusive representation (N.M. Stat. § 10-7E-15), unfair labor practices (N.M. Stat. §§ 10-7E-19, 10-7E-20), and binding arbitration in the event of a bargaining impasse (N.M. Stat. § 10-7E-18).

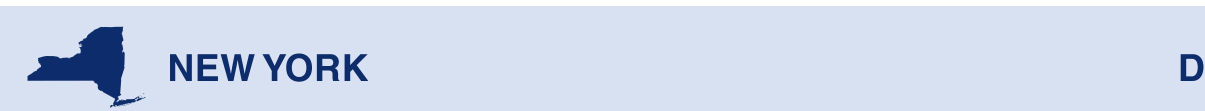
Over the years, New Mexico's labor law regime for public employees has gone back and forth. In 1992, after decades of warring Attorney General opinions on the subject (Stratton 2010), New Mexico enacted its first public sector unionization statute. However, the statute included a sunset clause that was allowed to expire in 1999. In 2003, however, New Mexico enacted PEBA, reinstituting public sector unionism in roughly its current form.

This back-and-forth represented a rare opportunity for research; one study concluded that New Mexico's collective bargaining laws actually increased the performance of high-achieving students but lowered the performance of poorly achieving students. A 2010 Yale study suggests that, without collective bargaining agreements in place, school districts were free to reallocate resources and staff to assist poorly achieving students (Lindy 2010).

New Mexico was one of the few states to pass legislation to formally eliminate agency fees in compliance with the U.S. Supreme Court's decision in *Janus*. (Williams Stapleton 2020). However, the same legislation greatly expanded the ability of union officials to organize in the public sector. For example, the new law gave union officials unsupervised time with public employees—including a minimum of 30 minutes with new employees—and the right to receive every employee's personal contact information, including home address, personal email address, and cell phone number (N.M. Stat. § 10-7E-15). It also gave union officials the right to use public email systems and the use of government buildings for union purposes (*Id.*).

New Mexico is also one of the few states to allow employees to file duty of fair representation claims against unions in the state court's original jurisdiction (*Callahan v. N.M. Fed'n of Tchrs.-TVI*, 131 P.3d 51 (N.M. 2006)). In addition, the New Mexico Supreme Court has specifically held that punitive damages may be available to litigants prevailing on a duty of fair representation claim (*Akins v. United Steel Workers of Am.*, AFL-CIO, CLC, Local 187, 237 P.3d 744 (N.M. 2010)).

Thanks to the Rio Grande Foundation for its contributions to this piece.



NEW YORK D

New York's Public Employees' Fair Employment Act, commonly referred to as the "Taylor Law," broadly permits unions to organize public employees at all levels of government (N.Y. Civ. Serv. Law §§ 200 – 215). Like many other states' public sector labor statutes, the Taylor Law allows for exclusive representation (N.Y. Civ. Serv. Law § 204(2)), unfair labor practices (termed "improper practices") (N.Y. Civ. Serv. Law § 209-a), and binding arbitration in the event of a bargaining impasse (N.Y. Civ. Serv. Law § 209).

Unfortunately, New York has also pioneered many changes to traditional labor law that further benefit union officials at the expense of public employees. Most notably, in anticipation of the

U.S. Supreme Court's decision in *Janus*, New York enacted a provision in 2018 allowing union officials to refuse to represent employees in grievances or arbitration unless the employee becomes a union member (N.Y. Civ. Serv. Law § 209-a(2)). Yet, public employees remain forcibly represented for purposes of collective bargaining and are still bound by the terms of the collective bargaining agreement setting forth grievance and arbitration requirements. *See id.*

At the same time, New York made payroll deduction of union membership dues more restrictive, making it harder for employees to stop payments and automatically continuing deductions after a break in service (N.Y. Civ. Serv. Law § 208(1)(b), (c)). Union officials also secured the right to notice of new hires and unsupervised meetings with new employees during their worktime, rights that were subsequently expanded in 2020 to give unions mandatory access to new employee orientations (N.Y. Civ. Serv. Law § 208(4)(b)). In 2019, New York also enacted a provision that prohibits public employers from sharing employee personal contact information except to union officials or under court order.

New York City has its own collective bargaining laws granting unions a more expansive scope of bargaining, including bargaining over city-wide policies, pensions, and leave rules for certain employees. *See* N.Y. City Admin. Code tit. 12, ch. 3, § 12-307. Interestingly, in 2018, the New York City Independent Budget Office (IBO) found that "[m]ost, if not all, of New York City's collective bargaining agreements contain provisions relating to union release time," with 193 city agency employees on paid, full-time union release, 55 on paid, part-time union release, and over 2,000 more approved to take occasional paid union release. The IBO estimated that ending paid union release in New York City would save the city nearly $30 million in one year, with additional savings each year thereafter (NYC-IBO 2018).

NORTH CAROLINA — A+

North Carolina was once called "the most adamant in its opposition to public sector unionism" among Southeastern states (Nolan 1978), but public sector union officials have recently gained ground.

In 1959—in apparent response to Jimmy Hoffa's attempt to organize Charlotte police officers (Okun 1980)—North Carolina prohibited collective bargaining in the public sector (N.C. Gen. Stat. § 95-98). And since 1981, strikes have been "illegal and against the public policy of this State" (*Id.* at § 95-98.1). North Carolina has also adopted right-to-work style statutes prohibiting discrimination on the basis of union membership or union payments (N.C. Gen. Stat. §§ 95.78–95.84).[5]

But there is nothing to stop public employees from becoming members of unions, despite the ban on collective bargaining. *See Atkins v. City of Charlotte*, 296 F. Supp. 1068 (W.D.N.C. 1969) (holding that North Carolina's ban on union membership violated employees' constitutional right to associate). In fact, many union officials maintain that North Carolina's prohibition on collective bargaining relates only to executing a contract and allows unions to formally negotiate. Teacher unions have received special authorization to meet and discuss "educational matters" with school boards as long as it is not done "with a view to establishing a group or collective contract for public school teachers" (40 Op. N.C. Att'y Gen. 274, 275-76 (1969)). Public sector union

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5 Relatedly, in a constitutional challenge to North Carolina's ban on collective bargaining, the U.S. Supreme Court held that North Carolina's refusal to withhold union dues did not violate the Equal Protection clause, at least in part due to Charlotte's policy not to deduct funds for any organization that did not provide a benefit to the entire workplace (*City of Charlotte v. Loc. 660, Int'l Ass'n of Firefighters,* 426 U.S. 283 (1976)).

executives have also secured increasing access to government workplaces for the purposes of membership recruitment.

Accordingly, despite North Carolina's prohibition on collective bargaining, union executives have amassed considerable membership numbers among public employees despite more recent losses.[6] This was particularly evident when, in 2018, "Red For Ed," together with the employee association North Carolina Association of Educators (NCAE), organized a statewide teacher "walkout" and rally at the State Capitol for as many as 20,000 North Carolina teachers and supporters, shutting down 40 school districts and affecting 1 million students (Luebke 2018). The walkout was widely understood, even by Red for Ed organizers (Red4EdNC 2019), as violating the State's prohibition on strikes. Yet, the result of the illegal strike was a statewide bump in teacher pay by 6.2 percent, compared to 3.85 percent increases received by other public employees (Gleason 2018). Just a year later (Hui et al. 2019), NCAE organized another teacher walkout and considered another in 2020 (Dillon 2020).

Thanks to the John Locke Foundation for its contributions to this piece.

NORTH DAKOTA B

North Dakota's Public Employee Relations Act (PERA) (N.D. Cent. Code §§ 34-11.1-01 – 34-11.1-08) provides a rudimentary framework from which public sector unions may operate in any level of government. PERA does not create a collective bargaining regime, but it does give public employees the right to be a member of a union, to request payroll deductions for membership dues, and to union grievance representation (N.D. Cent. Code §§ 34-11.1-03, 34-11.1-04.2).

North Dakota's Teachers' Representation and Negotiation Act (TRNA) (N.D. Cent. Code §§ 15.1-16-01 – 15.1-16-22) created a slightly different collective bargaining system specific to public school teachers and administrators. Under the TRNA, union officials select their desired bargaining unit and request to school district to represent it (N.D. Cent. Code §§ 15.1-16-08, 15.1-16-10). The school district is required to field the request and, if accepted, to bargain over certain terms and conditions of employment (N.D. Cent. Code §§ 15.1-16-09, 15.1-16-11). If the school district challenges the union's selection of a bargaining unit, an election determines representation (N.D. Cent. Code § 15.1-16-11).

The 2021 amendments to the TRNA added more structure to the collective bargaining process (N.D. Cent. Code §§ 15.1-16-13, 15.1-16-14), something North Dakota teacher unions opposed (Notermann 2021). Among other changes, the amendment contains a new default rule for handling the expiration of a collective bargaining agreement under which a teacher union automatically loses recognition when a collective bargaining agreement expires—essentially the opposite of the typical status quo obligation—or until another union is recognized (N.D. Cent. Code § 15.1-16-18). The default rule discourages unnecessary delays and disincentivizes strategic impasses.

6 The North Carolina Office of the State Auditor reports that membership in employee associations exceeds 109,000 (NC Auditor 2023), an apparent decline based on previous analysis (Stoops 2020).

OHIO D

Ohio courts have held that public employees have a constitutional right to associate with unions (*Ohio Council 8, AFSCME, AFL-CIO v. Bucyrus,* 612 N.E.2d 363, 366 (Ohio Ct. App. 1992)). But the Ohio Supreme Court has held that there is no constitutional right to collective bargaining, making clear that lawmakers have discretion to fashion an employment system for government workers that limits or does not include collective bargaining (*Franklin Cnty. Law Enf't Ass'n v. Fraternal Ord. of Police, Capital City Lodge No. 9,* 572 N.E.2d 87, 92 (Ohio 1991)).

