
Employee Freedom

A primer on state-based, pro-worker reforms



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Background

In Nevada, government workers' rights are being undermined by a patchwork of state laws ostensibly designed to protect them, but which in effect elevate the interests of labor unions over individual workers. Public-sector employees who disagree with the unions that purport to represent them are helpless in a system that favors "union security" over worker freedom.

When the U.S. Supreme Court decided that government unions can no longer compel workers to subsidize their activities in the recent *Janus v. AFSCME* case, it was a monumental victory for worker freedom. The ruling showed the country that the historic, often uncontested, power that unions have over the very workers they claim to represent is not absolute.

However, union security laws remain deeply entrenched at the state level. Whereas federal law governs the realm of private-sector collective bargaining, laws governing public-sector unions (with the exception of federal-employee unions) were adopted on a state-by-state basis.¹ Thus individual states can of their own volition implement appropriate pro-worker reforms aimed at restoring the proper balance of power between government unions and individual workers. It is up to individuals and groups within these states to take a stand against an unfair system and reform the law.

Union security laws in Nevada deny public-sector employees basic worker rights, such as the right to vote upon their union representation, the right to decide not to be a member of a union (and thus cease paying dues) without restriction, and the right for non-members to represent themselves during negotiations with their employer.

Accordingly, this report is intended as a primer to educate lawmakers and the public at-large on three specific worker-freedom reforms which can be implemented at the state level:

- 1) Periodic government-union recertification;
- 2) "Workers' Choice" in representation; and
- 3) Elimination of so-called "opt-out periods" that restrict when dues-paying members are able to withdraw from their union.

If enacted into state law, these three simple reforms would constitute measurable progress towards restoring and prioritizing the rights of both union and non-union employees in Nevada's public sector.

¹ See National Labor Relations ("Wagner") Act of 1935; Labor Management Relations ("Taft-Hartley") Act of 1947; In Nevada, the Local Government Employee-Management Relations Act (NRS 288.010 — 288.280) was enacted in 1969.

1. Periodic union recertification

Under current law, the vast majority of public-sector employees are denied the right to vote upon their union representation.

In Nevada, once a union can demonstrate it represents a majority of public employees within a given bargaining unit, that union is certified as the “exclusive bargaining agent.” This means the union alone will represent all workers — including employees that have decided against union membership — during collective bargaining negotiations and other worker-related issues.²

Scholars refer to the laws which make this system possible as “union security” provisions because they protect unions from competition by rival unions, lawyers, or others who offer representation services, even when some workers might prefer these alternatives.

Unions maintain the “exclusive bargaining agent” title in perpetuity (unless the union is decertified, which in practice never occurs³) because there is no requirement that workers regularly vote on who represents them. Once a union is voted in, that’s it — there are no subsequent elections, or “recertification” of the union.

This means the vast majority of government workers in unionized workplaces are never afforded the opportunity to vote on *which* union represents them. Instead, they simply inherit whatever union already represents their bargaining unit. This is a tremendous disservice to individual workers, as it denies them their right to a democratic workplace and strips them of their voice.

Take, for example, the Clark County School District. Of the nearly 20,000 CCSD teachers covered by the union-negotiated agreement, only *two* of them actually voted in the original union-organizing election, which occurred decades ago.⁴ Nonetheless, the Clark County Education Association continues to represent all current teachers on the basis of that single, decades-old vote.

The legislative solution here is simple: Allow workers to periodically vote on their representation. All bargaining units should be able to vote every year or every few years, at minimum, on whether they wish to continue with their current representation, or select an alternative.

Public-sector employees shouldn’t be forced into a decades-old relationship with a union. Like all service providers, unions should be expected to earn the loyalty and confidence of the employees

² Pursuant to NRS 288.160(2), “If an employee organization, at or after the time of its application for recognition, presents a verified membership list showing that it represents a majority of the employees in a bargaining unit, and if the employee organization is recognized by the local government employer, it shall be the exclusive bargaining agent of the local government employees in that bargaining unit. (Emphasis added.)

³ Per an August 2017 NPRI request for public records submitted to the Local Government Employee-Management Relations Board, no records exist “where a local government attempted to decertify a union.”

