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Solutions for Nevada: **Worker Freedom**

A LAWMAKER'S GUIDE TO EMPOWERING WORKERS IN THE SILVER STATE

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INTRODUCTION

Organized labor’s disproportionate influence over Nevada state politics has resulted in a patchwork of laws and policies which put the interests of government-sector unions over the constitutional rights of individual workers.

These so-called “union security” laws — laws that prioritize union revenues and political power at the expense of workers and taxpayers — deny government workers their fundamental First Amendment rights in multiple ways, including but not limited to:

- The right to vote upon which union represents them
- The right to resign from a union (and thus immediately cease paying dues) without restriction
- The right for non-members to disassociate completely from their workplace union, and instead represent themselves during negotiations with their employer

The U.S. Supreme Court in the 2018 *Janus* case acknowledged that these kinds of laws represent a “significant” infringement on individual freedoms that “would not be tolerated in other contexts.”¹

Nonetheless, these types of union security laws remain deeply entrenched at the state level.

“Union security laws in Nevada deny government workers their fundamental First Amendment rights in the workplace.”

Whereas federal law governs the realm of private-sector collective bargaining, laws governing public-sector labor relations (with the exception of federal-employee unions) are controlled by the states.² Thus, individual states can of their own volition implement appropriate collective-bargaining reforms aimed at empowering government workers.

Accordingly, this report is intended as a primer to educate lawmakers on six specific collective bargaining reforms — each intended to empower individual workers or reduce the degree to which state laws defer to special-interest labor groups — which can be implemented at the state level with majority legislative support:

- 1) Transparency in government-union collective bargaining;***
- 2) Prohibition on so-called “opt-out periods” that restrict when dues-paying members are permitted to withdraw from their union;***
- 3) Prohibition on taxpayer-subsidized “union leave time”;***
- 4) Worker’s Choice in Representation;***
- 5) Mandating decertification for government unions lacking majority support; and***
- 6) Periodic recertification of government unions.***

The proposals are presented in strategic order, based on how likely they are to be implemented in Nevada’s unique political environment.

Where applicable, February 2020 statewide polling results of likely voters will be included to demonstrate current (majority) levels of public support for each specific reform.³

TRANSPARENCY IN COLLECTIVE BARGAINING FOR GOVERNMENT UNIONS

The entire process of government-union collective bargaining is hidden from the taxpaying public.

Background

Nevada's legal requirements for governments to engage in collective bargaining with union leaders specifically exempt these bargaining sessions from public view, per NRS 288.220 and NRS 288.590.⁴

But there is no valid justification to retain the veil of secrecy over labor negotiations in the public sector. As Governor Steve Sisolak pointed out when he was serving as a Clark County commissioner, these are taxpayer dollars at stake and, as such, negotiations should take place in public.⁵

“The public that is ultimately paying this bill has a right to know what’s being negotiated away or not...”

“I think that everybody should be in favor of transparency.”

— Steve Sisolak

Legislation adopted in 2015 requires that a proposed collective bargaining agreement be made available to the public at least three days before a public board votes on it,⁶ but otherwise all collective bargaining activities remain hidden from public view.

Certain union officials in Nevada claim collective bargaining proceedings cannot be subject to the state's Open Meetings Law

because it would undermine negotiations. However, several states that require governments to engage in collective bargaining also require these proceedings to be open.

In Minnesota, where government unions enjoy very strong powers, the state's collective-bargaining law still proclaims: "All negotiations, mediation sessions, and hearings between public employees and public employers or their respective representatives are public meetings."⁷

Likewise, Idaho's collective-bargaining law declares: "All documentation exchanged between the parties during negotiations, including all offers, counteroffers and meeting minutes shall be subject to public writings disclosure laws."⁸

Also, in Texas, the law requires that "A deliberation relating to collective bargaining between a public employer and an association...shall be open to the public and comply with state law."⁹

There is no evidence from these states that collective bargaining has been undermined by transparency.