Ohio's Public Employees' Collective Bargaining Act (PECBA) (Ohio Rev. Code §§ 4117.01 – 4117.27) has undergone little change since its enactment in 1983. The PECBA, like many other states' public sector labor statutes, broadly permits unions to organize public employees in state and local government. PEBCA allows for exclusive representation (Ohio Rev. Code § 4117.04), unfair labor practices (Ohio Rev. Code § 4117.11), and binding arbitration in the event of a bargaining impasse (Ohio Rev. Code § 4117.14(I)).

In 2011, Ohio enacted comprehensive reforms to PECBA that were subsequently voided by referendum. The measure would have, among other reforms, guaranteed representation elections, limited the scope of bargaining, made clear employees' rights not to become union members, and required financial disclosures from union officials. It would have also prohibited strikes in public sector workplaces (Rishel n.d.).

Strikes have received renewed attention in the Ohio Legislature. At the moment, the Ohio House is considering SB 83, a measure already approved by the Senate, that would prohibit strikes in certain public workplaces (Cirino 2023). Two years ago, an Ohio Supreme Court ruling struck down statutory restrictions on unions' ability to picket the homes of public officials or representatives with whom the union is negotiating (*Portage Cnty. Educators Ass'n for Developmental Disabilities-Unit B, OEA/NEA v. State Emp. Rels. Bd.*, 202 N.E.3d 690 (Ohio 2022)).

Immediately after *Janus*, a public school teacher, represented by The Buckeye Institute, filed a lawsuit to challenge the constitutionality of exclusive representation as set forth in PECBA (*Thompson v. Marietta Educ. Ass'n*, 972 F.3d 809 (6th Cir. 2020), *cert. denied,* 141 S.Ct. 2721 (2021)). On appeal, the Sixth Circuit noted that the U.S. Supreme Court's reasoning in *Janus* would suggest exclusive representation violates workers' constitutional rights but ultimately upheld PECBA on the basis that previous Supreme Court rulings seemed to permit exclusive representation as a constitutional matter (*Id.* at 814).

Thanks to The Buckeye Institute for its contributions to this piece.

OKLAHOMA B

Oklahoma has allowed collective bargaining in only some public sector workplaces. Under the Fire and Police Arbitration Act (Okla. Stat. tit. 11, §§ 51-101 – 51-113), Oklahoma permits firefighter and police unions to collectively bargain under the general supervision of the Public Employee Relations Board (PERB). And under the title governing public schools, Oklahoma permits teacher unions to collectively bargain, yet outside of the Public Employee Relations Board's structure (Okla. Stat. tit. 70, §§ 509.1 – 510.3). In 2023, the Oklahoma Attorney General opined that teacher unions could collect dues through payroll deduction (Okla. Op. Att'y Gen. No. 2023-9).

In 2011, Oklahoma repealed the Oklahoma Municipal Employee Collective Bargaining Act (Okla. Stat. tit. 11, §§ 51-200 – 51-220; Olafson 2011), rolling back collective bargaining and ending payroll deduction benefits for many municipal unions. A decade later, in 2021, Oklahoma reformed the representation election provision for firefighter and police unions, eliminating PERB involvement and requiring a higher threshold for union representation elections, "fair elections" paid for by the union, voter identification, and a majority vote of the entire department (Okla. Stat. tit. 11, §§ 51-103).

The Oklahoma Supreme Court has placed important limits on Oklahoma's statutory collective bargaining scheme. First, the court held that the statutory "Evergreen" (or "status quo") obligation violates a state constitutional provision that prohibits cities from becoming indebted in an amount exceeding its revenue for any year (*City of Del City v. Fraternal Ord. of Police, Lodge No. 114*, 869 P.2d 309 (Okla. 1993)).

Second, the Oklahoma Supreme Court has ruled binding interest arbitration unconstitutional in the context of collective bargaining with teacher unions, and its reasoning would seem to apply in other areas (*Raines v. Indep. Sch. Dist. No. 6 of Craig Cnty.*, 796 P.2d 303 (Okla. 1990)). According to the court, whereas grievance arbitration is a legal means of dispute resolution, "[b]inding interest arbitration permits the arbitrator to substitute his/her judgment for that of a public official on matters the electorate has entrusted to its elected representatives [and] is said to involve the delegation of legislative decision making to an unelected third party" (*Id.* at 311-12). Years later, however, the Oklahoma Supreme Court ruled that binding interest arbitration was constitutional for firefighter and police unions because the legislature had clearly deemed it acceptable (*City of Bethany v. PERB*, 904 P.2d 604, 613 (Okla. 1995)).

Finally, Oklahoma may be one of a few states in which employees can file duty of fair representation claims against union officials in a trial court's original jurisdiction, though this has not been tested directly. *See Smith v. City of Oklahoma City*, 303 P.3d 921, 928 n.6 (Okla. Civ. App. 2013) (Mitchell, J., dissenting) ("An employee who contends that his/her rights pursuant to a collective bargaining agreement have been compromised may have available alternative remedies, although not yet recognized in Oklahoma ... [including] an action against the bargaining representative for breach of the duty of fair representation." (quotation omitted)).

Thanks to the Oklahoma Council of Public Affairs for its contributions to this piece.

OREGON F

Oregon's Public Employee Collective Bargaining Act (PECBA) broadly permits unions to organize public employees at all levels of government (Or. Rev. Stat. §§ 243.650 – 243.806). Like many other states' public sector labor statutes, PECBA allows for exclusive representation (Or. Rev. Stat. § 243.666), unfair labor practices (Or. Rev. Stat. § 243.672), and binding arbitration in the event of a bargaining impasse (Or. Rev. Stat. § 243.742).

In 2019, Oregon became one of the few states to formally amend its labor laws to comply with the U.S. Supreme Court's *Janus* decision. However, the same legislation repealing Oregon's agency fee provisions also created expansive new rights for public sector union officials. For example, Oregon codified the right of public sector unions to paid release time for any employees (Or. Rev. Stat. § 243.798), to payroll deductions for any union payment (Or. Rev. Stat. § 243.806(1)-(3)), and to secure dues deductions authorizations electronically or by telephone (Or. Rev. Stat. § 243.806(4)). The new law also gave union officials unsupervised time with

public employees—including a minimum of 30 minutes with new employees—and the right to receive every employee's personal contact information, including home address, personal email address, and cell phone number (Or. Rev. Stat. § 243.804).

Also in 2019, Oregon enacted a provision allowing certain police unions to charge nonmembers for services unrelated to contract negotiation, presumably grievance and arbitration (Or. Rev. Stat. § 243.672(5)(a)-(c)). In 2023, the list of unions permitted to take advantage of this allowance grew to include corrections, parole, and probation officers (Or. Rev. Stat. § 243.672(5)(d)-(e)).

In devising the scope of bargaining units for unionization, the Oregon Employee Relations Board has stated its policy preference for the "largest possible appropriate unit" (*Or. AFSCME Council 75 v. Or. Jud. Dep't - Yamhill Cnty.*, 469 P.3d 812, 827 (Or. Ct. App. 2020)).

Thanks to the Freedom Foundation for its contributions to this piece.

PENNSYLVANIA D

Pennsylvania permits unionization of public employees through three separate statutory provisions, the Public Employe Relations Act (PERA) (43 P.S. §§ 1101.101 – 1101.2301), the Policemen and Firemen Collective Bargaining Act (commonly referred to as "Act 111") (43 P.S. §§ 217.1 – 217.12), and portions of the School Code (24 P.S. §§ 11-1101-a – 11-1172-a). These provisions set forth a collective bargaining regime that includes exclusive representation (43 P.S. §§ 217.1, 1101.606), unfair labor practices (43 P.S. §§ 211.8, 1101.1201), and binding arbitration in the event of a bargaining impasse (24 P.S. §§ 11-1123-a – 11-1125-a; 43 P.S. §§ 217.4, 1101.804).

Pennsylvania's PERA, enacted in 1970, was a particularly aggressive expansion of union power, giving union officials several advantages still unavailable in most other states. For example, Pennsylvania was one of the only states statutorily authorizing "maintenance of membership" provisions within collective bargaining agreements, effectively forcing employees to remain members for years without the need to secure assent from the employee (43 P.S. §§ 1101.301(18), 1101.401). Although this provision remains in PERA, the largest unions have abandoned maintenance of membership provisions due to repeated litigation from public employees (Acker Susanj 2021).

PERA did not include any statutory duty of fair representation for public sector union officials. However, Pennsylvania courts have implied such a duty and have held that employees can file duty of fair representation claims in the state court's original jurisdiction (*Case v. Hazelton Area Educ. Support Pers. Ass'n (PSEA/NEA)*, 928 A.2d 1154 (Pa. Cmwlth. 2007)). A recent case appears to suggest that punitive damages are available to employees in the duty of fair representation lawsuits against their union (*Gustafson v. AFSCME*, Council 13, 310 A.3d 1267, 1269 (Pa. Cmwlth. 2024) ("[I]t is not 'free and clear from doubt[,]' that Appellant cannot proceed on a claim for damages on her duty of fair representation claim")).

Interestingly, PERA includes a relatively unique restriction on union political involvement. PERA prohibits public sector unions from making "any contribution out of the funds of the employe organization either directly or indirectly to any political party or organization or in support of any political candidate for public office" (43 P.S. § 1101.1701). Pennsylvania's Commonwealth Court has held that the state labor board is responsible for enforcement of this provision (*Trometter v. PLRB*, 147 A.3d 601 (Pa. Cmwlth. 2016)).

In Pennsylvania, strikes and the threat of strikes figure heavily in collective bargaining, particularly with teacher unions. Pennsylvania is one of 13 states to legalize teacher strikes, but a combination of factors makes for many more strikes in Pennsylvania than in other states. According to the Pennsylvania Department of Education, 131 teacher strikes took place between 1999 and March 2018, an average of seven strikes per year (Brannick 2018). A national publication counted 839 teacher strikes across America between 1968 and 2012, with 740—or 88 percent—occurring in Pennsylvania (Lee and Liebelson 2012).

