



## STORM CLOUDS AHEAD: WHY CONFLICT WITH PUBLIC UNIONS WILL CONTINUE

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Ohio's recent referendum (Issue 2) overturning Governor John Kasich's signature law that eliminated collective bargaining with unions representing state workers is the latest in a series of heated battles between governors and public-employee unions in a host of states.

Table 1  
Three Models of Reform in 2011

Structural*	Austerity**	Concessions and Tax Increases***
Wisconsin	California	Connecticut
Ohio (repealed)	New York	Illinois
Indiana	New Jersey	Hawaii

\*Structural: new restrictions on or elimination of collective bargaining, dues checkoff, agency shops, and change in union certification procedures

\*\* Austerity: no change in labor law; demand major union concessions and refuse to raise taxes

\*\*\* Concessions and tax increases: no change in labor law; demand union concessions but spread pain with tax increases

Notwithstanding the demise of reform in the Buckeye State, conflict over government labor relations is far from over and is very likely to continue. This is especially the case in states where the public workforce is heavily unionized and where slow economic growth will cause persistent budget problems—especially as pension and health benefits for retired workers crowd out other parts of their budgets. These conditions spell trouble for New York, California, Illinois, Rhode Island, Michigan, Ohio, and Washington State, among other states.

Because public sector unions' central task is to defend their members' occupational interests, they will have little choice but to resist reform efforts. But while public employee unions may

be able to stave-off major efforts to address employee compensation costs, the need for states to address these issues will remain. In Ohio's case, the defeat by referendum of a structural reform approach, which would have given elected officials and agency managers more discretion, will require the state to adopt one of the other two dominant approaches—budget austerity or a combination of concessions and new revenues. Which is to say, Ohioans are in for some combination of service cutbacks and tax increases.

The main reason that such confrontation will persist is the fundamental differences between unions in the public and private sectors. In times of fiscal pressures, these differences make it difficult for elected officials and government labor unions to resolve disputes, in contrast to private-sector negotiations. (Consider

## The Structural Sources of Public Employee Labor Conflict

### *Historical Dimensions*

Labor unions in the private economy first formed after the Civil War. Yet they only represented a small slice of American workers until Congress passed and President Franklin Roosevelt signed the National Labor Relations Act of 1935. Union density then increased rapidly. By the 1950s, about one-third of nonagricultural workers belonged to unions. From this high-water mark, however, private-sector labor unions suffered a series of political and economic setbacks that led to their slow decline over the next half-century (Table 2).<sup>1</sup> Today, only about 6 percent of workers in the private sector belong to unions.

### Key Findings

In 1959, only three states had collective-bargaining laws for state and local employees. By 1980, 33 states had these laws.

Less than 10 percent of full-time public employees were unionized in 1960; by 1980, it was 36 percent. The percentage of government workers in unions has held remarkably stable ever since. Private-sector unions have declined over the last 30 years; by 2009, public employees had become the majority of union members.

Due to the different environments within which they operate, public- and private-sector unions sometimes have competing interests and work at cross-purposes.

Public-sector unions are more fundamentally political organizations than their private-sector counterparts because the most relevant decisions to them are political decisions.