Management incentives in collective bargaining differ in public and private sectors.

Private-sector business leaders must exercise restraint with regard to labor contracts in order to remain competitive, offering goods or services at prices that customers are willing to pay. In the public sector, however, politicians recognize that government unions can support their election campaigns through donations, volunteers and other efforts. Politicians may seek such support by backing unionization of government workers and compensation packages they know will strain public finances.

Transparency ensures that labor contracts reflect community values.

Given the incentives of political employers to forego restraint at the bargaining table, public oversight is critical. If residents approve of collective bargaining agreements, they will continue to elect the political leaders who agree to them and, if not, they will elect new leaders.

SOLUTION:

Pass a Public Employee Bargaining Transparency Act

Since Nevada’s governments are required to bargain with union officials, lawmakers should recognize the serious fiscal implications of these proceedings. Lawmakers can borrow language from Idaho, Minnesota or Texas or use model language from the American Legislative Exchange Council¹⁰ to bring transparency to collective bargaining.

Alternatively, sample changes to NRS are shown on the following page, as they apply to both state- and local-government collective bargaining:

Polling Results

73% of likely voters expressed support for transparency in collective bargaining by responding “strongly support” or “somewhat support” to the below question:

Nevada’s Open Meetings Law requires government agencies to conduct their business in a public setting, where any member of the public can attend. However, when public employee unions negotiate labor agreements with government employers, the process is exempt from this requirement—meaning the entire negotiation process is kept secret from public workers, taxpayers and the public. Based on this, do you SUPPORT or OPPOSE changing the law to ensure negotiations between public unions and government employers are transparent and open to the public?

Section 1. Chapter 288 of the NRS is hereby amended to read:

NRS 288.220 ~~{Certain}~~ **All proceedings** ~~{not}~~ **required to be open** ~~{or}~~ **and public.** The following proceedings, required by or pursuant to this chapter, are ~~{not}~~ subject to ~~{any}~~ **the provisions** of NRS which require~~s~~ a meeting to be open ~~{or}~~ **and public, and the provisions of NRS which require documents to be made available for public inspection:**

1. Any negotiation or informal discussion between a local government employer and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives.
2. Any meeting of a mediator with either party or both parties to a negotiation.
3. Any meeting or investigation conducted by a fact finder.
4. Any meeting of the governing body of a local government employer with its management representative or representatives.
5. Deliberations of the Board toward a decision on a complaint, appeal or petition for declaratory relief.

Section 2. Chapter 288 of the NRS is hereby amended to read:

NRS 288.590 ~~{Certain}~~ **All proceedings** ~~{not}~~ **required to be open** ~~{or}~~ **and public.** The following proceedings, required by or conducted pursuant to this chapter, are ~~{not}~~ subject to ~~{any}~~ **the provisions** of NRS which require~~s~~ a meeting to be open ~~{or}~~ **and public, and the provisions of NRS which require documents to be made available for public inspection:**

1. Any negotiation or informal discussion between the Executive Department and a labor organization or employees as individuals.
2. Any meeting of a mediator with either party or both parties to a negotiation.
3. Any meeting or investigation conducted by an arbitrator.
4. Deliberations of the Board toward a decision on a complaint, appeal or petition for declaratory relief.

PROHIBITING RESTRICTIVE UNION OPT-OUT PERIODS

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

Background

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.”¹¹ (Emphasis added.)

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.

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.

Nevada Policy 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 fine-print detail, he must continue paying dues for another year.

In this sense, eliminating restrictive opt-out windows would mitigate the effects of such protectionist union 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.

SOLUTION:

Codify the right of workers to decide for themselves, without restriction, if they want to financially support their workplace union

The legislature must pass a law which provides dues-paying union members the right to opt-out of their union, and immediately cease paying dues, ***at any time during the year*** — not just within a two-week window.

