2023

BUILDING WORKER POWER IN THE STATES

COMMUNICATIONS WORKERS OF AMERICA

INTRODUCTION:

For decades, even as workers have increased their skills and become more productive, wages have stagnated for workers across the economy. Even while overall productivity has increased by more than 60% since the late 1970s, average real hourly wages have barely changed since then. In fact, the average S&P 500 company's CEO-to-worker pay ratio is now 324-to-1.

Much of the reason for this stagnation is a decline in union density and overall worker power. The stagnation of wages and increased income share going to the wealthiest few has taken place at the exact same time that union density has declined as a result of increasingly aggressive union-busting tactics. The Economic Policy Institute estimates that the erosion in collective bargaining explains about one-third of the increase in income inequality in recent decades.[1]

Unfortunately, the National Labor Relations Act and other federal laws have proven to be inadequate to combat the union-busting tactics that have become prevalent across industries and across the country. The *Protecting the Right to Organize (PRO) Act*, a comprehensive reform law to strengthen worker rights to organize and bargain, has passed the U.S. House of Representatives twice in recent years, but due to the longstanding anti-democratic Senate filibuster rule and a substantial number of anti-worker senators, the PRO Act has not yet been enacted into law.

While federal law must ultimately be changed to protect workers across the country, state and local governments also have a number of tools available to them to strengthen worker rights. These policies have the potential to raise wages and benefits, strengthen worker dignity, voice and health safety on the job, and help reverse the increasing income inequality that has harmed workers and our economy for many years.

Numerous tools are available for state and local governments to protect and empower workers. This report summarizes some of the key policies that would help build worker power for decades to come.

[1] https://www.epi.org/publication/charting-wage-stagnation/

PROTECTING WORKERS' FREE SPEECH ON THE JOB

Problem: When workers exercise their right to join a union, they create a workplace environment of shared power where they are able to negotiate higher wages, better benefits, and safer working conditions. Most employers oppose the power shift that happens when workers decide to join a union. As a result, they often engage in union busting activities to discourage workers from unionizing. They do this by hiring union-busting consultants and requiring workers to attend mandatory captive audience meetings.[2] In most cases, they likewise have the right to hold mandatory meetings on a wide range of political or religious matters that likewise should be decided by workers themselves–not force-fed by bosses.

In some of these meetings, workers are forced to listen to anti-union propaganda in an effort to coerce them out of signing union authorization cards, talking to union representatives, and continuing to organize themselves. Under current law, workers who refuse to attend these meetings can be fired by their employers.

Solution: Implementing a ban on mandatory meetings on political or religious matters can prevent employers from using captive audience meetings as a means to intimidate and discourage workers from forming a union or exercising any other political or religious beliefs. Putting a stop to this coercive practice would allow workers the opportunity to refuse to attend captive audience meetings without fear of retaliation from the company.

Model Bills:

- Connecticut S.B. No. 163: Prohibits an employer from coercing any employee into attending or participating in a meeting sponsored by the employer concerning the employer's views on political or religious matters. Further, under this law, an employer cannot discipline, discharge, or penalize an employee or threaten to do so because the employee refuses to attend employer-sponsored meetings, listen to speech, or view communications primarily intended to convey the employer's opinion about religious or political matters, including decisions to join labor organizations.
- Oregon Senate Bill 519: Prohibits an employer from taking adverse employment action against an employee who declines to attend a meeting or participate in communication concerning the employer's opinion about religious or political matters.

[2] 5 Common Union-Busting Tactics https://www.laborlab.us/5_common_union_busting_tactics

PROTECTING THE RIGHT TO STRIKE

Problem: Under the National Labor Relations Act, workers have a fundamentally protected right to strike. This right is critical in enabling workers to fight for decent working conditions, safety on the job, and to protect hard-earned pay and benefits. However, a significant problem facing workers who need to strike to protect their rights is that they are generally ineligible to collect unemployment.[3]

Although workers are legally allowed to strike, the financial burden of striking can effectively allow employers to starve workers back to work in hazardous or otherwise horrible conditions. Companies understand the economic impact that striking has on workers, and they use it and their excessive wealth to their advantage, often forcing them to return to the workplace under the same troubling conditions for which they initiated the strike.

Solution: Workers who are forced to go on strike to protect themselves and their livelihoods should not be denied unemployment insurance simply because of why they are off the job. Enabling workers on strike to collect unemployment insurance would ensure that this right is protected in practice and that workers would get a fair shake.[4] Companies would no longer be able to use the threat of a sudden and complete stoppage in pay to force workers to stay on the job under terrible conditions.

Model Bills:

- New York S. 7310 reduced the amount of time that striking workers must wait before receiving unemployment benefits from seven weeks to two weeks.
- California A.B. 1066 would restore eligibility for unemployment benefits after the first 3 weeks of a trade dispute for an employee who left work because of the trade dispute. The bill would also codify specified case law that holds that employees who left work due to a lockout by the employer, even if it was in anticipation of a trade dispute, are eligible for benefits.