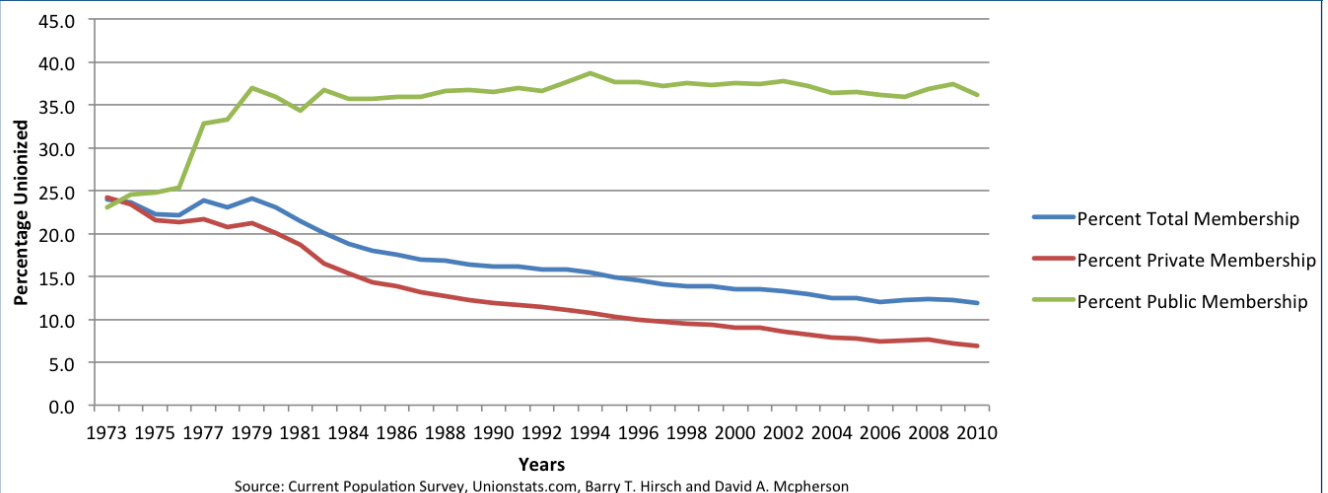
Government as an employer also creates incentives for public employee unions to obscure their purposes by conflating their self-interest with the public interest.

the quiet realism with which the United Auto Workers just signed off on a very tough contract with General Motors.) And the issues affecting government workers will be at the top of organized labor's agenda. This is because public employees have become a majority of union members, their unions are now the principal financiers of organized labor's political efforts, and government decides most issues of importance to them.

While unionized government workers share the union label with those in the private sector and are, so to speak, of the same genus, unions representing public workers are ultimately a different species. There are stark differences between unions representing teachers, police, and firefighters and those representing steelworkers, baggage handlers, carpenters, and coal miners. The differences between the two species of unionism extend across historical, economic, political, constitutional, and moral dimensions.

The story of public-sector unionism is radically different. A handful of public employees managed to form unions in the early twentieth century. But their organizations lacked essential legal rights to really qualify as unions. To the extent that they were organized, most public servants were members of occupational associations. Prior to the late 1950s, state and local laws severely restricted, if they did not outright prohibit, public employees from joining unions. No state permitted collective bargaining in the public sector or strikes by its employees. Civil-service laws specified public employees' conditions of hiring, promotion, and work. The prevailing attitude among policymakers toward unions in government was downright hostile. Consequently, when the American Federation of Labor (AFL) and the Congress of Industrial Organizations (CIO) merged in 1955, government workers constituted only a tiny percentage of the total unionized workforce.

Table 2  
Total Union Membership, Public and Private, 1973-2010



From 1958 through 1984, changes in state laws (supplemented by local ordinances) granted public-employee unions the right to bargain collectively with various units of government. In 1959, only three states had collective-bargaining laws for state and local employees; by 1980, 33 states had these laws. Today, all but three states (Texas, Utah, and Virginia) permit collective bargaining for at least some public servants—usually police, firefighters, and corrections officers—and about half the states have extensive legal provisions on their books permitting “agency shops” and government collection of union dues (Table 3).<sup>3</sup>

President John F. Kennedy’s 1961 Executive Order 10988 facilitated some unionization in the federal service and provided a model for further action in the states. (However, federal workers are, to this day, prohibited from bargaining collectively over salary and benefits.) The growth of public-employee unions followed fast upon the legal changes. Less than 10 percent of full-time public employees were unionized in 1960; by 1980, that figure had reached 36 percent. The percentage of government workers in unions has held remarkably stable ever since. And as private-sector unions have declined over the last 30 years, public employees have become a bigger and bigger share of the total, eventually becoming a majority of union members in 2009 (Table 4).