Polling Results

72% of likely voters expressed support for prohibiting union “opt-out periods” by responding “strongly support” or “somewhat support” to the below question:

Workers are free to join their workplace union at any time throughout the year. However, many public employee unions limit the ability of workers to drop their membership. Public school teachers, for example, are only allowed to opt out of union membership if they submit a written request to the union between July 1st and 15th of each year. If union members miss that deadline, they are forced to continue paying dues for the following year. Knowing this would you SUPPORT or OPPOSE a law that allows workers to drop their membership at any point throughout the year?

Section 1. Chapter 288 of NRS is hereby amended by adding thereto a new section to read as follows:

Prohibition on employee organization opt-out periods.

State and local government employees shall have the right to immediately cease the withholding of employee organization dues from their wages at any time upon the submission of a request to their state or local government employer.

1. No collective bargaining agreement between a state or local government employer and an employee organization may establish conditions for when employees may join or resign from the employee organization acting as the exclusive bargaining agent of a unit.

(a) Any existing provisions which restrict when a state or local government employee may withdraw membership from an employee organization are invalid and unenforceable by law.

2. An employee organization shall immediately cease deducting dues from any state or local government employee who has requested that his or her membership be withdrawn from the employee organization.

ABOLISHING TAXPAYER-SUBSIDIZED UNION LEAVE TIME

Taxpayers subsidize the political, non-government activities of labor unions that actively lobby against the public's interests.

Background

Should taxpayers be required to subsidize the non-governmental activities — including political activities — of independent labor organizations like the Service Employees International Union?

Nevada state law authorizes government employees to be paid their regular taxpayer-funded salaries for performing non-governmental services for their workplace union.

Taxpayer-funded union work can take the form of attending educational conferences, lobbying elected officials and preparing for collective-bargaining negotiations, but all such activities are undertaken specifically to advance the union's political and financial goals — not those of taxpayers.

This means taxpayers across Nevada — who typically earn less than government employees¹² — are effectively funding the efforts of labor activists whose interests diverge considerably from their own.

And it's costing millions of public dollars.

A 2012 NPRI analysis found that collective bargaining agreements explicitly granted nearly 70,000 hours of paid union-leave time in Clark County alone. Other agreements simply authorized a “reasonable amount” of union leave, without defining that term or setting upper limits. In total, on-the-record costs to Clark County taxpayers approached \$5 million that year.

Guided by that analysis and others, a bipartisan coalition of lawmakers during the 2015 legislative session appropriately sought to minimize the taxpayer impact of union leave.

Senate Bill 241 (2015), however, though rooted in noble intentions, accomplished very little on that front. Instead of prohibiting the practice outright, it merely clarified that union-leave time is permissible if the amount of leave granted by the labor agreement

“is offset by the value of concessions made by the employee organization” during negotiations.

The problem with that approach is unions had historically treated leave time as an asset of value during negotiations. Thus, rather than implementing real, taxpayer-friendly reform, SB241 merely codified the status quo.

Then, during the 2019 legislative session, Democrat-sponsored legislation, Senate Bill 153 — which passed on a strict party-line vote — dispensed of those already-weak restrictions on union leave by repealing the governing statute entirely.¹³ That means the only existing restriction on the amount of taxpayer-funded union leave that can flow directly to unions will be the fiscal restraint that government employers, acting as our stewards of public finances, take with them to the bargaining table.

Unsurprisingly, taxpayers in 2020 continue to be fleeced by leave time. Public records requests have revealed, for example, that Reno firefighters were granted nearly 2,500 hours of union leave at a public cost of \$73,000 for the most recent fiscal year.

Grandiose amounts of leave time likely apply to Reno police officers and members of Sparks’ public-safety unions as well, but unfortunately there’s no way of knowing. According to the city clerks of both jurisdictions, union leave is neither specifically tracked nor recorded for those departments. Apparently, the fact that Washoe County residents are required to fund these special interests doesn’t entitle them to basic information regarding how their tax dollars are being utilized, and to what extent.