Pennsylvania is one of eleven states to unionize home care workers as partial public employees, though it has yet to enact a statute on the subject. Instead, home care workers are forcibly represented via executive order (PA Executive Order No. 2015-05 2015). In a lawsuit challenging the legality of this arrangement, the Pennsylvania Supreme Court upheld the order on the basis that it did not "establish a system of collective bargaining, or indeed, create any legal rights at all" (*Markham v. Wolf*, 190 A.3d 1175, 1189 (Pa. 2018)).

RHODE ISLAND D-

Rhode Island permits unions to organize public employees at all levels of government, with workplace-specific statutory provisions for most employees. In addition to collective bargaining laws specific to state employees (R.I. Gen. Laws §§ 36-11-1 – 36-11-13), Rhode Island has enacted special provisions for firefighters (R.I. Gen. Laws §§ 28-9.1-1 – 28-9.1-18), municipal police (R.I. Gen. Laws §§ 28-9.2-1 – 28-9.2-18), teachers (R.I. Gen. Laws §§ 28-9.3-1 – 28-9.3-16), municipal employees (R.I. Gen. Laws §§ 28-9.4-1 – 28-9.4-19), state police (R.I. Gen. Laws §§ 28-9.5-1 – 28-9.5-17), 911 employees (R.I. Gen. Laws §§ 28-9.6-1 – 28-9.6-16), and correctional officers (R.I. Gen. Laws §§ 28-9.7-1 – 28-9.7-17). Rhode Island also has separate laws reinforcing arbitration between public sector unions and public employers (R.I. Gen. Laws §§ 28-9-1 – 28-9-18), governing strikes (R.I. Gen. Laws §§ 28-10-1 – 28-10-14), and attending the bargaining process (R.I. Gen. Laws § 28-7-13.1). During a labor dispute, an expired contract is considered "evergreen" and is allowed to remain in force past its expiration date (R.I. Gen. Laws §§ 28-9.1-17; R.I. Gen. Laws §§ 28-9.2-17).

Despite the number of statutory provisions governing public sector unions, Rhode Island exerts little direct authority over unions' organizing, recognition, or collective bargaining activities, preferring instead to require private arbitration of most labor issues, with each side splitting the bill. The state labor board is merely tasked with overseeing representation elections for teachers and municipal employees (R.I. Gen. Laws §§ 28-9.3-5, 28-9.4-6) and hearing claims of unfair labor practices for firefighters, municipal police and employees, and teachers (R.I. Gen. Laws §§ 28-9.1-6, 28-9.2-6, 28-9.3-4, 28-9.4-5). For many employees, this means unions can secure entire workplaces without an election or accountability.

In 2018, in anticipation of the U.S. Supreme Court's *Janus* decision, Rhode Island enacted statutory provisions relieving firefighter and municipal police unions of the obligation to represent nonmembers in grievance and arbitration proceedings (R.I. Gen. Laws §§ 28-9.1-18(a), 28-9.2-18(a)). Although these employees are allowed to prosecute their grievances, they are still bound by collectively bargained grievance provisions, and their union officials are allowed to be present at any hearings (R.I. Gen. Laws §§ 28-9.1-18(b), 28-9.2-18(b)).

The following year, Rhode Island extended a similar deal to teacher and municipal employee unions but without giving employees the right to prosecute their own grievances (R.I. Gen. Laws

§§ 28-9.3-7(e), 28-9.4-8(f)). Instead, these unions appear to retain exclusive control over the grievance and arbitration process—yet charge nonmembers for representation costs. *See* R.I. Gen. Laws §§ 28-9.3-7(e), 28-9.4-8(f).

Breaching the duty of fair representation is not an unfair labor practice in Rhode Island, but duty of fair representation actions may be filed by public employees in the state court's original jurisdiction, subject to a three-year statute of limitations period. *See Lagana v. Int'l Bhd. of Elec. Workers,* 767 A.2d 666 (R.I. 2001); *McDonald v. Rhode Island Gen. Council ex rel. Pub. Serv. Emps. Local 1033 of Laborers Int'l Union of N. Am., AFL-CIO,* 505 A.2d 1176, 1178 (R.I. 1986); *Belanger v. Matteson,* 346 A.2d 124 (R.I. 1975). Punitive damages have been awarded for breach of the duty of fair representation, but the Rhode Island Supreme Court has declined to address their availability in other cases (*Lundgren v. Pawtucket Firefighters Ass'n Local 1261*, 595 A.2d 808 (R.I. 1991)).

Thanks to the Rhode Island Center for Freedom and Prosperity for its contributions to this piece.

SOUTH CAROLINA A+

South Carolina prohibits collective bargaining in the public sector (*Branch v. City of Myrtle Beach,* 532 S.E.2d 289, 292 (S.C. 2000) ("Unlike private employees, public employees in South Carolina do not have the right to collective bargaining")). And even in the private sector, South Carolina is extremely skeptical of union officials; earlier this year, in his State of the State address, Gov. Henry McMaster remarked that labor organizers were "target[ing]" South Carolina industries but that the state would fight "[a]ll the way to the gates of hell" (Schechter 2024).

Despite the prohibition on collective bargaining, some unions—most notably, the NEA-affiliated South Carolina Education Association (SCEA)—continue to operate as advocacy groups. Recent analysis of the SCEA's tax filings indicates just under $2 million in annual revenue, with approximately two-thirds of its revenue coming from union dues (AFFT 2022). Palmetto State Teachers Association, a teacher advocacy group unaffiliated with any national organizations, reports just over $1.5 million in revenue. Just 5.7 percent of all public employees call themselves "union members," according to estimates from the Bureau of Labor Statistics (Hirsh, Macpherson, and Even 2024).

The SCEA spearheaded a high-profile lawsuit against a recent school choice law creating Education Savings Accounts (ESAs) for parents and their students (SCEA 2023). The lawsuit, *Eidson v. S.C. Department of Education*, No. 2023-001673, challenges the fund as violative of the state constitution, specifically its prohibitions on public funding of private institutions. The case is now before the South Carolina Supreme Court.

Thanks to the Palmetto Promise Institute for its contributions to this piece.

SOUTH DAKOTA **C**

South Dakota permits unions to organize public employees at all levels of government (S.D. Codified Laws §§ 3-18-1 – 3-18-18). Like many other states' public sector labor statutes, South Dakota's law allows for exclusive representation (S.D. Codified Laws § 3-18-3) and unfair labor practices (S.D. Codified Laws §§ 3-18-3.1 – 3-18-3.4), but the state has tasked it's Department of Labor and Regulation with promulgating regulations detailing many of these provisions. *See* S.D. Admin. R. 47:02:01:01 – 47:02:05:01.

In turn, the Department of Labor and Regulation has promulgated regulations for the conduct of representation elections, unfair labor practices, grievance procedures, and impasse resolutions. However, because these regulations are not clearly outlined in law, they are at greater risk of repeal. Among the rights currently protected under regulation are the right to a secret ballot representation election (S.D. Admin. R. 47:02:02:16, 47:02:02:21, 47:02:02:24) and to decertify one's union (S.D. Admin. R. 47:02:02:04.01). In fact, South Dakota appears to allow employees to file unit clarification petitions under its current decertification rule (S.D. Admin. R. 47:02:02:04.01(2)).

In 2020, South Dakota enacted a measure to prohibit collective bargaining at state universities overseen by the Board of Regents as well as teachers at state schools for the blind and deaf (S.D. Codified Laws § 13–49–39). Supporters of the measure cited the costs of the negotiation process (Mercer 2020). In 2022, a bill was introduced to prohibit collective bargaining among public school teachers as well, but it was withdrawn days later (Soye 2022; Warden 2022).

The South Dakota Supreme Court has held that "the scope of negotiations in the public sector is more limited than in the private sector" (*W. Cent. Educ. Ass'n v. W. Cent. Sch. Dist. 49-4*, 655 N.W.2d 916, 920 (S.D. 2002) (quoting *Rapid City Educ. Ass'n v. Rapid City Area Sch. Dist. No. 51–4*, 376 N.W.2d 562, 564 (S.D. 1985)). Not only must the subject of bargaining meet the statutory definition of "pay, wages, hours of employment, or other conditions of employment" (S.D. Codified Laws § 3-18-3), but it is non-negotiable if negotiating would "significantly impair the state's ability to make policy decisions" (W. Cent. Educ. Ass'n, 655 N.W.2d at 920).

TENNESSEE **A+**

Tennessee allows collective bargaining for unions representing certain public transportation-related employees (Tenn. Code § 7-56-102), but the state otherwise prohibits collective bargaining in the public sector. *See Simerly v. City of Elizabethton*, No. E200901694COAR3CV, 2011 WL 51737, at *13 (Tenn. Ct. App. Jan. 5, 2011) ("[A] municipality in this state cannot enter into a collective bargaining agreement with a labor union").

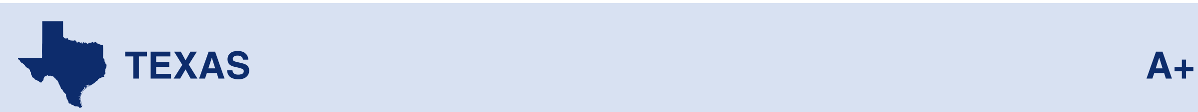
Tennessee takes a unique approach to workplace representation for teachers. Tennessee's Professional Educators Collaborative Conferencing Act of 2011 replaces the exclusive representative model generally used in collective bargaining with a multi-representative, "collaborative conferencing" model (Tenn. Code §§ 49-5-601 – 49-5-609). Briefly, under Tennessee's collaborative conferencing model, employees are polled periodically as to which organization—including those affiliated with traditional labor unions—they wish to represent them, and any organization receiving over 15 percent support is entitled to select individuals who will serve on the employee panel (Tenn. Code § 49-5-605). Individuals not affiliated with an

organization may also serve as proportionate representatives if employees select “unaffiliated” in the poll (Tenn. Code § 49-5-605(b)(5)). After a discussion between the local school board and the employee panel, the two may enter into a binding memorandum of understanding (MOU) governing terms and conditions of employment for all teachers (Tenn. Code § 49-5-609).

