



TOP 20

State-Level Labor Reforms

F. Vincent Vernuccio

**MACKINAC CENTER**
FOR PUBLIC POLICY

**WORKERS FOR
OPPORTUNITY**

Let's
Tog

“ 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

TOP 20

State-Level Labor Reforms

F. Vincent Vernuccio

1 Janus Compliance

- The U.S. Supreme Court in *Janus vs. AFSCME* ruled that everything government unions do is political, and public employees have a First Amendment right to choose whether or not to pay them. This essentially gave right-to-work protections to all public employees across the country. The Court also ruled that public employers must have evidence of affirmative consent before dues can be collected from an employee and given to a union. States need to be in full compliance with the *Janus* decision, and the following are several ways states could address this issue:
 - Evidence of opt-in
 - To comply with the *Janus* decision, public employers must have evidence of affirmative consent before collecting dues and giving them to unions. State governments should require all government employers to possess evidence of such consent before they deduct any dues from an employee's paycheck and remit it to a union. This can be done at the state level with legislation covering all public employees or through executive action for just state employees. Attorneys general can also show how states can comply through advisory opinions. Local governments could also take action independent of the state by issuing new rules of payroll deductions.
 - The opt-in evidence must be timely, dating from after June 27, 2018, the date of the *Janus* decision, and it should be renewed periodically. It should be submitted directly to the employer and contain a disclaimer informing the employee they are waiving their First Amendment rights. Additional safeguards, such as multifactor authentication, are also recommended.
- Protection against anti-*Janus* legislation or contract provisions
 - Some states and unions have included contract provisions or even legislation to trap public employees into paying dues. These can be prevented by passing legislation to protect public employee rights, including:
 - Banning "opt-out windows:" This will ensure that public employees can opt-out at any

time and do not need to wait for an arbitrary date to resign their union membership and disassociate themselves from the union.

- Prohibition against captive audience meetings or grant equal access: Some states are requiring public employees to sit through union sales pitches in order to begin or continue their government employment. This unfairly favors union interests and should not be allowed. An alternative approach would be to only allow a union to try to sign up public employees during work hours if the same opportunity is available to other groups and if employees are informed of their right not to join.
- Protect public employee personal privacy and ensure that they understand how to exercise their rights: Prohibit the automatic dissemination of public employee personal information such as private phone numbers, emails, or home address to unions or other entities unless explicitly consented to by the employee. Public employees should be informed of their rights regarding union membership through their professional contact information that is made available to the public.

2 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 working 100% of

their time exclusively on union issues receive a full taxpayer-funded salary

- Protects against “anti-Janus” legislation of forcing public employers to pay for union release time.

3 Wisconsin Bargaining Reforms

These reforms curtail government unions’ bargaining privileges. They essentially limit collective bargaining to wages only and limit salary increases to the rate of inflation, unless the raises are put before voters via referendum. The main package of reforms included:

- Pension reforms:
 - Government employees pay 50% of their annual pension payment. In 2011 this was 5.8% of their salary.
- Health insurance contributions:
 - State employees contribute 12.6% of the average cost of annual premiums.
- Limit collective bargaining to wages only:
 - Wage increase cannot exceed the rate of inflation without a referendum.
 - Unions cannot bargain for monopolies on benefits plans. Union-run health insurance plans and other benefit plans need to compete with the private sector. This resulted in reduced costs for state and local governments.
 - “Last in, first out” practice of basing layoffs on seniority instead of merit is prohibited.
- Union recertification:
 - Require annual vote of employees to determine if they’ll retain union representation — requires votes

from 50% plus one of all employees in bargaining unit.

- Election is held via phone-in vote.
- Dues check off illegal:
 - Employers cannot be the bill collector for union dues.
- Repeals authority for home health care and day care workers to collectively bargain with the state.

4 Union Recertification

- Requires government unions to stand for re-election periodically.
 - Recertification elections should be held annually or every two, three or four 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.

5 Worker's Choice

- 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 state. Unions still need 50% plus one to organize employer.
- Protects against "anti-Janus" legislation of forcing public employees to accept and pay for union representation even if they have opted out of membership.

6 Right-to-Work

- Forbids unions from getting a worker fired for not paying them.
- Does not change collective bargaining in any other way.
- May provide an important signal to job creators that the state is not beholden to special interests and may help in encouraging job, wage and population growth.
- Only applies to private sector unions because all public employees have right-to-work, thanks to the U.S. Supreme Court's Janus v. AFSCME decision.

7 Teacher Liability Insurance

- A concern for some teachers is the potential of being the subject of a lawsuit. In fact, teacher unions make providing liability insurance one of their key selling points to try to get teachers to join them. All teachers, regardless of their union status, should have the protection that liability insurance provides.
- States like Tennessee and Florida provide professional liability insurance to teachers, ensuring them peace of mind so they can focus on educating children.
- Groups like the Association of American Educators and the Christian Educators Association International also provide teacher liability insurance and generally for much less than union dues.
- These plans are relatively inexpensive, meaning states could easily afford to provide this benefit for all teachers, giving them peace of mind to focus on their job.

8 Pension Reform

- Change defined-benefit pension plans to a 401(k) style, defined-contribution plan.
 - This may include providing an annuities option to guarantee payouts for workers with no long term liability for employers. Employers pay for the annuity and do not have any future obligation to employee.
 - Possible pension reforms affecting differing groups of employees in order of difficulty:
 - Putting all new hires in a defined-contribution plan: easiest.