But one can imagine what those costs might be by referring again to Clark County, where the Las Vegas Metropolitan Police Department authorized more than 23,000 hours in total leave time for its union employees during Fiscal 2019, costing the public nearly \$2 million.

Absent meaningful reform, taxpayers can expect to foot the bill for unions’ private activities in the years ahead — and likely at an accelerated rate, given the recent authorization of collective bargaining rights via Senate Bill 135 (2019) for Nevada’s 20,000-plus state-level workers.

SOLUTION:

Prohibit the practice of taxpayer-subsidized union leave time

There is no public-policy justification for our elected officials to bargain away public funds for the benefit of politically connected special-interest groups. Taxpayers never should be expected to subsidize the efforts of organizations that lobby against the public's interests.

Lawmakers should affirm their loyalty to taxpayers — not organized labor — by explicitly outlawing publicly-subsidized union leave.

Polling Results

52% of likely voters expressed support for prohibiting the practice of taxpayer-subsidized “union leave” by responding “strongly support” or “somewhat support” to the below question:

Government unions often negotiate “paid union leave time” with government employers. This is a policy that pays certain government employees their normal taxpayer-funded salaries to perform non-governmental services for their union — such as lobbying, political activity, and member recruitment. The Las Vegas Metropolitan Police Department, for example, spent nearly \$2 million paying government employees to perform such private activities for their union in fiscal year 2019. Based on this, would you SUPPORT or OPPOSE efforts to ensure taxpayer dollars are spent on public services rather than the private, non-governmental activities of workplace unions?

Section 1. Chapter 288 of NRS is hereby amended by adding thereto a new section to read as follows:

Employee leave for time spent performing duties or providing services for employee organization.

A state or local government employer may agree to provide leave to any of its employees for time spent by the employee in performing duties or providing services for an employee organization only if the full cost of such leave is paid or promptly reimbursed by the employee organization.

WORKER'S CHOICE IN UNION REPRESENTATION

Non-union employees are forced to accept the union's advocacy as their own in a clear violation of their First Amendment rights.

Background

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.

However, while workers cannot be forced to subsidize the activities of their workplace union, they are nevertheless forced to accept the union-negotiated employment terms and representation, as the union is the only authorized “exclusive bargaining agent” for all workers in the bargaining unit.¹⁴

As a result, the union agreement covers both union and non-union employees alike, even if the non-union employees would prefer to

“Workers who drop their union membership are, nonetheless, still forced to accept the union’s advocacy as their own . . .

“. . . a clear violation of their constitutional right to free speech and free association.”

represent themselves during negotiations or hire somebody else to represent them.

In other words, workers who drop their union membership are, nonetheless, still forced to accept the union's advocacy as their own — violating their constitutional right to free speech and free association.

Under this system, neither union members nor those who “opt-out” are truly content with the status quo. 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.

And non-members are equally unhappy, viewing themselves instead 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. Even further, they are compelled by law to associate with the advocacy of the union— which include, of course, the union's political activities as well as labor negotiations.

It is a system of compulsory representation and, as such, is inherently undemocratic and a clear violation of workers' First Amendment rights. Nobody should be forced to be represented by, or associated with, any organization against their will.

SOLUTION:

Restore the First Amendment rights of workers who drop union membership by allowing them to advocate on their own behalf in negotiations with their employer

Polling Results

52% of likely voters expressed support for allowing non-union workers to represent themselves during contract negotiations by responding “strongly support” or “somewhat support” to the below question:

When a worker opts out of union membership, their workplace union nonetheless still represents them in contract negotiations on things like compensation and work schedule. Based on this, do you SUPPORT or OPPOSE changing the law to allow non-union workers to represent themselves in contract negotiations, ensuring unions only represent workers who decide to continue paying membership dues?