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[3] Recently Passed New York State Law Reduces Waiting Period for Strikers to Receive Unemployment Benefits
https://www.huntonlaborblog.com/2020/03/articles/employment-policies/recently-passed-new-york-state-law-reduces-waiting-period-for-strikers-to-receive-unemployment-benefits/

[4] Fear at work
https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/

PROTECTING PUBLIC SECTOR WORKERS

Problem: For decades, the rights of public sector workers have been under attack. In particular, the Supreme Court decision in *Janus v. AFSCME* severely undermined public-sector union membership by ruling that non-union public service workers could not be required to pay union dues.[5] This corporate-backed partisan ruling was designed simply to weaken the strength of organized workers in the public sector.

But the problem of inadequate protections for public sector workers also goes far beyond *Janus*. Under current law, there are no federal protections for state and local public service workers to join a union.[6] Public sector workers are not covered by the National Labor Relations Act, and thus they often lack sufficient (or any) right to negotiate with their employers. Even in states that nominally provide collective bargaining rights for public sector workers, severe limitations, such as severe restrictions on which terms and conditions of employment are subject to bargaining, the lack of a right to strike, or onerous conditions for workers to maintain their unions mean that workers can't effectively protect their rights. This has resulted in lower wages and worse working conditions for millions of public servants.

Solution: Providing stronger protections for public sector workers to collectively bargain is a crucial step in strengthening their ability to make improvements on the job. When public service workers have the freedom to negotiate the term and conditions of their employment free from coercion, they can secure fair compensation for the work and resources that they provide to the communities they serve.

Model Bills:

- New York Public Employees' Fair Employment Act grants public sector employees the right to organize and require state and local governments to negotiate with and enter into written agreements with unions representing public sector employees. Additionally, this law encourages public employers and unions to agree upon procedures for resolving disputes. This law also creates a public employment relations board to assist in resolving disputes between public sector employees and public employers.
- New Jersey Employer-Employee Relations Act gives public sector employees the right to union representation, as defined in the National Labor Relations

[5]Why Janus V. AFSCME Is A Threat To All Working People https://www.afscme.org/blog/why-janus-v-afscme-is-a-threat-to-all-working-people
[6] About the Public Service Freedom to Negotiate Act https://www.freedomtonegotiate.org/about-the-bill/

Act. Further, this bill establishes a division of public employment relations for the purposes of determining negotiating units, elections, certifications and settlement of public employee representative and public employer disputes and grievance procedures.

ENDING TAX BREAKS FOR UNION BUSTING

Problem: Workers across the country are organizing at unprecedented levels because they want a voice in their workplace. However, instead of respecting workers' right to organize, employers are spending huge sums engaging in anti-union campaigns. Research by the Economic Policy Institute (EPI) recently found that employers spend roughly $340 million a year on union avoidance consultants whose purpose is to defeat union organizing campaigns.

Currently, our tax code rewards companies for opposing workers' labor rights. Money spent on companies' anti-union campaigns can be deducted as ordinary and necessary business expenses. This includes money spent on, for example, captive audience meetings, hiring anti-union consultants to lead union busting campaigns, recruiting permanent striker replacements and defending unfair labor practices. Taxpayers should not have to subsidize anti-union activity by employers.

Solution: Unions and collective bargaining can help address many of the socioeconomic issues facing the United States by raising workers' wages, closing pay gaps, reducing economic inequality, promoting safe workplaces, and increasing workers' democratic voice. Policymakers should ensure that monies spent on anti-campaigns by employers are not deductible as an ordinary business expense.

Model Legislation: H.R. 8448/S. 4192, No Tax Breaks for Union Busting Act. The bill ends corporations' current ability to claim a tax deduction for their anti-union campaigns by classifying their interference in organizing campaigns as political speech under the tax code and therefore not tax deductible.

STRENGTHENING SOLIDARITY IN THE WORKPLACE

Problem: Misleadingly named"right-to-work" laws are designed to take away rights from working people and protect employers rather than employees. Their true purpose is to limit the ability of unions to bargain for better wages, benefits, and working conditions -- further tilting the balance in favor of multinational corporations at the expense of working families. Many "right-to-work" laws were the product of white supremacist and pro-segregationist elements and were enacted to divide workers on racial lines.

So-called "right-to-work" laws prohibit employers and unions from entering into agreements that require every worker covered by a contract to pay for their share of the costs of work done on their behalf by the union. By law, unions must represent every worker in the unit equally -- but in so-called right-to-work states, unions are prohibited from ensuring that all workers pay their fair share. This means that some members reap the benefits the union provides without sharing the cost, making it harder for organized labor groups to sustain themselves financially and undermine collective bargaining.

