

The State of Labor

A Review of Organized Labor and Worker Freedom

2005



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ABOUT THE EVERGREEN FREEDOM FOUNDATION

The Evergreen Freedom Foundation (EFF) is a non-profit, public policy research organization based in Washington state. The Foundation's mission is to advance individual liberty, free enterprise and limited, accountable government. EFF staff conduct research and publish analysis and policy alternatives in the areas of state budgets; governance and citizenship; and health, education and welfare reform.

The Evergreen Freedom Foundation neither solicits nor accepts donations from government sources. All programs and activities are funded by private donations from thousands of concerned individuals and numerous private foundations.

The State of Labor is a publication of the Evergreen Freedom Foundation's Labor Policy Center, released annually in conjunction with Labor Day. The report reviews significant developments in the organized labor movement and recommends policies that advance the First Amendment rights of workers. The 2005 report includes an analysis of Washington state's paycheck protection law.

Nothing in this publication should be construed as an attempt to aid or hinder the passage of any legislation.

EXECUTIVE SUMMARY

The year of 2005 has been a tumultuous one for organized labor. The AFL-CIO experienced a break in solidarity when several unions representing a third of its members disaffiliated in July. Union membership is at an all-time low, with only 12 percent of the workforce belonging to a union, compared to one in three workers a half century ago. Labor's candidates have lost the last two presidential elections. The power of labor appears to be waning.

The AFL-CIO breakup is essentially a disagreement over how to reverse labor's decline and regain power. The AFL-CIO leadership intends to continue with the top-down strategy of electing pro-union politicians through increased campaign spending. Meanwhile, the coalition of dissident unions is calling for a renewed focus on organizing workers. Ultimately, both factions seek to bring more dues-paying members into the fold in order to amass political clout.

Given the desperation of both sides to do whatever it takes to regain power, it is important to ensure that workers are protected from aggressive organizing and rampant political spending. Oppressive collective bargaining laws deny workers a choice on union representation, forcing workers to pay for representation in order to keep their jobs.

Union officials then use mandatory dues to fund sophisticated political operations with little regard for the political preferences of workers. Only a small number of workers voluntarily fund the political efforts of unions. In states that require member consent for spending union dues on politics, members overwhelmingly refuse to support union officials' radical political activism.

The State of Labor reviews significant developments in the organized labor movement and recommends policies that protect the First Amendment rights of workers.

Among the key findings of *The State of Labor*:

Despite a politically diverse membership, organized labor overwhelmingly supports a single political party. In many states, workers have virtually no say in whether their collective bargaining dues should be used for political purposes.

- Since 1989, 96 percent of union political contributions have gone to Democrats.
- In 2004, 87 percent of labor union direct contributions went to Democrats.
- In 2004, 92 percent of teachers' union party contributions went to the Democrats, and 90 percent of the National Education Association's federal contributions went to Democrats.
- In California, 89 percent of union contributions in partisan races went to Democrat candidates in 2003-04.

Shrinking membership numbers aside, unions are able to fund massive political operations using forced dues from employees. Reported union political contributions are only a fraction of actual union spending. Unions are able to conceal hundreds of millions of dollars in member education and voter mobilization efforts. As a result, members are not informed of how their collective bargaining dues are used, and electoral influences are not adequately disclosed to the public. In the 2004 presidential election cycle:

- The AFL-CIO spent a reported \$45 million on voter mobilization efforts. Between Labor Day and Election Day the AFL-CIO mobilized 225,000 volunteers, who knocked on 6 million doors, distributed 32 million worksite leaflets and made more than 100 million phone calls.
- The SEIU spent \$65 million, tripling its spending from 2000. The SEIU recruited 50,000 member volunteers and 2,000 full-time activists in the 2004 campaign effort. Activists placed 19 million phone calls, visited 10 million homes and distributed more than 6 million fliers in members' workplaces.
- The National Education Association admits to spending 46 percent of its dues on activities not related to the traditional collective bargaining activities of negotiating contract terms, maintaining contracts, and grievance arbitration. The Evergreen Freedom Foundation estimates that nearly 99 percent of the union's dues go to non-bargaining activities.
- The NEA also organized 3,800 highly-partisan "house parties" in September 2004 to discuss education issues.

When given a choice, union members (including Democrat members) overwhelmingly refuse to support union political activity. This is particularly evident in states with paycheck protection laws, which require unions to get written permission from members before using dues for political contributions.