Since 2011, Tennessee prohibited payroll deductions for any “political activities” (Tenn. Code § 49-5-608(b)(6)) and broadly defined them to include lobbying, public opinion polling, political advertising, or engaging or paying another to engage in political communications, among other activities (Tenn. Code § 49-5-602(7)). The Attorney General observed that, under this provision, if a professional organization representing teachers secures payroll deductions of dues through collaborative conferencing, the organization cannot use those funds to engage in political activities (Tenn. Op. Atty. Gen. No. 16-22). In 2022, Tennessee voters approved a right-to-work constitutional provision that would solidify a public employee’s right against making union payments as a condition of employment in the event *Janus* is overturned (Tenn. Const. art. XI, § 19).

More recently, in 2023, Tennessee enacted a blanket prohibition, now known as the “Michael Maren Paycheck Protection Act,” keeping local school boards from deducting any dues for a professional organization (Tenn. Code § 49-2-123). The prohibition, which survived a legal challenge from the Tennessee Education Association (*Tenn. Educ. Ass’n v. Lee,* No. 23-0784-II, Tenn. Ch. 2023)), was accompanied by a pay raise for teachers (Tenn. Code § 49-3-306).

Thanks to the Beacon Center of Tennessee for its contributions to this piece.



TEXAS A+

Texas allows collective bargaining with large cities (Tex. Loc. Gov’t Code §§ 146.001 – 146.017) and all police and fire departments (Tex. Loc. Gov’t Code §§ 174.001 – 174.253). Collective bargaining is otherwise prohibited in the public sector (Tex. Gov’t Code Ann. § 617.002).

Texas’ collective bargaining regime may be limited, but that does not mean it adequately protects public employees. For example, large cities for which collective bargaining is authorized may voluntarily recognize the exclusive representative without an election, based entirely on a signed petition delivered by the union (Tex. Loc. Gov’t Code § 146.004). Neither large cities nor police and fire departments have unfair labor practices that protect employees from pressure or coercion. Equally concerning, with both sets of laws, any collective bargaining agreement supersedes the law, including contrary state statutes (Tex. Loc. Gov’t Code §§ 146.017, 174.005).

However, courts have held that public sector unions owe covered employees a duty of fair representation, and such claims may be filed in the court’s original jurisdiction (*City of Fort Worth v. Davidsaver*, 320 S.W.3d 467, 477 & n.11 (Tex. Ct. App. 2010)). Unfortunately, however, they also appear to have adopted a six-month statute of limitations (*Diaz v. San Antonio Prof’l Fire Fighters Ass’n--IAFF Local 624*, 185 S.W.3d 37, 40 (Tex. Ct. App. 2005)).

According to the Texas Public Policy Foundation, state and local governments have found ways to advantage public sector union officials, notwithstanding the general prohibition on collective bargaining. For example, public school districts have adopted “exclusive consultation” policies that allow a single organization to represent employees in “meet and confer” sessions over educational and employment issues (Texas Public Policy Foundation 2018). An organization called “Education Austin” even describes itself as both a “labor union” and “consultation agent” and refers to exclusive consultation as synonymous with “meet and confer” (Education Austin n.d.) The state also uses its public payroll system to deduct union dues from employees’ paychecks (FMX n.d.).

UTAH C

Utah has not authorized collective bargaining in the public sector, except with respect to employees of the public transit system (Utah Code § 17B-2a-813) and firefighters (Utah Code §§ 34-20a-1 – 34-20a-9). Yet, some government employers have chosen to negotiate with a union or employee association, and state courts have upheld the government's treatment of these organizations as exclusive representatives. *See, e.g., Park City Educ. Ass'n v. Bd. of Educ. of Park City Sch. Dist.*, 879 P.2d 267 (Utah Ct. App. 1994), *cert. denied,* 890 P.2d 1034 (Utah 1994). Public sector unions in Utah have also litigated—as purported representatives of public employees—against Utah government officials. *See, e.g., Utah Educ. Ass'n v. Shurtleff*, 565 F.3d 1226 (10th Cir. 2009); *Utah Pub. Emps. Ass'n v. State*, 131 P.3d 208 (Utah 2006).

Recent legislation has placed important limitations on the power and influence of public sector union officials in Utah. For example, in 2011, Utah enacted a measure giving public employees the right to resign their union membership or join a union at any time, prohibiting unions from placing any time restrictions on one's right to resign or join a union, ending payroll deduction of union dues immediately upon an employee's request, and making employees' rights in this area unwaivable (Utah Code § 34–32–1).

Years before, in 2003, Utah enacted a provision to end public payroll deductions of union payments used for political purposes, broadly defined (Utah Code § 34–32–1.1). A teacher union challenged the measure in federal court, arguing that the restriction violated the union's free speech rights (*Utah Educ. Ass'n v. Shurtleff,* 565 F.3d 1226 (10th Cir. 2009)). However, the 10th Circuit ultimately upheld the law, with reference to the U.S. Supreme Court's review of a similar law in Idaho, concluding that: "[p]reventing employees from making political contributions utilizing payroll deductions 'plainly serves the State's interest in separating public employment from political activities'" (Utah Educ. Ass'n, 565 F.3d at 1231 (quoting *Ysursa v. Pocatello Educ. Ass'n,* 555 U.S. 353, 361 (2009)).

Most recently, Utah has limited the types of public transit employees union organizers can include within the bargaining unit, carving out certain supervisory, confidential, and managerial employees (Utah Code §§ 17B-2a-802, 17B-2a-813). Such a measure ensures that unions are not commandeering government and addresses potential conflicts of interest that may arise for union officials representing rank-and-file employees.

Thanks to the Libertas Institute for its contributions to this piece.

VERMONT D

Vermont permits unions to organize public employees at all levels of government, with several workplace-specific statutory provisions. Public sector unions representing most state and public university employees are governed by the State Employee Labor Relations Act (SELRA) (Vt. Stat. tit. 3, §§ 901 – 1008); employees of the state Judiciary Department employees are governed by the Judiciary Employees Labor Relations Act (JELRA) (Vt. Stat. tit. 3, §§ 1010 – 1044); public school teachers and administrators by the Labor Relations for Teachers Act (LRTA) (Vt. Stat. tit. 16, §§ 1981 – 2028); municipal employees by the Municipal Labor Relations Act (MLRA) (Vt. Stat. tit. 21, §§ 1721 – 1739); and all other public employees by the Vermont State Labor Relations Act (SLRA), (Vt. Stat. tit. 21, §§ 1501 – 1624). Vermont also unionized certain day

care and home care workers as partial public employees (Vt. Stat. tit. 21, §§ 1631 – 1646; Vt. Stat. tit. 33, §§ 3601 – 3619).

This year, Vermont enacted a new measure designed to help public sector union officials organize new government workplaces (2024 Vt. Acts & Resolves 117). The new law allows for "card check" instead of representation elections, specifically requiring the state labor board to certify a union as an exclusive representative if it can submit a petition for a proposed bargaining unit with over 50 percent of employees' signatures (*Id.* at §§ 4 – 8). Beginning July 1, 2024, card check rules will allow public sector union officials to bypass a representation election under the SELRA, LRTA, and MLRA.

This follows Vermont's 2020 legislation, enacted to empower union officials in the wake of the U.S. Supreme Court's *Janus* decision. The 2020 law gave union officials unprecedented access to employees and employee information in most government workplaces. Union officials now have the right to meet with each new employee for at least one hour for the stated purpose of "present[ing] information about the [union]," either during new employee orientation or one-on-one (Vt. Stat. tit. 3, §§ 909, 1022; Vt. Stat. tit. 16, § 1984; Vt. Stat. tit. 21, § 1738). The government is also required to send to union officials each employee's name and personal contact information, including home address, cellphone numbers, and personal email address (Vt. Stat. tit. 3, §§ 910, 1023; Vt. Stat. tit. 16, § 1985; Vt. Stat. tit. 21, §§ 1646, 1739; Vt. Stat. tit. 33, § 3619).

The 2020 law also gave unions a statutory right to automatic membership dues deductions for all public sector union workplaces (Vt. Stat. tit. 3, §§ 903, 1012; Vt. Stat. tit. 16, § 1982; Vt. Stat. tit. 21, §§ 1645, 1737; Vt. Stat. tit. 33, § 3618). In keeping with *Janus*, however, the law also requires that public employers secure signed authorizations prior to deducting any union dues (*Id.*).

Finally, the 2020 law created a high-speed certification process for unions attempting to organize new government workplaces (Vt. Stat. tit. 3, § 941; Vt. Stat. tit. 16, § 1992; Vt. Stat. tit. 21, § 1724). For example, under the new process for state employee workplaces, the employer has just seven days to object to the union's proposed bargaining unit (Vt. Stat. tit. 3, § 941(c)(2)(A)(i)); the labor board has just 10 days to hold a hearing on the petition (Vt. Stat. tit. 3, § 941(d)(2)(A)); and the labor board must issue a decision as to the union's showing of interest five days after the hearing or post-hearing briefs (which also have a five-day deadline) are filed (Vt. Stat. tit. 3, § 941(d)(2)(D)). And if an election is necessary, it must be conducted within 23 days of the petition (Vt. Stat. tit. 3, § 941(e)).