Currently, more than half of states have some sort of so-called right-to-work law on the books. Numerous studies have found that these states have lower wages, higher poverty rates, lower rates of health insurance coverage, reduced economic growth, and higher workplace safety violations. For example, in states with so-called right-to-work laws, workers make an average of $8,413 less than workers in states without these laws. Additionally, the rate of workplace deaths is 50% higher in states with these laws.

Solution: Repeal of so-called "right-to-work" laws would unrig the rules against working families. By ending "right-to-work," more workers would benefit from unions and have access to the higher wages, benefits and working conditions they provide.

Model Bills:

- Virginia HB 1755 (2021)
- Michigan HB 4033 (2019)

ENABLING WORKERS TO KEEP THEMSELVES SAFE ON THE JOB

Problem: Over the years, attacks on worker rights have meant that millions of workers are now left without a union to bargain or provide expertise over health and safety matters.

Since the passage of the Occupational Safety and Health Act (OSHA), workplace safety and health conditions have improved. Yet, too many workers remain at serious risk of injury, illness or death as chemical plant explosions, major fires, construction collapses, infectious disease outbreaks, workplace assaults and other preventable workplace tragedies continue to occur. According to a report by the AFL-CIO, in 2020:

- 340 workers died each day from hazardous working conditions.
- 4,764 workers were killed on the job in the United States.
- An estimated 120,000 workers died from occupational diseases.

Solution: Workers have found that one of the most effective ways to improve health and safety conditions at the workplace is to establish a joint labor-management health and safety committee so that they have a meaningful say in helping keep their workplace safe. A joint labor-management health and safety committee consists of both workers and management representatives, who meet in a structured way to reduce the risk of workplace illnesses and injuries and resolve health and safety concerns in an orderly way.

Committees are tasked with communicating potential hazards that may cause injury or illness. Since workers are on the floor of the worksite, they are able to notice and identify hazards that could cause injury or illness. As a committee, they can perform functions such as workplace inspections, accident investigations, records review, chemical and equipment monitoring, etc.

Model Bills:

- NY HERO Act Sec. 2 (enacted in 2021). Allows employees at private employers with at least ten employees to form a workplace safety committee that are co-chaired and co-staffed with nonsupervisory workers. Workers on the committee have to be chosen by the workforce and their representatives, not by the employer. The committee must meet within certain time periods and employers have to respond to committee concerns in writing.

- Oregon Rule 437-004-0251 requires employers to have safety committees that meet at least monthly and establishes protections for workers who serve on those committees or report problems

BANNING MANDATORY OVERTIME

Problem: Workers are working longer hours for less money and the lack of overtime protections has played a part in the decline of wages and living standards. Rather than raising wages, hiring and training new employees, employers have opted to rely on their existing workforce to work more hours, even if it meant paying overtime.

However, mandatory overtime affects more than just a worker's wages; it affects their families, communities, patients, customers, and employers. Longer work hours means less time to destress from work, to spend with their families, to parent, to go to school or to participate in other activities outside of work. This leads to increased risk for accidents and injuries on the job. Research shows the short-term benefits that make overtime attractive to employers, may in the longer term create offsetting harm to an organization by decreasing quality, increasing mistakes, and reducing productivity. For example, studies have shown that staff nurses were three times more likely to make an error and critical care nurses doubled the risk of making an error when working 12.5 or more hours.

Solution: Workers who are forced to work excessive overtime may be too stressed and tired to perform crucial job functions. Congress recognized the unfairness and dangers of forcing workers to work all day and all night, but by using mandatory overtime over and over again, companies have figured out a way to get around this core protection that ensures decent jobs and decent lives for workers. States must ban the practice of utilizing mandatory overtime as an alternative to hiring and training new employees at the expense of overworking their existing workforce.

Model Legislation:

- Ohio HB 163, to prohibit mandatory nurse overtime. This bill prohibits a hospital from requiring a nurse to work overtime as a condition of continued employment.
- New York Senate Bill 8063A / Assembly Bill 8874B. The legislation amends the labor law, in relation to restrictions on consecutive hours of work for nurses.

PROTECTING WORKERS' TAX BENEFITS

Problem: For years, our tax code has benefited multinational corporations and the super-wealthy at the expense of working people. For decades, the deduction on union dues and other employment-related expenses was a below-the-line, itemized deduction, so only some workers could actually deduct their dues. Workers could only deduct the portion of such expenses exceeding 2 percent of their income—and only if they did not claim the standard deduction.

This already flawed tax code was only made worse in 2017 through the passage of the federal Tax Cuts and Jobs Act. This law eliminated tax deductions for unreimbursed employee expenses, including union dues. The passage of this law has taken money out of the pockets of hardworking families and weakened an already broken tax code that provides more support for corporations than workers.