- After implementation of Washington state's paycheck protection law, contributions by teachers to the Washington Education Association's political fund dropped from 80 percent of the membership to only 11 percent.
- The Utah Legislature passed a similar provision in 2001. After the first full year of implementation, political contributions by Utah Education Association teachers dropped from 68 percent of the membership to 6.8 percent: a 90 percent drop-off in the number of teachers contributing to the union's political activity.
- In Colorado, the number of teachers requesting political refunds from their union increased 400 percent after an outreach campaign by the Independence Institute.

Union organization efforts can be undemocratic and violate individual worker rights.

- In Washington state, public-sector unions effectively doubled membership and income by negotiating a contract with a forced-dues provision. Of the approximately 30,000 general government employees covered by the Washington Federation of State Employees (the state's largest public employee union), only 6,133 participated in the ratification vote—a 20 percent turnout.
- A recent poll of non-union workers by Zogby International and the Public Service Research Foundation reveals widespread disinterest in unionizing. Only one in three workers (35 percent) would consider bringing a union into the workplace. On the other hand, 56 percent of all non-union workers surveyed said they would vote against unionizing.

As unions attempt to reverse labor's decline, it is necessary to ensure that the individual rights of employees are protected from union officials who are more interested in wielding political power than in winning the patronage and goodwill of workers.

I. THE STATE OF LABOR IN 2005

The organized labor movement is in a state of upheaval. Faced with 2004 election losses, the lowest membership levels in a half-century, and splintering solidarity, union officials are engaged in a fierce debate over how to reverse the movement's decline.

A Messy Divorce for the AFL-CIO

The 2005 schism within the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) illustrates the competing opinions among labor leaders on how to address labor's crisis.

Elected president of the AFL-CIO in 1995, John J. Sweeney vowed to reverse the labor movement's decline by amassing and wielding political power. To that end, he led a ten-year campaign to increase organized labor's political muscle, which his critics say came at the expense of organizing new employee groups and industries.

With every new election, Sweeney and his operatives promised another Democrat takeover, and every time they failed. GOP majorities in the House of Representatives have prevailed in every two-year cycle in the House since 1994, and Republicans won the White House in 2000 and 2004, pulling several Senate Republican candidates over the finish line in the process.

Sweeney has spent literally hundreds of millions of forced-dues dollars in direct financial contributions to pro-union candidates, for professional staffers "loaned" to Democratic campaigns, direct mail "education pieces" and massive get-out-the-vote drives. Despite these mammoth efforts, pro-union candidates have consistently failed to win back majorities for Sweeney in both the House and Senate. The AFL-CIO's efforts climaxed in 2004 when Sweeney fielded 225,000 union foot soldiers in key battleground states—all to no avail.¹

Sweeney and other members of the AFL-CIO Executive Council offered a set of proposals for consideration at the federation's Constitutional Convention meeting, held in Chicago on July 25–28, 2005. Their proposals offered little by way of changed strategy, instead advocating for increased political and legislative spending and a proposed get-out-the-vote effort to educate and mobilize 100,000 new political activists by 2008.²

A number of labor leaders, led by Andrew Stern, the outspoken president of the Service Employees International Union (SEIU), began questioning the AFL-CIO's single-minded devotion to political activity, calling instead for a shift back to the organizing efforts that built the strong labor movement of the early-to-mid 20th century.

Stern formed a new union coalition called "Change to Win," consisting of the SEIU, the Teamsters, the Laborers, UNITE HERE, the United Food and Commercial Workers (UFCW), the United Brotherhood of Carpenters and the United Farm Workers. These unions represent approximately 6 million members.

Leading up to the AFL-CIO convention, Change to Win leaders firmly disagreed with the proposals offered by the AFL-CIO Executive Council, arguing that declining union membership is due to internal structural problems, not external politics. Rather than lambasting politicians, policies or employees, the Change to Win coalition called for a re-examination the labor movement itself.

The Change to Win coalition distributed its own set of proposals in anticipation of July's annual convention,³ calling for a renewed emphasis on organizing new sectors of the workforce, streamlining union bureaucracy, and exploring new avenues of political involvement previously ignored by Sweeney and his team. The flagship proposal called for a rebate of half the dues paid to the AFL-CIO back to individual unions. This rebate would be dedicated to organizing new members and could amount to over \$2 billion over the next five years.

Leaders of the AFL-CIO and Change to Win were unable to resolve their differences, and just before the AFL-CIO's July convention in Chicago, SEIU and the Teamsters announced their intention to boycott the convention and disaffiliate with the AFL-CIO. Days later UFCW disaffiliated as well. Several other members of the Change to Win coalition opted to stay in the AFL-CIO. The three disaffiliating unions represent about one-third of the AFL-CIO's 13 million members.