VIRGINIA — B

A few years ago, Virginia reversed decades-old law prohibiting unionization of government employees and enacted a unique framework for collective bargaining (Va. Code §§ 40.1-57.2 – 40.1-57.3). But instead of creating a state labor board or instituting statewide standards for organization, recognition, and bargaining, Virginia's law pushes each of these responsibilities on local governments, including counties, municipalities, and school districts (Va. Code § 40.1-57.2(A)). Exclusive bargaining is still not legal in state employee workplaces.

The new law, which went into effect in 2021, gives local governments the initial choice of whether to adopt collective bargaining (Va. Code § 40.1-57.2(A)). If they do, they must enact an ordinance adopting it as well as procedures for certifying unions as exclusive representatives

(Va. Code § 40.1-57.2(A)). There is no requirement that local governments adopt collective bargaining or address this matter proactively.

But if union officials file a petition claiming support from a majority of employees in a proposed bargaining unit, local governments are forced to consider adopting collective bargaining (Va. Code § 40.1-57.2(C)). Although it can be rejected, the local government may have to entertain such petitions, perhaps repeatedly, from numerous proposed bargaining units within its jurisdiction.

So far, local governments choosing to adopt collective bargaining have done so by enacting comprehensive collective bargaining systems (Prince William County, VA 2023; Fairfax County, VA 2021; City of Alexandria, VA 2021; Arlington County, VA 2021a), complete with representation elections, unfair labor practices, and impasse resolution procedures, including binding arbitration. Most have also created a labor board with power vested in one individual, sometimes called a "Labor Relations Administrator." They have also had to devote additional resources to staffing and administering these new systems (Arlington County, VA 2021b; Loudoun County, VA 2021).

Still, local governments have the power to reject collective bargaining or, if adopted, to impose whatever limits on collective bargaining they wish. For example, a local government adopting collective bargaining may limit the scope of bargaining, refuse "status quo" obligations, require periodic recertification, or provide any number of First Amendment protections for public employees against union officials. At least three Virginia Attorney General Opinions interpreting the law tend toward flexibility for the local government (2021 Op. Va. Att'y Gen. No. 21-093/21-061 (Dec. 21, 2021); 2021 Op. Va. Att'y Gen. No. 21-071/21-061 (Dec. 10, 2021); 2021 Op. Va. Att'y Gen. No. 21-009 (March 1, 2021)).

WASHINGTON F

Washington broadly allows for collective bargaining in the public sector through the Public Employees' Collective Bargaining Act (PECBA) (Wash. Rev. Code §§ 41.56.010 – 41.56.900) and several other provisions specific to teachers (Wash. Rev. Code §§ 41.59.010 – 41.59.940), state employees (Wash. Rev. Code §§ 41.80.001 – 41.80.911), and community college faculty (Wash Rev. Code §§ 28b.52.010 – 28b.52.900). Washington has also unionized interpreters and certain childcare and adult day care workers as partial public employees. *See* Wash. Rev. Code §§ 41.56.028, 41.56.029, and 41.56.510.

Washington's public sector union officials have lobbied for—and secured—several important measures that help them recruit and retain new members since the U.S. Supreme Court's *Janus* decision in 2018. For example, in 2019, union officials rewrote the statutory rules for securing payroll deduction authorization from employees, allowing them to secure such authorization electronically or by "recorded voice," at the same time requiring the government to rely exclusively on union officials for a list of employees from whom authorizations had been obtained (Wash. Rev. Code §§ 41.56.110, 41.56.113, 41.59.060, 41.76.045, 41.80.100, 47.64.160, 49.39.080). Although the 2019 law also eliminated agency shop language throughout Washington's labor laws, it included provisions that made it more difficult for employees to revoke their authorizations.

More recently, in 2023, Washington gave union officials access to public employees' personal contact information (Wash. Rev. Code §§ 41.56.035, 41.59.200, 28B.52.230, 41.80.075). Now, every four months, the government is required to give the union at least each public employee's home address, home and cellphone numbers, and personal email addresses, with additional

information available via collective bargaining (Wash. Rev. Code § 41.56.035(6)(b)). In the months before *Janus*, union officials had already secured the right to unsupervised time—at least 30 minutes—with new public employees, either one-on-one or during orientation (Wash. Rev. Code §§ 41.56.037, 28B.52.027, 41.59.068, 41.76.013, 41.80.083, 47.64.137, 49.39).

Washington also continues to pioneer the expansion of new collective bargaining rights to workplaces previously regarded as inappropriate for unionization, as it did with home care and day care workers years ago. In 2022, for example, Washington authorized collective bargaining for employees of the legislature, complete with automatic dues deductions, unfair labor practices, and binding arbitration (Wash. Rev. Code §§ 44.90.010 – 44.90.900).

As a final note, Washington enacted an unprecedented measure protecting union communications (Wash. Rev. Code §§ 5.60.060, 28B.52.110, 41.56.520, 41.59.190, 41.76.090, 41.80.420, 47.64.370, 49.36.040, 53.18.070). Going forward, union representatives' communications with employees are—like attorney-client communications—generally privileged against disclosure. More specifically, a union representative cannot be made to testify or disclose communications they had with an employee or other union representative in the course of union representation, subject to certain exceptions (Wash. Rev. Code § 5.60.060(11)).

Thanks to the Freedom Foundation for its contributions to this piece.

WEST VIRGINIA — A

West Virginia has not statutorily authorized collective bargaining in the public sector. Nevertheless, union officials have a significant foothold in West Virginia's public sector workplaces. Three unions—the West Virginia Education Association (WVEA), the American Federation of Teachers West Virginia (AFT-WV), and the West Virginia School Service Personnel Association (WVSSPA)—claim to represent tens of thousands of West Virginia Teachers. By 2025, WVEA and AFT-WV are set to merge into one union that will represent the majority of teachers in the state, leaving the more militant WVSSPA, which played a large role in the 2018–19 teacher strikes, on its own.

The only legal authorities in West Virginia that would allow for unionization of public employees come in the form of opinions from the West Virginia Attorney General's Office. *See, e.g.,* 55 W. Va. Op. Att'y Gen. 300 (1974); 49 W. Va. Op. Att'y Gen. 448 (1962). In those opinions, the Attorney General wrote that, while public employees did not have a right to "collective bargaining," governmental bodies could still elect to "recognize" and "negotiate" with a union over terms and conditions of employment (55 W. Va. Op. Att'y Gen. 300, at *9; 49 W. Va. Op. Att'y Gen. 448, at *5).

These and other Attorney General opinions—and West Virginia's Supreme Court (*Jefferson Cnty. Bd. of Educ. v. Jefferson Cnty. Educ. Ass'n,* 393 S.E.2d 653, 659 (W. Va. 1990))—have made clear that public employees do not have a right to strike. *See, e.g.,* 63 W. Va. Op. Att'y Gen. 27 (1990); 60 W. Va. Op. Att'y Gen. 101 (1983). However, teachers in West Virginia have called strikes periodically for decades, most recently in 2018 and 2019, with relative success (Bidgood 2018; Goldstein 2019). As a result, in 2021, West Virginia enacted a measure to make participating in a strike grounds for termination and a mandatory reduction in pay (W. Va. Code § 18-5-45a).

In 2021, West Virginia enacted the "West Virginia Paycheck Protection Act," which ended the practice of deducting union payments from public employees' wages using the public payroll

system (W. Va. Code §§ 7-5-25, 8-5-12, 12-3-13b, 18A-4-9, 21-5-1). After it was enacted, several unions sued, claiming that the measure violated their constitutional rights, and initially secured an injunction against its enforcement (*Justice v. W. Va. AFL-CIO*, 866 S.E.2d 613 (W. Va. 2021)). However, the West Virginia Supreme Court ultimately dissolved the injunction, holding that the unions were unlikely to succeed on the merits of their constitutional claims (*Id.*).

Thanks to the Cardinal Institute for West Virginia Policy for its contributions to this piece.

WISCONSIN A

Wisconsin's public sector union officials have the right to collectively bargain (Wisc. Stat. §§ 111.70 – 11.94) but have attempted in recent years to reclaim what they believe is lost ground after Act 10.

Act 10 (Wisconsin State Legislature 2011), also known as the Budget Adjustment Act (Karls-Ruplinger, Rose, and Schmidt 2011), introduced four basic reforms to public sector collective bargaining in Wisconsin that are still relevant today: limits to the scope of bargaining, union recertification election requirements, an end to payroll deduction of union dues, and elimination of interest arbitration. Some studies have suggested that the reforms improved teacher quality and student outcomes (Biasi 2021), while others have suggested the opposite (Baron 2017).

Public sector union officials have resumed their legal attacks on Act 10, and at least one county court judge has thus far sided with public sector unions. *See Decision on Mot. to Dismiss, Abbotsford Educ. Ass'n v. Wisc. Emp't Rels. Comm'n,* No. 2023CV3152 (Wis. Cir. Ct. July 3, 2024). In Abbotsford, several Wisconsin public sector unions brought a challenge to Act 10 on equal protection grounds in state court under the state constitution. A Dane County judge denied Wisconsin's motion to dismiss, determining that Act 10's distinction between first responders and other public employees was irrational and, therefore, violated the unions' equal protection rights. The case, which seems destined for appeal to higher courts, is still awaiting a ruling on the merits at the time of writing (*Abbotsford Educ. Ass'n v. Wisc. Emp't Rels. Comm'n*, No. 2023CV3152 (Wisc. Cir. Ct. filed Nov. 30, 2023)).