Separating the two species of unions greatly complicates the conventional story of union decline, which focuses on the private sector. Private- and public-sector unions emerged at different times and from different legal

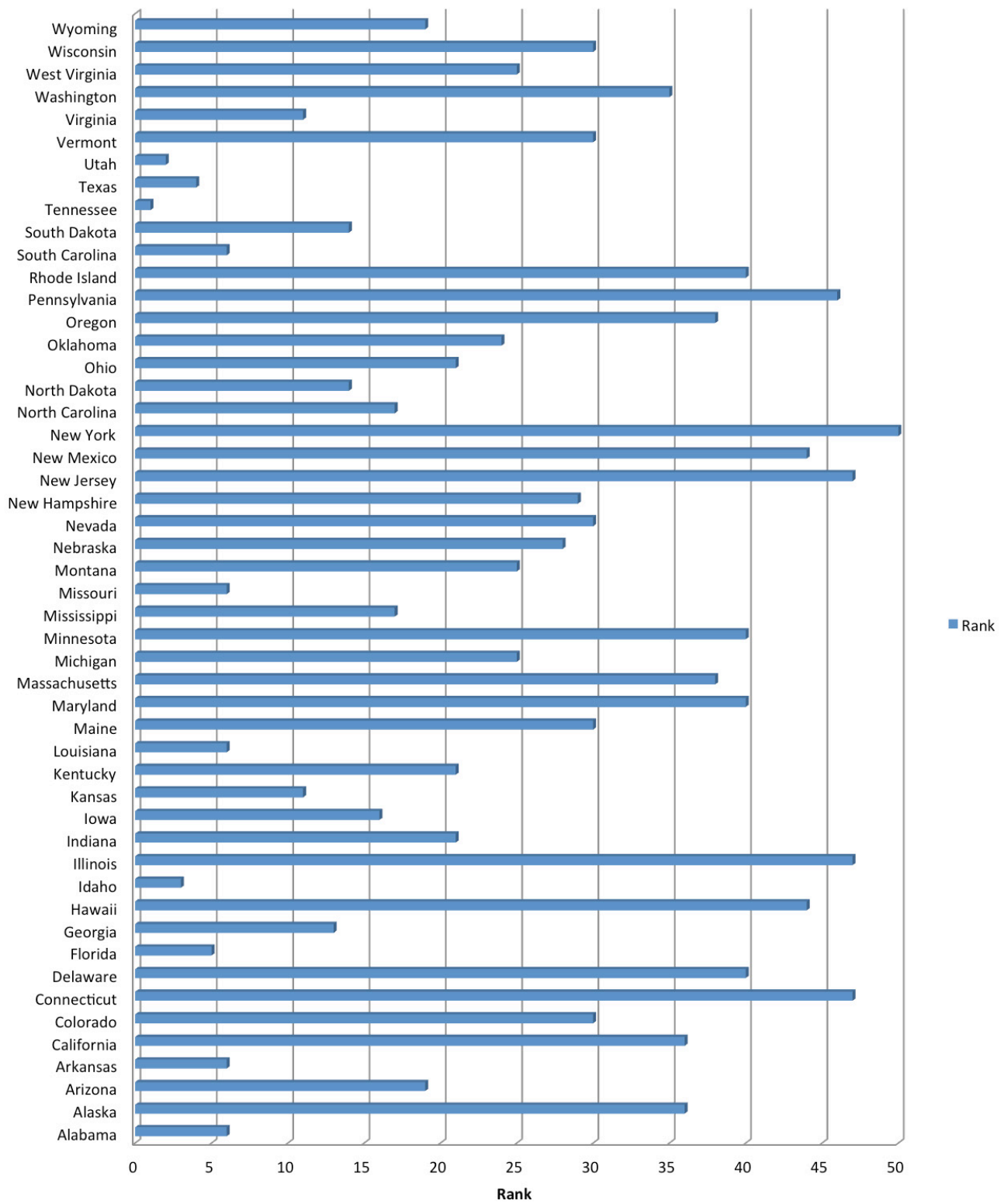
sources, and they have followed different trajectories. The central difference today is the staying power of public-sector unions. Across the country, roughly 36 percent of public employees belong to unions—New York tops the charts, with 69 percent of its public workers in unions. Even if the reforms in Wisconsin cause some of the Badger State’s unions to decertify and declare themselves associations, these overall numbers won’t change very much. At the state and local level, then, public-sector unions are now fixtures of America’s political economy.

