

# TOP LABOR REFORMS FOR MICHIGAN

F. Vincent Vernuccio



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“ There may be here and there a worker who for certain reasons unexplainable to us does not join a union of labor. This is his right, no matter how morally wrong he may be. It is his legal right, and no one can or dare question his exercise of that legal right.

- Samuel Gompers, the first and longest-serving president of the American Federation of Labor, December 10, 1918

“ It is impossible to bargain collectively with the government.

- George Meany, former president of the A.F.L.-C.I.O., 1955

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The Michigan Legislature and Gov. Rick Snyder made significant labor reforms in 2011 and 2012, culminating with the passage of a right-to-work law. Other impactful reforms include empowering school boards to design their own teacher evaluation systems and providing them autonomy to make lay off and placement decisions. But there are still many labor reforms that would be beneficial for Michigan workers, taxpayers and consumers.<sup>1</sup>

## 1. SCHOOL EMPLOYEE PENSION REFORM

- Offer only 401(k) style, defined-contribution retirement plans to new school employees.
  - All pension benefits earned by public school employees are constitutionally protected and the state should and must honor these benefits.
  - But the current school employee retirement system is underfunded by \$26.7 billion and consumes over 30 percent of school

1. This is a companion to the Mackinac's Center's Top 20 State-Level Labor Reform Possibilities guide. It highlights, in order of most desirable and achievable reforms for Michigan with an "enacted" section of the reforms already passed into law.

Several enacted reforms have not gone far enough, and for this reason, they are included in both lists.

payroll costs. In order to avoid racking up more unfunded liabilities and reduce the costs of pensions, the state needs to close the system to new hires.

**Enacted Legislation:** [Public Act 487 of 1996](#) closed the defined-benefit pension system to new state employees starting in 1997. However, the act did not include public school employees.

**Current Legislation:** [Senate Bill 102](#) and [House Bill 5218](#) both would close the school pension system to new hires and provide them with defined-contribution retirement plans. Employees could contribute up to 5 percent of their salary to their portable retirement account, and the local school district would have to contribute an amount equal to 80 percent of this.

## 2. WORKER'S CHOICE

- Protects right-to-work from union constitutional challenges which could overturn worker freedom in Michigan and across the country.
- Allows workers under a collective bargaining agreement to opt out and represent themselves individually.
- Enhances right-to-work laws which simply take away a union's ability to get a worker fired for

not paying them. Under right-to-work laws, workers must still allow the union to represent them in contract negotiations and most workplace grievances.

- Removes union “free rider,” a.k.a. “forced rider,” issue.
- Allows individual contracts to include merit pay and other individual worker benefits and protections.
  - Allows managers to give bonuses and other recognition to employees without union consent.
- Protects against “micro-unions” and multiple unions.
  - Does not change collective bargaining in any way. Unions still need 50 percent plus one to organize a workplace.

**Current Legislation:** House Bill 4311 — introduced by Rep. Gary Glenn in 2015 — would allow workers to opt out of their union’s representation. The bill repeals government unions’ duty to represent nonmembers.

Model legislation and more information is available at: [www.mackinac.org/21317](http://www.mackinac.org/21317)

### 3. UNION RECERTIFICATION

- Requires government unions to stand for re-election periodically.
  - Recertification elections should be held every two years.
  - Quorum of all employees in collective bargaining unit must be included, which is greater than a simple majority of those voting.
  - Government unions failing recertification are decertified and may not recertify for a set period of time, at least one year.

This does not prevent other unions from attempting to organize employees.

**Current Legislation:** House Bill 4428 — introduced by Rep. Gary Glenn in 2015 — requires public sector unions to recertify every two years. Unions will need affirmative votes from a majority of workers in the unit. The legislation will need to be accompanied by Michigan Employment Relations Commission rules or amended to provide a system for recertification elections. Recommended system is the Wisconsin example of telephone voting with unions paying fees to cover the costs.

Model legislation and more information is available at: [www.mackinac.org/archives/2016/UnionRecertification2.pdf](http://www.mackinac.org/archives/2016/UnionRecertification2.pdf)

### 4. OFFICIAL/RELEASE TIME PROHIBITION

- Prohibit union contract clauses that force taxpayers to subsidize union work by government employees while on the clock.
  - In many cases union officials are working 100 percent of their time on union issues but still receive a full taxpayer-funded salary.

**Current Legislation:** Senate Bill 280 — introduced by Sen. Marty Knollenberg in 2015 — bans state and local governments, including public school districts, from paying union officials to do union work, on either a full-time or part-time basis. [Senate Bill 279](#) — also by Sen. Knollenberg — bans union officials from adding credits to their public pensions while working for a union and not in the employment of the government. Recent news reports have exposed how recent presidents of the state’s largest teacher union were paid by the union but remained school employees “on loan” for many years, thereby “spiking” their government pension payouts to six-figure amounts.