Years ago, Act 10 survived several lawsuits brought in federal court by public sector union officials raising similar claims under the U.S. Constitution (*Laborers Local 236, AFL-CIO v. Walker*, 749 F.3d 628, 638 (7th Cir. 2014); *Wisc. Educ. Ass'n Council v. Walker*, 705 F.3d 640 (7th Cir. 2013); *Madison Teachers, Inc. v. Walker*, 851 N.W.2d 337, 385 (Wisc. 2014)). At that time, the central claims—that Act 10 violated unions' First Amendment and equal protection rights—were roundly rejected. As these courts recognized, Act 10 did not prevent unions from forming, meeting, or organizing, and the distinction between first responders and other public sector unions was not irrational.

Despite union officials' claims, Wisconsin's public employees have experienced increased levels of self-determination since Act 10. In the ten years following Act 10, more than one-third of Wisconsin's public sector unions have failed to win recertification elections (WERC 2024), and union membership declined by 5.5 percent (Johnson 2021). Accountability for public sector union officials has benefited taxpayers and students, enabling the state to resolve its fiscal crisis, make tax cuts for families and businesses, and adopt school choice reforms (Benefield and Stelle 2022). A recent study also found that eliminating Act 10 would also have tremendous costs for school districts statewide, which would have to take on $1.6 billion in increased costs annually (Flanders 2024).

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WYOMING B

Wyoming does not statutorily authorize collective bargaining in the public sector except in the context of city, town, or county fire departments (Wyo. Stat. §§ 27-10-101 – 27-10-109). The Wyoming Attorney General has opined that most other governmental bodies in Wyoming cannot enter into collective bargaining agreements because they lack “expressed, specific authority” to collectively bargain (1999 Wyo. Op. Att’y Gen. 1 (1999)).

Nevertheless, the Wyoming Attorney General has long held the position that school districts are permitted—though not required—to enter into collective bargaining agreements with teacher unions (1978 Wyo. Op. Atty. Gen. 157 (1978)). In the Attorney General’s opinion, the Wyoming Education Code provides sufficient authority for collective bargaining, in that it permits local school boards to “[e]nter into agreements with any public or private agency, institution, person, or corporation for the performance of acts or furnishing of services or facilities by or for the school district” (Wyo. Stat. § 21-3-111(a)(iii)).

Wyoming’s National Education Association affiliate, the Wyoming Education Association (WEA), has been a major player in recent litigation over public school funding. *See, e.g., Campbell Cnty. Sch. Dist. v. State,* 181 P.3d 43 (Wyo. 2008); *State v. Campbell Cnty. Sch. Dist.,* 32 P.3d 325 (Wyo. 2001); *Campbell Cnty. Sch. Dist. v. State,* 907 P.2d 1238 (Wyo. 1995). In the most recent iteration of school funding lawsuits, the WEA took the lead, suing the state and arguing that it failed to adequately update and fund public schools in keeping with Wyoming Supreme Court decisions (*Wyo. Educ. Ass’n v. State*, 2022-CV-200-788 (Wyo. Dist. Ct. filed Aug. 18, 2022)).

Another union, the Wyoming Public Employees Association, SEIU Local 1990, claims to represent “all Wyoming State Agency Employees,” though the scope of its representation is unclear (WPEA n.d.). The organization’s most recently available tax filing indicates just $375,701 in total revenue, with nearly $78,000 sent to the SEIU (WPEA 2022).

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APPENDIX I: Glossary of Labor Terms

Agency fee: Also known as a "fair share fee." Until June 2018, it represented the portion of dues a union may require nonmember employees to pay as a condition of employment. The fee was meant to cover core aspects of union representation and collective bargaining while promising to relieve nonmembers of the obligation to subsidize the union's political agenda. In *Janus* v. AFSCME, Council 31, the U.S. Supreme Court rules fair share fees unconstitutional in the public sector because they violate 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 for collective bargaining. Typically, labor boards define the scope of the bargaining unit based on a "community of interest," including salary arrangements and working conditions shared by certain workers.

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 two types: mandatory and optional card checks.

> **Mandatory card check:** A public employer must 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.

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 be asked to 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 may also recommend nonbinding solutions.

Exclusive representative: The designation for a 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 typically a binding process by which a third party rules on final terms of a collective bargaining agreement when a union and employer have reached an impasse in negotiations.

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

Maintenance of membership: The requirement that an employee who is a union member must 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 may not be legally

binding, but in practice, the process and the nature of the agreement is often very similar to collective bargaining.

Paycheck protection: The prohibition against government payroll deductions of certain union payments. It may refer only to bans on collecting direct political contributions or political action committee money. However, it may also refer to prohibitions on collecting union dues.

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.

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: An enumerated violation of labor law. Charges of unfair labor practices are usually filed with a state labor board, which has the power to further investigate, hold hearings, and issue certain remedies.

APPENDIX II Summary of State Public Sector Labor Laws

State	Note	Grade	Are public sector strikes legal?	Right-to-Work?	Can a union require a public employer to collect membership dues?	Can a union require a public employer to collect political money?	What items may be negotiated in collective bargaining?	Does state law authorize collective bargaining?	Is there a duty to bargain?	How are unions certified?	Are there mandatory recertification elections?	Notable Powers of Exclusive Representatives	Is union release time statutorily authorized?	Are membership opt-out windows statutorily authorized?	Do union members have a right to resign?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Statutory Reference
Alabama		B	Illegal.	Yes.	Yes, unless the union uses "any portion of the dues for political activity."	No.	Not outlined in law.	Yes, for state and municipal firefighters. Not authorized for other employees.	No.	Not outlined in law.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	Not specified.	No.	Ala. Code § 11-43-143 (Firefighters).
Alaska		D	Legal for some.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	None outlined in law.	No.	No.	Not statutorily recognized.	May be closed.	Yes.	Alaska Stat. §§ 23.40.070 – 23.40.260 (Public Employee Relations Act).
Arizona		B	Illegal.	Yes.	Yes.	Yes.	Not outlined in law.	Yes for public safety employees. No prohibition for other employees.	No.	Not outlined in law.	No.	Not outlined in law.	No, union release time is explicitly prohibited.	No.	Not statutorily recognized.	Not specified.	Not outlined in law.	Ariz. Stat. § 23-1431 (Release time).
Arkansas		A+	Illegal.	Yes.	Not for teachers.	Not for teachers.	Wages, other work conditions.	Prohibited, except for public safety employees.	No.	Not outlined in law.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	Not specified.	Not outlined in law.	Ark. Stat. §§ 21-1-801– 21-1-804 (Law enforcement and firefighters).
California		F	Legal except for public safety employees.	No.	Yes.	Yes.	Wages, pension benefits, fringe benefits, hours, other work conditions.	Yes.	Yes.	Card check permitted by law.	No.	Access to employees, access to contact information, access to employee orientation.	Yes.	Yes.	No.	May be closed.	Yes, once requested by law enforcement and firefighters.	Cal. Gov't Code §§ 3500 – 3511 (Local governments); §§ 3512 – 3524 (State employees); §§ 3524.50 – 3524.81 (Judicial system employees); §§ 3540 – 3549.3 (Public schools); §§ 3550 – 3553 (Enhanced penalties for employer); §§ 3555 – 3559 (Employee access); §§ 3560 – 3599 (Higher education); §§ 71600 – 71675 (Trial court employees) §§ 71800 – 71829 (Trial court interpreters); Cal. Pub. Util. Code §§ 28848 – 28863 (San Francisco transit); 40120 – 40129 (Orange County transit); §§ 100300 – 100311 (Santa Clara transit); §§ 102398 – 102418 (Sacramento transit); §§ 98160 – 98174 (Santa Cruz transit); §§ 99560 – 99570.4 (L.A. Transit) Cal. Welf. & Inst. Code §§ 10420 – 10429.5 (Child care).

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

State	Note	Grade	Are public sector strikes legal?	Right-to-Work?	Can a union require a public employer to collect membership dues?	Can a union require a public employer to collect political money?	What items may be negotiated in collective bargaining?	Does state law authorize collective bargaining?	Is there a duty to bargain?	How are unions certified?	Are there mandatory recertification elections?	Notable Powers of Exclusive Representatives	Is union release time statutorily authorized?	Are membership opt-out windows statutorily authorized?	Do union members have a right to resign?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Statutory Reference
Colorado		D	Illegal for firefighters, state, and county employees. Legal for teachers and local government workers.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Card check permitted for state workers, secret ballot for county workers.	No.	Access to employees, access to contact information, access to employee orientation.	No.	No.	Not statutorily recognized.	Must be open for schools; may be closed for other agencies.	No.	Colo. Rev. Stat. §§ 8-3.3-101 – 8-3.3-116 (County employees); §§ 24-50-1101 – 24-50-1117 (State employees); §§ 29-33-101 – 29-33-105 (Local government employees).
Connecticut		D	Illegal.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	Access to employees, access to contact information, access to employee orientation.	No.	No.	Not statutorily recognized.	No.	Yes.	Conn. Gen. Stat. §§ 5-270 – 5-280 (State employees); §§ 7-467 – 7-479 (Municipal employees); §§ 10-153 – 10-153o (Teachers).
Delaware		D	Illegal.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Secret ballot election only.	No.	None outlined in law.	No.	Yes.	No.	No.	Yes, once requested.	Del. Code Ann. tit. 19, §§ 1301 – 1309 (Public Employment Relations Act).
Florida		A	Illegal.	Yes.	No, with exception for public safety employees.	No, with exception for public safety employees.	Wages, pension benefits, fringe benefits, hours, other work conditions.	Yes.	Yes.	Voluntary recognition via card check or secret ballot election.	Yes.	May refuse to represent nonmembers in grievances.	No.	No, explicitly prohibited except for public safety employees.	Yes.	Must be open.	Not outlined in law.	§§ 447.201 – 447.609, Fla. Stat. (Public Employment Relations Act).
Georgia		A+	Illegal.	Yes.	Not outlined in law.	Not outlined in law.	Wages, hours, other work conditions.	Prohibited, except for firefighters.	Yes, for firefighters.	Secret ballot election only.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	Not specified.	Not outlined in law.	Ga. Code §§ 25-5-1 – 25-5-14 (Firefighters).
Hawaii		D-	Legal.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Secret ballot election only.	No.	May refuse to represent nonmembers in grievances and can access employee personal and contact information when requested.	Yes.	No.	Not statutorily recognized.	May be closed.	Yes, for police, firefighters, nurses, and certain other white-collar workers.	Haw. Rev. Stat. §§ 89-1 – 89-23 (Public Employment Relations Act).
Idaho		B	Illegal.	Yes.	Yes.	No.	Wages, hours, employment terms.	Yes, for firefighters and teachers. No prohibition for other employees.	Yes.	Secret ballot election only.	No.	Not outlined in law.	Yes.	No.	Yes.	May be closed.	No.	Idaho Code §§ 33-1271 – 33-1276 (Teachers); §§ 44-1801 – 44-1812 (Firefighters).
Illinois		F	Legal except for public safety employees.	No.	Yes.	Yes.	Wages, hours, and working conditions, economic welfare, safety at work.	Yes, collective bargaining is a fundamental right.	Yes.	Card check permitted by law.	No.	Access to employees, access to contact information, access to employee orientation.	No.	Yes.	No.	No.	Yes, once requested by law enforcement and firefighters.	5 Ill. Comp. Stat. §§ 315/1 – 315/28 (Public Labor Relations Act); 115 Ill. Comp. Stat. §§ 5/1 – 5/21 (Teachers).