## Economic Dimensions

The fact that private-sector unions operate in the marketplace and public-sector unions in government, which has a quasi-monopoly on many goods and services, changes the nature of collective bargaining.<sup>4</sup> In the private sector, unions must be acutely attentive to their employers’ competitive position vis-à-vis other firms. This can moderate their demands because if the company goes out of business, workers lose their jobs and the union disappears. And management has stronger incentives to push back against union demands because it has incentives to keep profits for itself. To adapt to this environment, private-sector unions have been willing to make concessions to keep their employers competitive.

In contrast, public-sector collective bargaining occurs in a situation where management cannot keep profits for itself and the employer is unlikely to go out of business. This reduces agency managers’

Table 3  
Index of Public Union Strength



Source: Competitive Enterprise Institute, Crossroads GPS,

stake in contract negotiations and their need to play hardball. Furthermore, the only “market” check on union demands is that taxes will increase so much that taxpayers will move to other jurisdictions.<sup>5</sup> Government never goes out of business, so once public workers are unionized, they remain unionized. Consequently, public-sector unions maintain a steady drumbeat in favor of government expansion. The rapid endorsement of the Occupy Wall Street protests by New York City’s municipal unions was meant to keep up pressure for higher taxes on the wealthy to fund salary and benefits increases for their members—irrespective of fiscal realities.

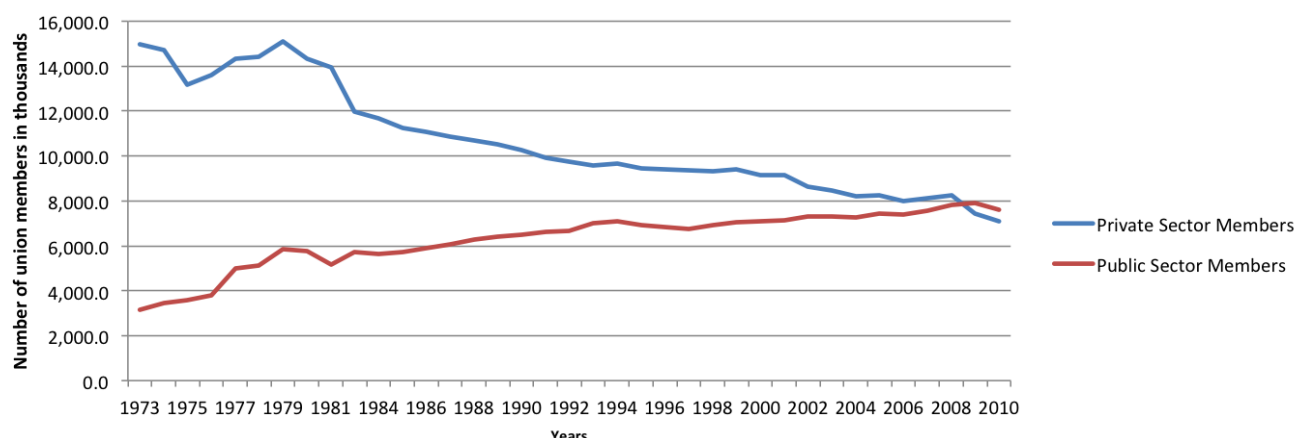
Due to the different environments within which they operate, public- and private-sector unions sometimes have competing interests and work at cross-purposes. Private-sector unions are ultimately dependent on growing businesses for better salaries and benefits. Therefore, private-sector unions are sensitive to tax and regulatory policies that favor a healthy business environment. In contrast, to advance their members’ interests, public-sector unions must constantly push for higher taxes and bigger government, which creates a recipe for conflict between the two species of unions. For example, Gary LaBarbera, president of the Building and Construction Trades Council of Greater New York, joined with real-estate and business interests in support of Governor Andrew Cuomo and in opposition to the Empire State’s public-employee unions. Why? Because “without a fiscally sound environment, we will not be able to attract new businesses; we’ll continue to lose business,” LaBarbera explained.<sup>6</sup> And without a vibrant New York economy, there won’t be jobs for LaBarbera’s members.