Conclusion: Measuring the impact

While the impact of the collapse of union solidarity is yet to be measured, one thing is certain: As union officials attempt increasingly desperate measures to reverse labor's decline—whether by relying on political power funded by mandatory dues or by using coercive organization and representation practices—it is necessary to ensure that the individual rights of employees are protected from union officials who are more interested in maintaining and wielding power than in winning the patronage and goodwill of workers.

II. UNION POLITICAL ACTIVITY

Unions are a powerful force in national, state and local politics. The secure source of funding from dues and forced fees allows union officials to pursue an aggressive political agenda. The sophistication of their political operation rivals that of established political parties. The full breadth of labor's political operation is rarely known because unions often exploit loopholes in reporting laws to avoid full disclosure.

Only a small number of workers voluntarily fund the political efforts of unions. In states that require consent for deducting political contributions or spending general dues on politics, workers generally refuse to support union officials' political activism.

The following is a synopsis of reported union electioneering in 2004.

2004 Presidential Election Cycle

Labor unions engaged in significant political activism during the 2004 presidential election cycle. Organized labor reported raising \$199.5 million for their own political organizations (Section 527 political organizations).⁴ In addition, unions set aside \$165 million for mobilizing and educating their own members. Union PAC spending amounted to \$61.4 million and union officials gave \$24.5 million to non-union 527 groups.⁵

Direct Union Contributions

The vast majority of unions' candidate contributions were given to Democrat candidates: 87 percent of labor unions' \$61.4 million in 2004 contributions went to Democrats, and since 1989, 96 percent of union political contributions have gone to Democrats.⁶

Union contributions to party and caucus committees nationwide amounted to \$39.8 million. Eighty-seven percent went to Democrat organizations and 13 percent went to Republicans.⁷

Teachers' unions were the most significant contributors to party and caucus committees giving \$6,693,947. Ninety-two percent of the teachers' unions' contributions were made to Democrat organizations and 8 percent to Republicans.⁸

Independent Expenditures

Union independent expenditures also leaned heavily Democrat. The teachers' unions contributed millions to key left-of-center activist groups⁹ and initiatives.¹⁰ The National Education Association specifically spent more than \$1 million on 67 mailings to influence voters toward the Kerry-Edwards presidential ticket.¹¹

Other unions also engaged in heavily Democrat activism. The SEIU spent \$3 million on federal independent expenditure TV and radio ads in targeted markets¹² and gave \$2.6 million to non-federal independent expenditures and initiatives in five targeted states.¹³

Union Member Communications

One of the main thrusts of union officials' campaign strategy is the political "education" of union members. This form of electioneering is particularly convenient because campaign expenditures made under the guise of "member communication" are exempt from campaign finance disclosure requirements. As a result, union officials spend massive amounts of employee hours and general funds on "educating" union households, often conveniently influencing the general public.

According to news reports, the AFL-CIO spent \$45 million to mobilize union households (13 million members).¹⁴ The SEIU earmarked \$65 million for its effort (1.6 million-members).¹⁵ The AFSCME set aside \$48 million to lobby its members (1.5 million members).¹⁶ And LIUNA reserved \$8 million for the same (800,000 members).¹⁷ The total for just these three organizations exceeds \$165 million.

AFL-CIO

The AFL-CIO initiated Labor 2004 as a get-out-the-vote program for its 13 million members, with 5,000 paid staffers working full-time for the campaign.¹⁸ Between Labor Day and Election Day the AFL-CIO mobilized 225,000 volunteers.¹⁹ All told, AFL-CIO volunteers knocked on 6 million doors, distributed 32 million worksite leaflets and made more than 100 million phone calls.