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

State	Note	Grade	Are public sector strikes legal?	Right-to-Work?	Can a union require a public employer to collect membership dues?	Can a union require a public employer to collect political money?	What items may be negotiated in collective bargaining?	Does state law authorize collective bargaining?	Is there a duty to bargain?	How are unions certified?	Are there mandatory recertification elections?	Notable Powers of Exclusive Representatives	Is union release time statutorily authorized?	Are membership opt-out windows statutorily authorized?	Do union members have a right to resign?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Statutory Reference
Indiana	Note: Ind. Code § 20-29 is currently permanently enjoined due to ongoing litigation. The injunction is being appealed.	A+	Illegal.	Yes.	No for state workers, yes for teachers.	No for state workers, yes, for teachers.	Wages, fringe benefits, hours.	Yes, with prohibition for state employees.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	Not outlined in law.	No.	No.	Yes.	Partial.	No.	Ind. Code §§ 20-29-1-1 – 20-29-9-5 (Teachers); §§ 36-8-22-1 – 36-8-22-16 (Public safety employees).
Iowa		A	Illegal.	Yes.	No.	No.	Limited to base wages only, except for public safety workers.	Yes.	Yes.	Secret ballot election only.	Yes.	Not outlined in law.	No.	No.	Not statutorily recognized.	Partial.	Yes, once requested.	Iowa Code §§ 20.1 – 20.33 (Public Employment Relations Act); § 70A.19 (Payroll deductions).
Kansas		B	Illegal.	Yes.	Yes.	No.	Wages, pension benefits, fringe benefits, hours, other working conditions.	Yes.	Yes.	Secret ballot election only.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	Must be open.	No.	Kan. Stat. §§ 72-2218 – 72-2244 (Teachers); §§ 75-4321 – 75-4350 (Public Employer-Employee Relations Act).
Kentucky		B	Illegal.	Yes.	No.	No.	Wages, fringe benefits, hours, other work conditions.	Yes, for local public safety employees. No prohibition for other employees.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	No.	No.	Ky. Rev. Stat. § 67A.6903 (Police officers, firefighters, corrections officers); §§ 67C.404, 78.470 (Police officers); § 70.262 (Sheriff's deputies); § 336.130 (Generally).
Louisiana		C	Legal except for public safety employees.	Yes.	Yes.	Yes.	Not outlined in law.	Yes.	No.	Not outlined in law.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	Partial.	No.	La. Stat. § 23:822 (Generally)
Maine		D	Illegal.	No.	Not outlined in law.	Not outlined in law.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Voluntary recognition, with optional card check for municipal workers and secret ballot election for state workers.	No.	Access to employees, access to contact information, access to employee orientation.	No.	No.	Not statutorily recognized.	May be closed.	Yes, once requested.	Me. Rev. Stat. tit. 26, §§ 961 – 974 (Municipal employees); §§ 979 – 979-S (State employees).
Maryland		F	Illegal.	No.	Yes.	Yes.	Wages, hours, pension benefits, fringe benefits, other work conditions.	Yes.	Yes.	Mandatory card check if supported by >50% of employees. Otherwise, voluntary recognition or secret ballot election.	No.	Access to employees, access to contact information, access to employee orientation.	Yes.	No.	Not statutorily recognized.	No.	Yes, for teachers and local agency employees once requested.	Md. Code, Health-Gen. §§ 15-901 – 15-907 (Homecare workers); Md. Code, Educ. §§ 9.5-701 – 9.5-707 (Daycare workers); Md. Code, State Gov't §§ 22-101 – 22-601 (Public Employee Relations Act).

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

State	Note	Grade	Are public sector strikes legal?	Right-to-Work?	Can a union require a public employer to collect membership dues?	Can a union require a public employer to collect political money?	What items may be negotiated in collective bargaining?	Does state law authorize collective bargaining?	Is there a duty to bargain?	How are unions certified?	Are there mandatory recertification elections?	Notable Powers of Exclusive Representatives	Is union release time statutorily authorized?	Are membership opt-out windows statutorily authorized?	Do union members have a right to resign?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Statutory Reference
Massachusetts		D-	Illegal.	No.	Yes.	Yes.	Wages, hours, fringe benefits, standards, productivity/ performance, other work conditions.	Yes.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	May charge nonmembers for the cost of grievance and arbitration procedures. Access to employees, contact information, and employee orientation.	No.	Yes.	No.	May be closed.	Yes, once requested.	Mass. Gen. Laws ch. 150E, §§ 1 – 15 (Public employees); ch. 180, § 17A (Payroll deductions).
Michigan		D	Illegal.	No.	Not outlined in law.	Not outlined in law.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	Access to employee contact information.	No, union release time is explicitly prohibited.	No.	Yes.	May be closed.	Yes, for police and firefighters.	Mich. Comp. Laws §§ 423.201 – 423.217 (Public Employment Relations Act).
Minnesota		D	Legal for teachers.	No.	Yes.	Yes.	Wages, hours, fringe benefits, other work conditions.	Yes.	Yes.	Mandatory card check if supported by >50% of employees. Otherwise, voluntary recognition or secret ballot election.	No.	None outlined in law.	Yes.	No.	Not statutorily recognized.	May be closed.	Yes, once requested by essential employees such as police and firefighters.	Minn. Stat. §§ 179A.01 – 179A.60 (Public Employment Labor Relations Act); § 179A.54 (Homecare workers).
Mississippi		A	Illegal.	Yes.	Not outlined in law.	Not outlined in law.	Not outlined in law.	No, but not prohibited.	No.	Not outlined in law.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	Not specified.	Not outlined in law.	N/A
Missouri	Note: Much of Mo. Rev Stat. §101.500 was struck down as unconstitutional in 2021.	C	Not outlined in law.*	No.	Not outlined in law.*	Not outlined in law.*	Wages, fringe benefits, other work conditions.	Yes.	Yes.	Not outlined in law.*	No.	Not outlined in law.*	No.	No.	Not statutorily recognized.	Not outlined in law.*	No.	Mo. Rev. Stat. §§ 101.500 – 105.598 (Public employees).*
Montana		D	Legal for teachers and general government workers.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	Must be open.	Yes, once requested.	Mont. Code §§ 39-31-101 – 39-31-505 (Public Employees Collective Bargaining Act).
Nebraska		C	Illegal.	Yes.	Yes.	Yes.	Work conditions, grievances.	Yes.	Yes.	Secret ballot election only.	No.	Not outlined in law.	Yes.	No.	Not statutorily recognized.	May be closed.	No.	Neb. Rev. Stat. §§ 48-801 – 842 (Public employees); §§ 81-1369 – 1388 (State employees).
Nevada		C	Illegal.	Yes.	Yes.	Yes.	Wages, hours, other work conditions.	Yes.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	Partial.	Yes, must be written in contracts.	Nev. Rev. Stat. §§ 288.010 – 288.715 (Government Employee-Management Relations Act)
New Hampshire		D	Illegal.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Secret ballot election only.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	No.	No.	N.H. Rev. Stat. §§ 273-a:1 – a:17 (Public Employee Labor Relations Act).