## 5. UNION TRANSPARENCY/ OPEN MEETINGS

- Private sector unions are required to file financial data with the U.S. Department of Labor. State and local government unions are exempt from federal transparency laws.
- State legislation should be modeled after federal laws and regulations, specifically the U.S. Department of Labor's Form LM-2, which requires full accounting of union finances. LM-2 reports include:
  - Itemized expenditures and receipts of \$5,000 or more broken into meaningful categories, including payer and payees whose aggregate expenditures and receipts total \$5,000 or more.
  - Union officer and employee salaries and expenditures.
  - Full membership totals, assets, incomes and expenditures for the union.
  - Reports are available online at [www.unionreports.gov](http://www.unionreports.gov); states should facilitate similar disclosure websites.
- Allow for open meetings in contract negotiations.
  - Some states exclude union contract negotiations from their open meeting laws or allow one party to close the meeting.
  - Full transparency would open these meetings to the public.

Model legislation and more information available at: [www.mackinac.org/21465](http://www.mackinac.org/21465)

## 6. MERIT PAY

- Allows workers to be paid according to productivity, merit or positive performance evaluations.

- Curtails clauses in many collective bargaining agreements which prescribe the only way a government employee can receive a raise is through seniority (how many years they have worked on the job).

### Enacted Legislation: [Public Act 205 of 2009](#)

required public school districts to adopt some form of merit pay and [Public Act 192 of 2016](#) specifically required the new Detroit Community School District to use a method of compensation that includes job performance and accomplishments.

**Policy Recommendation:** Michigan should go further and require merit pay systems for all state and local government employees and enforce this law. Even though public schools are legally required to pay based on merit, many of them have just ignored the law and continue paying teachers based on seniority.

## 7. PREVAILING WAGE REPEAL/ PROHIBITION

- Often included in Project Labor Agreements, prevailing wage laws generally require state construction contracts to pay union wages. The federal determination of these rates come from survey data which generally skews toward union pay scales. In some states the prevailing wage rate for state projects is explicitly linked to collective bargaining agreements.
  - These artificially increased wage rates can cost taxpayers an estimated 10–15 percent premium on construction costs.
- In 2013, less than 15 percent of construction workers were covered by a union contract. The laws steer government construction contracts to unionized firms at the expense of the 85 percent of workers not under a union contract.

- States cannot affect wages paid on projects using federal money but can prohibit them on projects using only state or local funds.

[Several bills](#) have been introduced to affect this change.

## 8. SECRET BALLOT PROTECTIONS

- Protects workers' rights to a secret ballot in union elections.
- Prohibits organizing new unions via a "card check" election where a union can be organized simply by the collection of signed cards. Cards can be collected in the open and workers may be subject to coercion, intimidation or deception by organizers to obtain their signature.
- Several states, including Arizona, South Dakota, Utah and South Carolina, have passed secret ballot protection acts which apply to both government and private sector unions.
  - The National Labor Relations Board sued Arizona to overturn its secret ballot protection act, but a federal trial court upheld the act.
    - The NLRB declined to appeal the decision.
  - There still may be legal controversy of applying this to the private sector, but as of now it is constitutional.
    - For government employees, a state is within its rights to pass secret ballot protection acts, as such laws are legally uncontroversial.

## 9. CORPORATE CAMPAIGN PROHIBITIONS

- Unions are increasingly targeting employers with public relations smear campaigns.

The goal is to harm a business's bottom line in order for the company to sign a neutrality agreement with the union.

- Neutrality agreements usually contain:
  - A gag order on what the employer can say.
  - Giving over employee contact information before it is mandated by law (which occurs after at least one-third of the employees sign authorization cards).
  - Taking away the secret ballot from workers.
- The first step to decreasing the likelihood of corporate campaigns is a secret ballot protection act, which removes card check as a possibility for an election. Card check is generally the union's top goal in a corporate campaign.
- Other possibilities include state legislation, such as that proposed in Michigan, which protect private sector employee and employer rights under federal law. Any agreement infringing on these rights is null and void and has no legal effect.
  - These rights include:
    - Employer's right to express views on unionization.
    - Employees' right to a secret ballot by employer choice (secret ballot protection act would protect the right of a secret ballot regardless of employer's choice).
    - Confidentiality of employee information to the extent provided by federal law.

**Current Legislation:** [Senate Bill 330 — introduced by Sen. John Proos in 2015](#) — would protect workers' rights under federal labor law from local ordinances or laws, which could be used to assist unions in corporate campaign tactics. [House Bill 4643](#) — introduced by Rep. Gary Glenn in 2015 — would establish legal recourse for targets of illegal union

picketing. Employers could get a court injunction to cease the picketing and unions could be fined \$10,000 per day for violating such an injunction.

## 10. DUES CHECK OFF PROHIBITIONS

- Prohibits the deduction of union dues or fees from government employees' paychecks.
- Unions need to collect payment directly from members and fee payers instead of using taxpayer funded resources for collection.