Solution: Restoring and strengthening tax deductions for unreimbursed employee expenses and union dues is an important step toward helping working families make ends meet. Just as corporations can deduct business expenses, workers should be able to deduct the cost of the expenses that they incur as they work to build better lives for themselves, their families, and their co-workers. Tax-deductible union dues make dues less expensive and send a signal to workers that the government believes that workers deserve the same respect afforded to corporations and that union dues are a worthwhile expense.

Model Legislation: Maryland Legislature House Bill 172 amended the state tax code by providing a subtraction modification under the Maryland income tax for certain union dues paid during the taxable year. This will expand tax benefits for workers who choose to exercise their right to join a union.

ENDING MISCLASSIFICATION OF WORKERS

Problem: Misclassification is a serious and persistent problem in many industries nationwide, including home care, janitorial, trucking, delivery, construction,

maintenance and repair, personal services, hospitality and restaurants and, more recently, in rapidly growing app-dispatched jobs. A 2000 study commissioned by the Department of Labor found that between 10% and 30% of audited employers misclassified workers and that up to 95% of workers who claimed they were misclassified as independent contractors were reclassified as employees following review.

Too many companies intentionally misclassify their workers as independent contractors to deprive them of rights and protections under federal and state labor and employment laws, including wage and hour protections, anti-discrimination protections, workers' compensation, unemployment benefits, and the right to organize. Additionally, misclassification strains federal, state, and local budgets by robbing unemployment insurance and workers' compensation funds of billions of much-needed dollars, and reducing federal, state and local tax withholding and revenues.

Solution: To combat misclassification, states should adopt the ABC test to determine employee status. The ABC test establishes a presumption that an individual performing services for an employer is an employee, not an independent contractor, unless the employer can establish three factors:

> (A) The work is done without the direction and control of the employer;
>
> (B) The work is performed outside the usual course of the employer's business;
>
> (C) The work is done by someone who has their own, independent business or trade doing that kind of work.

About half the states currently use an ABC test under their state unemployment insurance law and a few other states use an ABC test under their state wage and hour law. Federal and state policymakers should adopt the ABC test in their labor and employment laws to ensure workers are not misclassified, and are covered by important workplace rights and protections.

Model Legislation:

- California AB 5 (2019). This law uses the ABC test to define who is an employee for purposes of a broad range of state employment laws.

- H.R. 842 / S. 420, Protecting the Right to Organize (PRO) Act. The legislation uses the ABC test to determine who is an employee for purposes of the NLRA.

PROTECTING WHISTLEBLOWERS

Problem: Workers are protected under the law to report unlawful activities, policies, or practices when an employer presents a substantial danger to the public health, safety of a workplace, or a range of other unlawful conduct. However, especially for private sector workers, these reports require concrete proof of a violation of law in order to constitute a valid claim. These restrictions make proving claims significantly more difficult for private sector workers, exposing them to frequent wrongful retaliation. Retaliation can range from firing or demoting the employee, reducing the employee's salary or benefits, changing the employee's work schedule, transferring the employee, or denying the employee a promotion or a raise.

Solution: Labor law must be expanded to strengthen protections for whistleblowers in both the public and private sector. Expanding the definition of who constitutes an 'employee', which activities are protected, and explicitly prohibiting retaliatory actions make it so that workers who observe activities that pose a threat to the health and safety of the workplace feel safe reporting those violations. These changes give workers the confidence to speak up when they see something that poses a danger and result in workplaces that center safety and health.

Model Bill:

- New York Labor Law Section 740 expands the definition of who constitutes an employee to include former employees, without any explicit limitation in time, and independent contractors. Further, it supplements the qualifications of protected activity by including protections for claims of substantial and specific danger to the public health or safety that may not entirely violate the law. Finally, this law refines the types of employment-related actions that constitute retaliation, the available remedies for aggrieved employees, and the notice requirements for employers.
- Minnesota Legislature Chapter 181 Section 181.931 expands the definition of retaliation to include conduct that might dissuade a reasonable employee

from making or supporting a report of an actual, suspected, or planned violation of a statute, regulation, or common law.
- Colorado HB 20-1415 strengthens whistleblower protections for workers relating to concerns about health and safety issues, requires employers to post notifications of the protections, establishes new avenues for workers to bring whistleblower complaints, increases damages for violators, and creates a legal right of action for victims.

CONCLUSION:

Working people across the country badly need overdue reforms to strengthen protections for their rights on the job. Given that over 70 percent of workers are interested in joining a union, yet only 10 percent of workers are currently union members, it is clear that existing protections for worker rights are not up to the task. There is no time to waste in helping strengthen those protections using any and all avenues available.

Given the many policies that are available to state and local policymakers to strengthen worker rights, it is critical that those policymakers seize the day and help level the playing field for working people.

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