## Political Dimensions

A fundamental difference between public and private sector unions is that the former can exert greater influence on their employers—that is, the government—through the political process. Private-sector unions concentrate their resources on collective bargaining, which is the only way that they can win things for their members. Public-sector unions, however, can win benefits for their members through collective-bargaining and through lobbying and electioneering on behalf of elected officials. Government unions make campaign contributions and organize get-out-the-vote drives to elect politicians who then act as “management” in contract negotiations. The unions then assiduously lobby those same politicians between election cycles.

As the American Federation of State, County, and Municipal Employees’ (AFSCME) website boldly puts it: “We elect our bosses, so we’ve got to elect politicians who support us and then hold them accountable on our issues.” Public-sector unions are more fundamentally political organizations than their private-sector counterparts because the most relevant decisions to them are political decisions. Because politics never stops, neither can the public-employee unions, who must remain ever vigilant. The sums given to federal campaigns (when most unionized public employees are state and local workers) are indicative of the scale and partisan character of public-sector unions’ power. Conflict between employers and unions is therefore constant in the public sector and not confined to the collective-bargaining process, as it often is in the private sector.

Table 4  
Labor’s Changing Membership



Source: Current Population Survey, Unionstats.com, Barry T. Hirsch and David A. McPherson

Public-sector unions have become uniquely powerful interest groups that enjoy a number of advantages over their private-sector counterparts and other interest groups when it comes to getting their way in politics. First, they have automatic access to politicians through the collective-bargaining process, while other interest groups must fight for such entrée. Second, government unions can more easily mobilize their members for electoral participation than other interest groups can. Third, most interest groups must devote a great deal of time and effort to fund-raising. Public-sector unions, in contrast, enjoy a steady, reliable revenue stream, as union dues are deducted directly from members' paychecks (usually by government, which drastically reduces the unions' administrative costs). Few other groups can boast of such an arsenal of resources.

## Constitutional and Moral Dimensions

The unique nature of government as an employer raises issues not present in private-sector labor relations. The oldest critique of public-sector unionism is that it compromises the sovereignty of government and distorts the democratic process. Bargaining collectively with government means that many policy choices are the outcome of negotiations between elected officials and union leaders, even though voters have not invested the latter with such authority nor do they have a way of holding them accountable. Over the long term, these negotiations

can push public policy down paths that neither elected officials nor voters want to go. The legal views of government sovereignty and unconstitutional delegation of powers were the grounds on which even liberals and union leaders—such as FDR and AFL-CIO president George Meany—opposed collective bargaining for public employees until well into the 1950s.

Government as an employer also creates incentives for public-employee unions to obscure their purposes by conflating their self-interest with the public interest. It is no secret that most private-sector unions and interest groups are active in American politics to pursue their self-interest. Most are relatively up-front about it. For example, the Commercial Workers of America, which represents supermarket cashiers, is concerned about the wages and benefits of cashiers, not about consumers who buy groceries. However, government unions are different because they operate in the political sphere. To adapt, they often wrap self-interested appeals in public-interest rhetoric. Hence the slogan of the National Education Association (NEA) and the American Federation of Teachers (AFT): “What’s good for teachers is good for kids.”

Many government union leaders may care sincerely about the middle class and about the poor. But public-sector unions’ fundamental purpose is to advance union members’ interests in higher levels of compensation, greater job security, more autonomy

Table 5  
Top 15 All Time Donors, 1989-2012

Source: Center for Responsive Politics

Rank	Organization	Amount	% Dem	%Rep
1	ActBlue		99	0
2	AT&T		44	55
3	<b>AFSCME</b>		94	1
4	National Association of Realtors		47	49
5	<b>SEIU</b>		75	2
6	<b>NEA</b>		82	5
7	Goldman Sachs		60	39
8	American Association for Justice		89	8
9	International Brotherhood of Electrical Workers		97	2
10	<b>Laborer's Union</b>		89	7
11	<b>AFT</b>		91	0
12	Carpenters & Joiners Union		86	9
13	<b>Communication Workers of America</b>		94	0
14	Citi Group		49	49
15	American Medical Association		49	49

\* Public-employee unions or unions with substantial numbers of public employees in their ranks are in bold.



from management, and so on. If these leaders do not promote their members' interests, they can be removed from office. These organizational incentives require union leaders to press for public policies through collective bargaining and politicking that are good for their members, regardless of their overall effect on citizens who rely on public services. But government union leaders can never openly admit that there can be trade-offs between what is good for public employees and what is good for the public.

