



How U.S. Labor Laws Have Divided Public and Private Sector Workers and Undermined Union Clout

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Labor unions in the United States have declined sharply from their high point in the mid-20th century. In 1953, nearly a third of private sector workers were members of unions, but now it is less than seven percent. In politics, labor leaders still have a seat at the table, but enjoy much less clout. The one area where organized labor remains strong is in the public sector. More than a third of public employees are enrolled in unions and public sector unionists now outnumber those in the private sector.

How has America arrived at a point where “Big Labor” and blue collar unionists are largely a thing of the past, while white collar government employees are the new face of organized labor? Much of the answer lies in the bifurcated nature of modern U.S. labor laws.

A Partial Breakthrough to National Labor Rights

In 1935, the Wagner Act formally guaranteed for the first time the right of employees to form and join unions and collectively bargain with their employers. But in a little discussed or debated provision, public sector employees were explicitly excluded from the new protections. U.S. labor law became bifurcated, with sweeping and long-term consequences. Basic private sector rights were legally enshrined at the national level, but each state and locality was left to decide what rights, if any, would be granted to public employees.

Underpinned by the Wagner Act, private sector unions doubled their enrollments as a share of the labor force in just four years after 1935. After that, national laws became less supportive. In 1947, anti-union provisions were enacted by Congress. And those were the last major national-level changes, as anti-union forces soon realized that they could weaken unions simply by blocking updates. The Wagner Act’s provisions grew increasingly out of date as employers became more adept at resisting union organizing. Absent harsh punishments, employer hostility to unions has grown, and illegal tactics are used with little fear of prompt or serious legal consequences. Obstructionist levers built into the U.S. governing system, particularly the Senate filibuster, have made it easy for anti-union interests to block national reforms. Private sector unions have hemorrhaged members in part due to industrial transformations, but also because outdated national labor laws make it very difficult for unions to organize new members.

As private sector unions initially grew, public sector unions had to fight for legal recognition and protection in every state and locality across the country. Efforts to win mini-Wagner Acts only truly gained momentum in the 1960s and 1970s, when an explosion of public sector collective bargaining laws led to dramatic boosts in union enrollments. But legislative reforms and enrollment gains for public sector unionists happened only in some states and were never backstopped by any national statute like the Wagner Act. In addition, just as public sector union gains were gathering steam, they were cut short by the oil shocks and state budget crises in the late 1970s. After that came the conservative backlash against governments everywhere.

The Consequences of Legal Bifurcation for Unions and Working Americans

In the long run, separation of private and public sector labor law has undercut the U.S. labor movement as a whole in several ways.

- **Union surges happened out of sync.** Public sector unionization gained steam only at the end of the period of private sector union growth – too late to exert unified pressure for national labor law overhauls before the economic crises of the late 1970s and the subsequent rise of a new and powerful conservative movement committed to weakening organized labor.
- **Legal bifurcation exacerbated regional unevenness.** If public sector workers had been included in the Wagner Act, they might have built unions in hostile regions more readily than private-sector workers,

because public employers would have faced greater constraints on all-out union resistance. Instead, public sector unions ended up making gains largely in states with established private unions. To this day, organized labor's paltry presence in many southern and southwestern states means that the sixty votes to break Senate filibusters are out of reach.

- **State-level rights are easier to undo.** The Wagner Act created national rights hard to overturn altogether, but the state-level rights of public sector employees have proven vulnerable, as demonstrated by recent rollbacks in Wisconsin, Ohio, Michigan, Indiana and beyond. State-level protections that once helped public unions grow amid set-backs for private unions are now being completely dismantled, even in states that were once union strongholds.

Future Prospects

Public sector union growth in the 1960s and 1970s slowed the decline of overall U.S. union strength, but that is no longer true. Now public sector unions are under attack and face decline, just like private sector unions after the 1970s.

Looking back, we can see that bifurcations in U.S. labor law have undercut the growth and clout of organized labor, with harmful consequences that should concern all Americans. As studies by Bruce Western, Jake Rosenfeld, and others have demonstrated, strong unions help boost wages and reduce economic inequality, even for workers who are not members. In the political sphere, a stronger labor movement might have helped block tax cuts benefitting the rich or worked to bring about responses to the 2009 recession that benefitted ordinary Americans more than just the very rich and the bankers who sparked the crisis in the first place.

What can now be done to strengthen U.S. organized labor? New steps must include enhanced legal protections for union organizing and collective bargaining – *full national rights for both private and public sector workers*. Reforms will not happen without the sorts of public protests and workplace actions that American workers mounted to win earlier legal gains – and that we now see among fast food workers and Wal-Mart employees. But today's workers and surviving unions cannot fight alone. Social justice groups, legislators, and the broad American public should recognize that a strong, vibrant labor movement is a worthy cause we should all get behind and support with the full force of America's national labor laws.

Read more in Alexis N. Walker, "The Distinct Paths of Public and Private Sector Unionization." *Studies in American Political Development* (under review).