⁴ Ashley Johnson, “In the Workplace, Unions Ditch Democracy for Dictatorships,” NPRI Commentary, February 2016.

they want to represent by providing them with ongoing value. Regular elections would provide workers with confidence that their interests remain the priority of union officials.

It is, therefore, unsurprising that this basic pro-worker reform has strong support among unionized employees. According to a 2017 survey conducted for National Employee Freedom Week, the policy concept received more than 70 percent support among union members.⁵

2. Workers' Choice of representation

Non-union employees are forced to accept the union-negotiated agreement.

Nevada has been a Right-to-Work state since long before the *Janus* decision came down, meaning that government workers have never been required to pay their workplace union any dues or other fees as a condition of employment.

Yet while non-union workers cannot be forced to subsidize the union's activities, they are nevertheless forced to accept the union-negotiated employment terms, as the union serves as the "exclusive bargaining agent" for the entire bargaining unit. The union agreement covers both union and non-union employees alike, even if the non-union employees would prefer to represent themselves during negotiations or hire somebody else to represent them.

Under this system, neither side is content. Unions frequently accuse non-members of being "free riders" because they claim those workers enjoy the benefits of the union's collective bargaining activities (such as higher wages and retirement benefits) without having to pay the union a dime. But non-members are equally unhappy, viewing themselves as "forced riders" because they are forced to accept the union's contractual terms, regardless of whether or not they want to. They do not have the choice to seek alternative representation or alternative contractual provisions. They are prohibited from negotiating with their employer on their own behalf.

What is needed here is a statewide policy of "Workers' Choice." Under Workers' Choice, non-union employees would have the right to be represented by somebody other than the union, including themselves, during contract negotiations. As such, they would not be forced to accept whatever collective-bargaining terms were negotiated by the union.

Essentially, implementing Workers' Choice would create two distinct types of government employees in unionized workplaces:

- 1) Employees who opt for union membership, pay full dues, and accept the working conditions negotiated by the union; and
- 2) Employees who choose to opt-out of union membership, pay no dues, and negotiate their employment terms independently.

⁵ See <http://employeefreedomweek.com/2017-study-union-vs-right-to-work/>

Here's an example of how this pro-worker reform could benefit workers:

Consider the classic case of a married couple being offered comprehensive health insurance as a fringe benefit by both of the couple's employers, thus doubly covering both spouses and their dependents. Certainly, this redundancy offers no additional benefit. After all, a single family health plan should by itself be sufficient.

In such a case, shouldn't either of them be permitted to negotiate a higher wage, for example, in lieu of overlapping health coverage? Or perhaps extra vacation days? Common sense says so.

Further, Workers' Choice actually presents a win-win opportunity for both unions and non-union workers. Unions will be relieved of their obligation to represent non-members who refuse to support them financially, and non-members will be able to represent their own interests and negotiate their own contracts. The entire "free rider" versus "forced rider" debate will be rendered moot.

But perhaps the most appealing aspect of Workers' Choice is its potential to increase worker productivity via economic incentives. According to renowned labor scholar Vincent Vernuccio of the Mackinac Center for Public Policy:

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Most public sector union contracts prescribe that pay must be based exclusively on seniority. Effective and productive workers are not allowed to earn more than less effective and productive workers. With the freedom to negotiate their own methods of compensation, nonmember employees could be compensated based in part on their productivity, which, in turn, could have a positive impact on the entire workplace. Since these employees provide taxpayer-funded services, this would also benefit taxpayers, as they would be getting more effective and better services for their money. (Emphasis added.)⁶

⁶ Vincent Vernuccio, "Worker's Choice: Freeing Unions and Workers from Forced Representation," Mackinac Center for Public Policy, 2015

Thus non-union workers will be financially incentivized to outperform their peers, potentially bringing forth revolutionary efficiencies, and allowing for the most effective workers to be compensated at levels more reflective of their talents.⁷

The proper legislative course here is, as before, to remove the “union security” provisions that guarantee unions’ protected monopoly status over the entire bargaining unit and instead allow non-members to acquire whatever representation they prefer. This is yet another pro-worker reform that earns broad support from unionized workers, with 77 percent supporting the policy.⁸

3. Eliminate restrictive “opt-out periods”

Teachers and other education professionals are only able to leave their union within an unreasonably small window of time.