- Putting all new hires and existing employees in a defined-contribution plan while freezing defined-benefit pensions for current employees. Letting current employees keep their promised benefits but not allowing any more to accrue: moderate.
- Buying out defined-benefit pensions and/or converting to a defined-contribution plan for already accrued benefits: more difficult.
- Clawing back existing defined-benefit pensions: most difficult.
 - Possibly illegal without bankruptcy.

- Smaller changes can include limiting double dipping (employees receiving more than one full government pension or collecting a pension from one government job while currently working another) and other methods of pension spiking (employees increasing overtime in their last years on the job to inflate their salary and receive larger pensions.)

9 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).

10 Protection for Gig Economy Workers, Independent Contractors and Freelancers

- States such as California are attacking entrepreneurship and innovation in the economy. Legislation there restricts the flexibility gig economy workers, independent contractors and freelancers enjoy by forcing them into a regulatory system meant for full-time employees, just so unions might more easily unionize them.
- Entrepreneurs should be protected by making clear they are not employees and allowing them to earn a living in a way that suits them best.

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.

12 Specification of Who is Not a Public Employee

- In the last decade, several states defined people taking care of sick friends and relatives, as well as students and small business owners, as public employees subject to unionization.
 - Generally, a group is redefined by a union-friendly politician or by a legislative act and non-descript ballots are sent to the new “public employee” unit. Most throw away the ballot, but a few union supporters return it. With a very small percentage of the group voting for the union, the labor organization is able to organize the unit and start collecting dues.
 - Pushback against this practice includes lawsuits, executive orders and legislation.
 - Legislation would specifically define the following groups as not public employees, not subject to unionization, or ineligible for mandatory dues:
 - Home health care workers receiving taxpayer assistance to take care of the sick
 - Most are taking care of sick family and friends.
 - In 2014 the U.S. Supreme Court in *Harris v. Quinn* ruled mandatory dues for this practice illegal.
 - In 2019 the U.S. Department of Health and Human Services issued a rule prohibiting states from deducting dues from homecare subsidy checks.
 - Home day care workers receiving taxpayer assistance to take care of children from low-income families
 - Many run businesses out of their homes and consider themselves small business owners.
 - In 2014 the U.S. Supreme Court in *Harris v. Quinn* ruled mandatory dues for this practice illegal.
 - Students
 - Unions have tried to organize student athletes and graduate assistants.

13 Arizona Model of Government Collective Bargaining

- Arizona does not allow collective bargaining per se, but allows for government unions to engage in a “meet and confer” bargaining process.
 - “Meet and confer” allows unions to meet and have a discussion with government employers. There may be a possibility for litigation or political pressure from the process.
 - Some are granted by executive order.
- While “meet and confer” is not technically as strong as collective bargaining, critics of the process note that “meet and confer” produces many of the same issues as traditional government collective bargaining.
 - Full membership totals, assets, incomes and expenditures for the union.
 - Reports are available online at 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.
 - An alternative may be made to broadcast the meeting via the internet, public access television or other means to ensure the public can witness the negotiations but would not be able to disrupt the meeting.

14 Union Transparency / Open Meetings

- Private sector unions are required to file financial data with the U.S. Department of Labor. Many government unions with only public employees 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.

15 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 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.

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 this right regardless of employer's choice).
 - Confidentiality of employee information to the extent provided by federal law.

16 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

17 Project Labor Agreements Repeal / Prohibition

- Project Labor Agreements are provisions in public construction contracts that essentially require the use of unionized or union-affiliated construction firms to ensure "labor peace" during the project.
 - Union affiliation can include: workers recruited out of union hiring halls, employers to pay into union-run benefits plans regardless if the workers would receive the benefits, and abide by union work rules.

18 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% premium on construction costs.
- In 2013, less than 15% of construction workers were covered by a union contract. Laws such as Prevailing Wage and Project Labor Agreements steered government construction contracts to unionized firms at the expense of the 85% of workers not under a union contract.
- States cannot affect Project Labor Agreements and Prevailing Wage on projects using federal money but can prohibit them on projects using solely state and local funds.

19 Prohibition Against Binding Arbitration

- 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.

20 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. ■

Note: Any federal legislation referenced is intended for private sector workers and those covered under the National Labor Relations Act. State legislation may be modeled after federal proposals but unless otherwise noted will only apply to state and local public sector workers.

Descriptions in this outline are only intended as broad explanations of state labor issues. For greater detail or questions please contact the Mackinac Center for Public Policy at **989-631-0900** or email the author at **Author@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



F. Vincent Vernuccio is a senior fellow at the Mackinac Center for Public Policy. He served as the Mackinac Center's director of labor policy between 2012 and 2017. Vernuccio is a graduate of the Ave Maria School of Law in Ann Arbor, Mich. Under President George W. Bush he served as special assistant to the assistant secretary for administration and management in the Department of Labor.



The Mackinac Center for Public Policy is dedicated to improving the understanding of economic and political principles among citizens, public officials, policymakers and opinion leaders. For more information, call 989-631-0900, or see our website, www.mackinac.org.

Additional copies of this report are available for order from the Mackinac Center.



Workers for Opportunity works alongside coalition partners, lawmakers, administrations and other state stakeholders to advance workplace freedom for employees across the country by promoting meaningful and forward-thinking post-Janus labor reform policies anchored by key policy principles. Learn more about Workers for Opportunity at www.workersforopportunity.org.