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

State	Note	Grade	Are public sector strikes legal?	Right-to-Work?	Can a union require a public employer to collect membership dues?	Can a union require a public employer to collect political money?	What items may be negotiated in collective bargaining?	Does state law authorize collective bargaining?	Is there a duty to bargain?	How are unions certified?	Are there mandatory recertification elections?	Notable Powers of Exclusive Representatives	Is union release time statutorily authorized?	Are membership opt-out windows statutorily authorized?	Do union members have a right to resign?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Statutory Reference
New Jersey		D-	Illegal.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions as long as they are not prohibited by statute.	Yes.	Yes.	Card check if only one union is seeking to represent employees, otherwise secret ballot election.	No.	May charge nonmembers for cost of representation in arbitration or refuse to represent them. Access to employees, access to contact information, access to employee orientation.	No.	Yes.	No.	May be closed.	Yes, once requested by police and firefighters.	N.J. Stat. §§ 34:13A-1 – 34:13A-64 (Employer-Employee Relations Act).
New Mexico		D-	Illegal.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	Not outlined in law.	No.	Yes.	No.	No.	Yes, once requested.	N.M. Stat. §§ 10-7E-2 – 10-7E-25 (Public Employee Bargaining Act).
New York		D	Illegal.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Card check if only one union is seeking to represent employees, otherwise secret ballot election.	No	Access to employees, access to contact information, access to employee orientation.	No.	No.	Not statutorily recognized.	May be closed.	Yes, once requested by law enforcement, firefighters, and some transit workers.	N.Y. Civ. Serv. Law §§ 200 – 215 (Public employees).
North Carolina		A+	Illegal.	Yes.	N/A	N/A	N/A	No, prohibited.	N/A	N/A	No	N/A	N/A	N/A	N/A	N/A	N/A	N.C. Gen. Stat. § 95-98 (Collective bargaining prohibition).
North Dakota		B	Illegal for teachers.	Yes.	Yes.	Yes.	Wages, other work conditions.	Yes.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	Must be open.	Yes, once put into contracts for teachers.	N.D. Cent. Code §§ 34-11.1-01 – 34-11.1-08 (Public Employee Relations Act); §§ 15.1-16-01 –15.1-16-22(Teachers).
Ohio		D	Legal for teachers and general government workers.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	No.	Yes, for essential employees such as law enforcement and firefighters.	Ohio Rev. Code §§ 4117.01 – 4117.27 (Public Employees' Collective Bargaining Act).
Oklahoma		B	Illegal.	Yes.	Not for teachers.	No.	Wages, fringe benefits, hours, other work conditions.	Yes, for firefighters and teachers. No prohibition for other employees.	Yes.	Mandatory card check for teachers. Voluntary recognition via card check or secret ballot election for firefighters and police.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	May be closed.	Yes, once requested by police and firefighters.	Okla. Stat. tit. 11, §§ 51-101 – 51-113 (Police and firefighters); tit. 70, §§ 509.1 – 510.3 (Teachers).

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

State	Note	Grade	Are public sector strikes legal?	Right-to-Work?	Can a union require a public employer to collect membership dues?	Can a union require a public employer to collect political money?	What items may be negotiated in collective bargaining?	Does state law authorize collective bargaining?	Is there a duty to bargain?	How are unions certified?	Are there mandatory recertification elections?	Notable Powers of Exclusive Representatives	Is union release time statutorily authorized?	Are membership opt-out windows statutorily authorized?	Do union members have a right to resign?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Statutory Reference
Oregon		F	Legal for teachers and general government workers.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Card check if only one union is seeking to represent employees, otherwise secret ballot election.	No.	May charge nonmembers fees for non-collective bargaining representation costs. Access to employees, access to employee contact information, and access to new employee orientation.	Yes.	No.	Not statutorily recognized.	May be closed.	Yes, for public safety workers such as police and firefighters.	Or. Rev. Stat. §§ 243.650 – 243.806 (Public Employee Collective Bargaining Act).
Pennsylvania		D	Legal for teachers.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Voluntary recognition via card check or secret ballot election.	No.	Not outlined in law.	No.	Yes.	No.	May be closed.	Yes.	24 P.S. §§ 11-1101-a – 11-1172-a (Teachers); 43 P.S. §§ 217.1 – 217.12 (Police and firefighters); §§ 1101.101 – 1101.2301 (Public Employee Relations Act).
Rhode Island		D-	Illegal.	No.	Yes.	Yes.	Wages, limited fringe benefits, other work conditions.	Yes.	Yes.	Card check if only one union is seeking to represent employees, otherwise secret ballot election.	No.	May charge fees to nonmembers for representation in grievance and arbitration procedures or refuse to represent them.	No.	No.	Not statutorily recognized.	May be closed.	Yes.	R.I. Gen. Laws §§ 28-9.1-1 – 28-9.1-18 (Firefighters); §§ 28-9.2-1 – 28-9.2-18 (Municipal police); §§ 28-9.3-1 – 28-9.3-16 (Teachers); §§ 28-9.4-1 – 28-9.4-19 (Municipal employees); §§ 28-9.5-1 – 28-9.5-17 (State police); §§ 28-9.6-1 – 28-9.6-16 (911 employees); §§ 28-9.7-1 – 28-9.7-17 (Correctional officers); §§ 36-11-1 – 36-11-13 (State employees).
South Carolina		A+	Illegal.	Yes.	N/A	N/A	N/A	No, prohibited by case law.	N/A	N/A	No	N/A	N/A	N/A	N/A	N/A	N/A	N/A
South Dakota		C	Illegal.	Yes.	Yes.	Yes.	Wages, some pension benefits, fringe benefits, hours, other work conditions.	Yes.	Yes.	Secret ballot election only.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	May be closed.	No.	S.D. Codified Laws §§ 3-18-1 – 3-18-18 (Public employees).
Tennessee		A+	Illegal.	Yes.	No.	No.	Wages, fringe benefits, hours, work conditions.	"Collaborative conferencing" permitted for teachers.	Yes, duty to "participate in collaborative conferencing" for teachers.	Secret ballot election only.	No.	None; unions awarded representation proportionally.	Yes.	Yes.	Not statutorily recognized.	Must be open.	No.	Tenn. Code § 7-56-102 (Public transportation); § 49-2-123 (Payroll deductions); §§ 49-5-601 – 49-5-609 ("Collaborative conferencing" for teachers).
Texas		A+	Illegal.	Yes.	Yes.	Yes.	Wages, hours, fringe benefits, other work conditions.	Prohibited, except for police and firefighters.	Yes.	Card check if only one union is seeking to represent employees, otherwise secret ballot election.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	Must be open.	Yes, for public safety workers such as police and firefighters.	Tex. Loc. Gov't Code §§ 146.001 – 146.017 (Certain cities); §§ 174.001 – 174.253 (Police and firefighters).

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

State	Note	Grade	Are public sector strikes legal?	Right-to-Work?	Can a union require a public employer to collect membership dues?	Can a union require a public employer to collect political money?	What items may be negotiated in collective bargaining?	Does state law authorize collective bargaining?	Is there a duty to bargain?	How are unions certified?	Are there mandatory recertification elections?	Notable Powers of Exclusive Representatives	Is union release time statutorily authorized?	Are membership opt-out windows statutorily authorized?	Do union members have a right to resign?	Are union contract negotiations open to the public?	Is binding arbitration required during collective bargaining impasses?	Statutory Reference
Utah		C	Illegal for firefighters.	Yes.	Yes.	Yes.	Wages, hours, pension benefits, fringe benefits, other work conditions.	Yes.	Yes.	Not outlined in law. A union "designated or selected by a majority of employees" becomes the exclusive representative.	No.	Not outlined in law.	Yes.	No.	Yes.	May be closed.	Yes, for firefighters.	Utah Code § 17B-2a-813 (Public transit); §§ 34-20a-1 – 34-20a-9 (Firefighters); § 34–32–1 (right to resign); § 34–32–1.1 (Payroll deductions).
Vermont		D	Legal for teachers and municipal employees.	No.	Yes.	Yes.	Wages, fringe benefits, hours, other work conditions.	Yes.	Yes.	Card check for teachers, voluntary recognition, or secret ballot election for other workers.	No.	Access to employees, access to contact information, access to employee orientation.	No.	No.	Not statutorily recognized.	May be closed.	Yes, for judiciary employees, for teachers and municipal workers, if both negotiating sides submit to arbitration.	Vt. Stat. tit. 3, §§ 901 – 1008 (State employees); §§ 1010 – 1044 (Judiciary Department); tit. 16, §§ 1981 – 2028 (Teachers and administrators); tit. 21, §§ 1501 – 1624 (State Labor Relations Act); §§ 1631 – 1646 (Homecare workers); §§ 1721 – 1739 (Municipal employees); tit. 33, §§ 3601 – 3619 (Daycare workers).
Virginia		B	Illegal.	Yes.	Not outlined in law.	Not outlined in law.	Not outlined in law.	Yes, only for local government employees.	No.	Not outlined in law, determined locally.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	May be closed.	No.	Va. Code §§ 40.1-57.2 – 40.1-57.3 (Local government and school employees).
Washington		F	Illegal.	No.	Yes.	Yes.	Wages, some pension/fringe benefits, hours, other work conditions.	Yes.	Yes.	Card check if only one union is seeking to represent employees, otherwise secret ballot election.	No.	Access to employees, access to contact information, access to employee orientation.	Yes.	Yes.	Not statutorily recognized.	No.	Yes, for police, firefighters, public transit, and other uniformed personnel.	Wash. Rev. Code §§ 28b.52.010 – 28b.52.900 (Community college faculty); §§ 41.56.010 – 41.56.900 (Public Employees' Collective Bargaining Act); §§ 41.59.010 – 41.59.940 (Teachers); §§ 41.80.001 – 41.80.911 (State employees).
West Virginia		A	Illegal.	Yes.	No.	No.	Not outlined in law.	No, but not prohibited.	No.	Not outlined in law.	No.	Not outlined in law.	No.	No.	Yes.	Not specified.	Not outlined in law.	W. Va. Code § 18-5-45a (strikes).
Wisconsin		A	Illegal.	Yes.	No, with exception for public safety employees.	No, with exception for public safety employees.	Limited to base wages only, except for public safety workers.	Yes.	Yes.	Secret ballot election only.	Yes.	Not outlined in law.	No.	Yes, for public safety employees only.	Not statutorily recognized.	Partial.	Yes, once requested by municipal and public safety workers.	Wisc. Stat. §§ 111.70 – 111.77 (Municipal employees); §§ 111.80 – 111.94 (State employees).
Wyoming		B	Not outlined in law.	Yes.	Not outlined in law.	Not outlined in law.	Wages, hours, fringe benefits, work conditions.	Yes, for firefighters and teachers. No prohibition for other employees.	Yes, for firefighters.	Not outlined in law. A union "designated or selected by a majority of firefighters" becomes the exclusive representative.	No.	Not outlined in law.	No.	No.	Not statutorily recognized.	May be closed.	No.	Wyo. Stat. §§ 27-10-101 - 27-10-109 (Firefighters).

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