Public-school teachers in Nevada operate under collective bargaining agreements which restrict when they are allowed to leave their union. Pursuant to the agreements, teachers may only opt-out of union membership during the two-week period of July 1 to July 15.

For example, per Article 8, Section 4 of the governing agreement between the Clark County School District and its affiliated teacher union, the Clark County Education Association,

Any teacher desiring to have the School District discontinue deductions previously authorized must notify the Association in writing between July 1 and July 15 of each year for the next school year’s dues and the Association will notify the District in writing to discontinue the employee’s deduction. (Emphasis added.)⁹

Conveniently for unions, this opt-out period occurs in the middle of summer – when school is not in session – so many teachers aren’t even aware of how and when they can leave their union.

Notwithstanding these restrictive opt-out windows, nearly 8,000 teachers across Clark County have already elected not to pay membership dues to the Clark County Education Association. Similarly in Washoe County, more than 1,600 teachers have decided against membership in the Washoe Education Association.

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⁷ See James W. Guthrie, “The \$200,000-a-year classroom teacher: A new paradigm to rescue Nevada public education,” Nevada Policy Research Institute, April 2013.

⁸ See <http://employeeefreedomweek.com/2017-study-union-vs-right-to-work/>

⁹ Complete copies of all governing public-sector CBAs are available at http://emrb.nv.gov/Resources/Collective_Bargaining_Agreements/

The fact that there has been such a dramatic number of educators who have opted-out despite the restrictive and bureaucratic burden of doing so, demonstrates the degree to which union leadership has failed to adequately address the concerns of former members.

Unfortunately, rather than focusing on better serving members, some union leadership has turned to further narrowing opt-out eligibility, in an apparent effort to forcibly retain members.

NPRI has learned of instances where unions have employed petty tactics to deny an employee's valid request to opt-out of union membership, even when the request was rightfully made during the mandated two-week opt-out period.

In July 2018, for example, when a member of the Washoe Education Support Professionals informed his union via written notice of his desire to withdraw his membership, he assumed his request would be summarily granted. Weeks later, however, he received union correspondence denying his request on the basis that his request to withdraw had not been sent via certified mail, as the union claims is required per its bylaws.

This denial shocked the employee, especially because there is no mention of a certified-mail requirement in the plain text of the governing collective-bargaining agreement, and because the union's bylaws are not readily available to its members. (Days after first requesting to review the union's bylaws, the employee was eventually provided a copy.) He was nevertheless left in a situation where, thanks to a bureaucratic detail, he must continue paying dues for another year.

In this sense, eliminating restrictive opt-out windows would mitigate the effects of such union hardball tactics: Instead of having to wait a full calendar year to try again, the aforementioned employee could immediately, for a second time, request to leave the union, this time following the arbitrary procedures apparently outlined within the union's bylaws.

If teachers and other education professionals can join their union whenever they want, they should also be permitted to leave whenever they want. The opt-out period serves as a special type of union security provision — a collectively-bargained one — which only exists to curb the number of teachers that exercise their right not to be a union member.

The legislative cure to this injustice is to pass a law which provides dues-paying union members the right to opt-out of their union at any time during the year — not just within a two-week window — and which declares any current opt-out-period provisions as invalid.

It's difficult to imagine any behavior more flagrantly anti-worker than for a union to essentially extort a year's worth of dues from its members merely because their request to withdraw from the union arrived outside of the prescribed timeframe!

Conclusion

Government workers should neither be forced to forfeit their democratic voice simply because they're employed at a unionized workplace, nor be forced to navigate arbitrary rules which dictate how and when they may leave their union. Yet since Nevada adopted laws allowing for the proliferation of government unions, union security provisions have reinforced union hegemony at the expense of individual worker freedom.

If enacted, the three pro-worker reforms explained herein would help to properly restore the balance of power between public-sector unions and the government workers they represent, thereby ensuring that unions become more responsive to the needs of their dues-paying members.