What is needed is a statewide policy of “Worker’s Choice” in Representation. *The suggested statutory changes for such a policy are as follows, per an adaptation of model language from the Mackinac Center for Public Policy:*¹⁵

Section 1. Chapter 288 of NRS is hereby amended by adding thereto a new section to read as follows:

‘Independent bargaining’ defined.

“Independent bargaining” or “to bargain independently” means to bargain between a state or local government employer and state or local government employees with respect to rates of pay, wages, hours of employment, adjustment of grievances

or other terms and conditions of employment without the intervention of an employee organization, bargaining agent, or exclusive bargaining representative.

1. Independent bargaining does not grant any greater or lesser rights or privileges to state or local government employees who have chosen to represent themselves in a unit with an exclusive bargaining representative than those state or local government employees in a unit without an exclusive bargaining representative.

2. Independent bargaining does not grant any greater or lesser duties or obligations for a state or local government employer to state or local government employees who have chosen to represent themselves in a unit with an exclusive bargaining representative than those duties or obligations the state or local government employer owes to state or local employees in a unit without an exclusive bargaining representative.

Section 2. Chapter 288 of NRS is hereby amended by adding thereto a new section to read as follows:

Public employee choice guaranteed.

1. State and local government employees shall have the right to independently bargain in their relations with their state or local government employer.

2. No provision of any agreement between an employee organization and a state or local government employer, or any other public policy, shall impose representation by an employee organization on state or local government employees who are not members of that organization and have chosen to bargain independently. Nothing in any collective bargaining agreement shall limit a state or local government employee's ability to negotiate with his or her state or local government employer or adjust his or her grievances directly with his or her state or local government employer, nor shall a resolution of any such negotiation or grievance be controlled or limited by the terms of a collective bargaining agreement.

3. No provision of any agreement between an employee organization and a state or local government employer, or any other public policy, shall impose any wages or conditions of employment for members of an employee organization which are linked or contingent upon wages or conditions of employment to state or local government employees who are not members of an employee organization.

ENSURING PUBLIC-SECTOR UNIONS MAINTAIN MAJORITY SUPPORT

Many government unions across Nevada lack majority support yet are permitted to continue acting as the exclusive bargaining representative for all employees in the workplace.

Background

Many public-sector unions in Nevada continue to retain their title as the “exclusive bargaining agent” despite the fact they no longer command the support of a majority of their employees.

This defies the spirit of NRS 288.160(2), which reads: “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.)

Current law, however, gives discretion to both government employers [NRS 288.160(3)] and the Employee-Management Relations Board [NRS 288.160(4)] regarding whether to initiate a process of decertification when a union’s majority support is in doubt.

Thus, despite Nevada’s majority-membership requirement, history demonstrates that decertification is rarely, if ever, pursued.

In fact, a recent inquiry with the director of the Employee-Management Relations Board found that he was aware of “no instances where a local government attempted to decertify a union.” Further, the EMRB has operated for years under legal guidance which suggests that it cannot itself initiate the process of decertification, in seeming contradiction to the plain text of the law.

What this means is, unions are not incentivized to improve the quality of their representation — they remain the “exclusive bargaining agent” regardless of how many dues-paying members they represent.

Why should a union without majority support continue to represent an entire bargaining unit of employees?

Union Membership Rates as of Summer 2019

School District	Bargaining Unit	Members	Total	Rate
Clark County	Support Staff	3,634	12,416	29%
Carson City	Support Staff	141	413	34%
Douglas County	Support Staff	125	298	42%
Elko County	Support Staff	81	412	20%
Eureka County	Support Staff	15	32	47%
Lander County	Support Staff	14	55	25%
Lincoln County	Administrators	4	10	40%
Lyon County	Support Staff	187	480	39%
Washoe County	Support Staff	631	2,877	22%
	Administrators	205	466	44%
White Pine	Support Staff	22	93	24%

Data courtesy of individual school districts via requests for public records, 2019

SOLUTION:

Mandate that decertification be pursued when there is evidence to indicate a union no longer commands majority support from the employees it represents

The legislative fix here is simple: Abolish the discretion given to government employers and the EMRB regarding their authority to pursue decertification.