The more successful public-sector unions are in achieving their goals, the more government outputs are likely to be imbalanced. If government spends more on the salaries, pensions, and health care of its employees, it cannot spend more money on such things as public transit systems, school buildings, and relief for the poor. Serious trade-offs are involved in a commitment to government that provides extensive goods and services to its citizens—especially the middle class and the poor—and a commitment to unionism and collective bargaining in the public sector. How America's states and cities manage those trade-offs will be the subject of ongoing contention with their unionized employees for the foreseeable future.

How America's states and cities manage those trade-offs will be the subject of ongoing contention with their unionized employees for the foreseeable future. But the question will be how to manage the trade-offs, not whether to do it. There are ample reasons for the public to prefer structural reforms that reduce the power of public employee unions and in turn the value of public employee compensation packages. To the extent that union power has been wielded to capture above-market compensation or productivity-reducing work rules, structural reform is a free lunch for the public, who can get the same or better government services at lower cost.

By rejecting structural reform, as voters have in Ohio, states force a choice between either the "austerity" path blazed by California, leading to a deterioration of services; or a model that is heavy on tax increases, as seen in Illinois and Hawaii. These approaches are better for public employee unions—or at least for the majority of their members who don't get laid off due to austerity. But they are worse for other members of the public, and are another reflection of how public sector unionization distorts policy choices to the detriment of the public good.

<sup>1</sup> For two significantly different perspectives on the decline of the labor movement, see, Michael Goldfield, *The Decline of Organized Labor in American Politics* (Chicago: University of Chicago Press, 1989) and Charles B. Craver, *Can Unions Survive? The Rejuvenation of the American Labor Movement* (New York: New York University Press, 1993).

<sup>2</sup> Richard B. Freeman, "Unionism Comes to the Public Sector," *Journal of Economic Literature* 24(1) (March 1986), 41–86. On the provisions of these laws, see, Robert G. Valletta and Richard B. Freeman, "Appendix B: The National Bureau of Economic Research Public Sector Collective Bargaining Law Data Set," <http://www.nber.org/publaw/>. For contemporary state legal provisions, see, James T. Bennett and Marick F. Masters, "The future of public sector labor-management relations," *Journal of Labor Research*, Vol. 24, No. 4 533–544, (2003).

<sup>3</sup> In *National Labor Relations Board v. General Motors*, 373 U.S. 734 (1963), the Supreme Court determined that workers cannot be forced to join unions, outlawing the "closed shop." However, the Court allowed unions to act as workers' "agent" in collective bargaining and to charge those who refuse to join the union "agency fees," which are often nearly as much in dollar terms as union dues. So it is constitutional for unions to coerce contributions to their coffers, even if they cannot coerce workers to become union members. Workers refusing to join and objecting to the use of their agency fees for non-collective-bargaining purposes, usually political activity, can exercise a "claw-back" provision. But few actually do. For the legal background on these policies, see Charles W. Baird, "Right to Work before and after 14(b)," *Journal of Labor Research* 19(3) (summer 1998), 471–93.

<sup>4</sup> Collective bargaining is a legally mandated process that determines the binding contractual agreements for the terms and conditions of employment.

<sup>5</sup> Charles Tiebout, "A Pure Theory of Local Expenditures," *Journal of Political Economy* 64 (October 1956): 416–24.

<sup>6</sup> As quoted in Charles Bagli, "Cuomo Gains an Ally for a Looming Fight with the Public Employee Unions," *The New York Times*, December 10, 2010.

<sup>7</sup> See, <http://www.afsme.org/news/publications/newsletters/works/september-2006/bold-action-big-change-the-power-to-win-plan>.