**Enacted Legislation:** [Public Act 53 of 2012](#) banned using public school resources to deduct union dues. Michigan should expand the reforms of PA 53 to include all state and local government employees as well.

## 11. LAST IN, FIRST OUT PROHIBITIONS

- Protects qualified and high-performing young and new employees from layoffs based exclusively on seniority.
  - Layoffs are instead based on lack of merit or poor performance.
- Helps remove ineffective workers who would have been protected due to their years of service at the expense of newer, better performing workers.

**Enacted Legislation:** [Public Act 102 of 2011](#) prohibits school districts from laying off teachers based simply on seniority and teachers rated more effective than others may not be laid off first. However, most school districts do not evaluate teachers rigorously, resulting in the vast majority of teachers receiving the same effectiveness rating. School districts then fall back on laying off teachers according to seniority, because nearly all teachers are rated the same.

**Policy Recommendation:** Michigan should expand the reforms in PA 102 of 2011 to all state and local government employees and strengthen its enforcement, particularly in public schools.

## 12. EMPLOYEE PRIVACY

- Allow government employees to opt out of giving unions their contact information during an organizing campaign.
  - A similar idea is included in the proposed federal legislation known as the "Employee Rights Act."

## 13. PROHIBITION AGAINST BINDING ARBITRATION

- Current binding arbitration allows a panel of unelected arbitrators to have the final say on public employee contracts.
- Can bind taxpayer dollars without accountability of elections.
- Generally (but not always) these clauses are given in exchange for public employees such as police and fire employees giving up the ability to strike.





# ENACTED LABOR REFORMS IN MICHIGAN

The reforms discussed below have been enacted in Michigan. As noted in the previous section some could be strengthened or expanded.

## 1. RIGHT-TO-WORK

[Public Act 348 of 2012](#) made Michigan a right-to-work state for private sector employees and [Public Act 349 of 2012](#) gave the same rights to public sector employees.

## 2. PENSION REFORM

[Public Act 487 of 1996](#) closed the defined-benefit pension system to new state employees starting in 1997 and these employees were offered defined-contribution plans instead. This has saved the state an estimated \$4 billion in unfunded liabilities. However, the act did not include local government employees or public school employees.

[Public Act 300 of 2012](#) made a number of changes to the defined-benefit school employee pension system. It requires employees hired after September 2012 to choose between a defined-contribution plan or a “hybrid” defined-benefit plan created under Gov. Granholm. Health insurance coverage was eliminated for new hires as well, but they could still set aside 2 percent of their salary into a health savings account that would be matched by school districts. Employees hired between 2010 and 2012 had to choose between keeping their current multiplier and increasing their employee contributions, using a reduced multiplier but keeping their contribution rate level, or they could freeze all current earned benefits and accrue all future benefits in a defined-contribution plan. It also capped the amount school districts have to pay for the system to 24.46 percent of payroll

## 3. MERIT PAY

[Public Act 205 of 2009](#) required school districts to adopt some form of merit pay and [Public Act 192 of 2016](#) specifically required that compensation in the newly formed Detroit Community School District be based primarily on performance.

## 4. DEFINE WHO IS A PUBLIC EMPLOYEE AND SUBJECT TO UNIONIZATION ATTEMPTS

Unions have organized or attempted to organize home daycare providers, home health care workers and graduate research assistants, arguing that these individuals are government employees, because their work is partially funded by government subsidies.

[Public Act 76 of 2012](#) bans unionization of independent contractors paid in part with government subsidies. [Public Act 45 of 2012](#) which limits unionization of graduate research assistants. [Public Act 414 of 201](#) exempts college athletes from unionization.

## 5. PROJECT LABOR AGREEMENTS REPEAL/ PROHIBITION

Project Labor Agreements are provisions in contracts which essentially require the use of unionized or union-affiliated construction firms to ensure “labor peace” during the project.

[Public Act 238 of 2012](#) prohibits project labor agreements in state, school district and local municipal construction projects.

For greater detail or questions please contact the Mackinac Center for Public Policy at 989-631-0900 or email the author at [Vernuccio@mackinac.org](mailto:Vernuccio@mackinac.org).



“ Organizations of Government employees have a logical place in Government affairs ...

All Government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of Government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with Government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are governed and guided, and in many instances restricted, by laws which establish policies, procedures, or rules in personnel matters.

Particularly, I want to emphasize my conviction that militant tactics have no place in the functions of any organization of Government employees. Upon employees in the Federal service rests the obligation to serve the whole people, whose interests and welfare require orderliness and continuity in the conduct of Government activities.

This obligation is paramount. Since their own services have to do with the functioning of the Government, a strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of Government until their demands are satisfied. Such action, looking toward the paralysis of Government by those who have sworn to support it, is unthinkable and intolerable.

- Franklin D. Roosevelt letter to Luther C. Steward, President, National Federation of Federal Employees, August 16, 1937



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