Section 1. Chapter 288 of the NRS is hereby amended to read as follows:

NRS 288.160 Recognition of employee organization: Application for and withdrawal of recognition; exclusive bargaining agent; election.

.....

3. A local government employer may withdraw recognition from an employee organization which:

(a) Fails to present a copy of each change in its constitution or bylaws, if any, or to give notice of any change in the roster of its officers, if any, and representatives;

(b) Disavows its pledge not to strike against the local government employer under any circumstances; **or**

~~[(c) Ceases to be supported by a majority of the local government employees in the bargaining unit for which it is recognized; or]~~

~~[(d)]~~ (c) Fails to negotiate in good faith with the local government employer, if it first receives the written permission of the Board.

4. A local government employer shall withdraw recognition from an employee organization which

ceases to be supported by a majority of the local government employees in the bargaining unit for which it is recognized.

~~[4.]~~ **5.** If the Board in good faith doubts whether any employee organization is supported by a majority of the local government employees in a particular bargaining unit, it ~~[may]~~ **shall** conduct an election by secret ballot upon the question. Subject to judicial review, the decision of the Board is binding upon the local government employer and all employee organizations involved.

~~[5.]~~ **6.** The parties may agree in writing, without appealing to the Board, to hold a representative election to determine whether an employee organization represents the majority of the local government employees in a bargaining unit. Participation by the Board and its staff in an agreed election is subject to the approval of the Board.

Section 2. Chapter 288 of NRS is hereby amended by adding thereto a new section to read as follows:

Withdrawal of recognition by state government employer of employee organization.

1. A state government employer shall withdraw recognition from an employee organization which ceases to be supported by a majority of the state government employees in the bargaining unit for which it is recognized.

2. If the Board in good faith doubts whether any employee organization is supported by a majority of the state government employees in a particular bargaining unit, it shall conduct an election by secret ballot upon the question. Subject to judicial review, the decision of the Board is binding upon the state government employer and all employee organizations involved.

PERIODIC RECERTIFICATION OF GOVERNMENT UNIONS

Under current law, the vast majority of public-sector employees are denied the right to vote on which union, if any, represents them.

Background

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.

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

“According to a 2017 survey conducted for National Employee Freedom Week, the idea [of periodic recertification] received more than 70 percent support among union members.”

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 (as of 2016) actually voted in the original union-organizing election, which occurred decades ago.¹⁶ Nonetheless, the Clark County Education Association continues to represent all current teachers on the basis of that single, decades-old vote.

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 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.*¹⁷

SOLUTION:

A policy of periodic union recertification (e.g., every two years) is the appropriate remedy to restore the injustice of exclusive representation in perpetuity

Section 1. Chapter 288 of NRS is hereby amended by adding thereto a new section to read as follows:

Periodic recertification of employee organization.

No employee organization certified as the exclusive bargaining agent shall continue to represent any state or local government employees without the concurrence of a majority of all state or local government employees in the bargaining unit.

1. A commission will recertify an employee organization in a secret ballot election within three years of this policy being implemented and every even year thereafter.

2. The Government Employee-Management Relations Board shall direct a secret ballot election to certify the employee organization retains support of a majority of all state or local government employees in the bargaining unit.

3. The Board shall promulgate rules to preserve the purity of elections and to preserve the secrecy of the ballot.

(a) The Board shall determine whether elections shall be conducted in-person, by mail, by telephone, by internet-based systems, or by any other means determined by the Board to be fair, confidential, and reliable. The board shall allow represented state or local

government employees to cast ballots for a period of seven days.

(b) The Board may establish a fee schedule from the employee organization participating in elections conducted under this section for the purpose of funding of the elections.

4. Should the employee organization receive affirmative votes from a majority of all state or local government employees employed in the unit the pre-existing certification shall continue. If the employee organization fails to receive affirmative votes from a majority of all state or local government employees employed in the unit, the Board shall decertify the employee organization and the state or local government employees shall be unrepresented.

5. In the event of a termination of certification, the terms of any pre-existing contract between the employee organization and the state or local government employer shall continue and remain in effect for the remaining contract term except for any provisions involving, in any manner, the employee organization including but not limited to union security, dues and fees, and grievance and arbitration.

6. Following the decertification of an employee organization, state or local government employees may certify a new employee organization in accordance with NRS 288.160, NRS 288.520 or NRS 288.525 so long as the state or local government employees are not included with a substantially similar or affiliated employee organization to the decertified employee organization for 12 months from the date of decertification.

7. The Board shall start directing elections to certify majority support of the existing exclusive representatives not less than two and not more than three years after the effective date of this act and every even numbered year thereafter; elections shall occur no earlier than August 1st and no later than December 1st.

Appendix: Polling Results, Explained

Polling performed by:

OH Predictive Insights

3550 N Central Ave, STE. 1900

Phoenix, AZ 85012

A blended phone survey (37.4% live caller; 62.6% interactive voice response) of 1,000 likely Nevada voters was conducted between January 30 and February 4, 2020.

The margin of error for results is +/- 3.1%.

Leading Researcher: Mike Noble

Leading Project Manager: Haylye Plaster

Leading Analyst: Eileen Liao

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Endnotes

- 1 *See Janus v. AFSCME* (2018)
- 2 *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, which granted bargaining rights to local-government employees, was enacted in 1969. Bargaining rights were extended to state-level employees in 2019 via Senate Bill 135. Chapter 288 of the Nevada Revised Statutes governs state and local labor relations.
- 3 Polling conducted by OH Predictive Insights. *See* Appendix.

- 4 NRS 288.220 exempts local-government collective bargaining from Nevada’s Open Meetings Law (NRS 241.010 — 241.040); NRS 288.590 exempts state-level collective bargaining from the same.
- 5 *See* Q & A with Clark County Commissioner Steve Sisolak, *Las Vegas Review-Journal*, May 1, 2011, <https://www.reviewjournal.com/opinion/q-a-with-county-commissioner-steve-sisolak/>
- 6 Nevada Legislature, 78th Session, Senate Bill 158.
- 7 Minnesota Statutes, 179A.14(3).
- 8 Idaho Statutes, 33-1273A(2).
- 9 Texas Statutes, Title 5, Subtitle C, 174.108.
- 10 American Legislative Exchange Council, “Public Employee Bargaining Transparency Act,” 2011.
- 11 Complete copies of all governing public-sector CBAs are available at http://emrb.nv.gov/Resources/Collective_Bargaining_Agreements/
- 12 *See* Fellner, Robert. “Collective bargaining for state workers is about politics, not fairness,” Nevada Policy Research Institute, 13 Feb 2019, <https://www.npri.org/press/collective-bargaining-for-state-workers-is-about-politics-not-fairness/>
- 13 NRS 288.225 was repealed by Senate Bill 153 (2019)
- 14 Per 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.)
- 15 Vernuccio, F. Vincent. “Worker’s Choice: Freeing Unions and Workers from Forced Representation.” Mackinac Center for Public Policy, 2015, <https://www.mackinac.org/archives/2015/s2015-03.pdf>
- 16 Johnson, Ashley. “In the Workplace, Unions Ditch Democracy for Dictatorships.” Nevada Policy Research Institute, February 2016, <https://www.npri.org/commentary/in-the-workplace-unions-ditch-democracy-for-dictatorships/>
- 17 Corder, Lloyd. “Union vs. Right-to-Work States: A Comparison of Members’ Opinions of Union Performance, Management and Practices.” CorCom, Inc. & Carnegie Mellon University, August 2017, https://www.npri.org/docLib/20170815_NEFWStudy2017.pdf



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