SEIU

SEIU records indicate that it outspent the AFL-CIO in its campaign activity. The SEIU recruited 2,017 full-time activists,²⁰ roughly 40 percent of which temporarily moved to targeted states. The SEIU recruited more than 2,750 members and staff to take leave from their jobs and volunteer full-time for left-of-center organizations like Americans Coming Together and MoveOn.org.²¹

Besides full-time volunteers and employees, the SEIU exceeded its goal of 50,000 member volunteers.²² By the end of the campaign, these "weekend warriors" who made phone calls and knocked on doors had put in over 2 million hours of volunteer service.²³

The SEIU placed 19 million phone calls, visited 10 million homes and distributed more than 6 million fliers in members' workplaces during the course of the campaign. It also claims to have registered or helped register 4.5 million new voters.²⁴

NEA

With 2.7 million members each paying approximately \$137 per year in union dues, the National Education Association has nearly \$370 million at its disposal, making it a major force in American politics and education. Though one would naturally expect that an overwhelming majority of union dues would go toward collective bargaining activities, making the jobs and salaries of teachers better, the union admits to spending 46 percent of its dues on activities not related to traditional collective bargaining activities of negotiating contract terms, maintaining

contracts, and grievance arbitration. The Evergreen Freedom Foundation estimates that nearly 99 percent of its dues go to non-bargaining activities. (For a detailed analysis, see Appendix B.)

The NEA directs a small army of full-time political operatives, numbering over 1,800, through its UniServ program. Their most significant responsibility is to convey the collective bargaining, political, and legislative goals to the state and local associations and assist them in carrying out the goals. The UniServ operatives coordinate lobbying efforts at state capitols, help recruit candidates for local and federal office, and manage political communication campaigns. These operatives are directed by the NEA’s national headquarters, but are paid through state affiliates, thereby avoiding federal disclosure of their salaries and expenses.

Beyond the politicking of the UniServ officials, the NEA dedicated a department of 30 full-time employees to its political efforts in 2004, paid by a combination of PAC and general funds.²⁵ The NEA also organized 3,800 “house parties” in September to discuss education issues. The parties were highly politicized meetings with partisan rhetoric and political literature.²⁶

The NEA and its affiliates take credit for a multitude of successes such as defeating a charter school initiative in Washington (spending \$1.3 million), supporting a minimum wage and education initiatives in Florida (spending \$499,000),²⁷ and campaigning for several school funding measures on the California ballot (spending \$1.99 million).²⁸

Case Study: California Public-Sector Unions

Campaign finance records indicate California’s public-sector unions are extensively involved in California’s political scene. Political action committee (PAC) spending has increased on a yearly basis. In 2004, union PACs gave \$38 million in support of candidates and ballot measures. Eighty-nine percent of partisan donations were given to Democrat candidates.²⁹

The Evergreen Freedom Foundation estimates that California’s public-sector unions’ dues income exceeds \$295 million. Public employees are forced to pay for union representation, and union officials use collective bargaining dues to fund massive political activity, with no restrictions on how much can be spent on politics. For example, in the U.S. Supreme Court case *Communications Workers v. Beck* (1988), up to 79 percent of the union’s dues were not spent on core collective bargaining functions.

California public-sector union reported political spending³⁰

Union	2001-02	2003-04
American Federation of State and County Municipal Employees	\$445,190.00	\$669,724.00
Attorneys, Administrative Law Judges and Hearing Officers	\$1,348,572.64	\$449,500.00
California Association of Highway Patrolmen	\$753,725.05	\$652,851.13
California Association of Professional Scientists	\$305,550.00	\$52,500.00
California Association of Psychiatric Technicians	\$379,750.00	\$418,000.00
California Union of Safety Employees	\$542,038.00	\$999,500.00
California Correctional Peace Officers Association	\$3,082,030.51	\$2,128,990.00
California Department of Forestry Firefighters	\$740,887.99	\$701,816.38
California Nurses Association	Not Reported	\$381,375.00

California Teachers' Association	\$11,469,018.00	\$15,901,084.00
International Association of Firefighters	\$59,476.00	\$171,548.66
International Union of Operating Engineers	\$318,509.00	\$251,350.00
Professional Engineers in California Government	\$1,246,110.00	\$2,007,964.00
Service Employees International Union	\$9,717,909.46	\$13,048,702.73
Union of American Physicians and Dentists	\$213,853.40	\$180,455.05
Totals	\$30,622,620.05	\$38,015,360.95
Democrat	85.4%	88.8%
Republican	14.6%	11.2%
Libertarian	Less than .01%	

Conclusion: Union political spending violates members' First Amendment rights

Unions wield significant clout in national, state and local elections. This power—evidenced by political contributions, independent expenditures, extensive member communications and grassroots mobilization—is funded by mandatory dues imposed on workers by monopolistic collective bargaining laws.

Garnering political power by abusing and trampling workers' freedoms is contrary to the American value of individual liberty. American workers should be free to make their own political choices, sending money to candidates and causes they believe in, and should not be punished if their political beliefs differ from those of their union bosses.

State and federal lawmakers can implement a number of policy solutions that advance worker freedom and hold unions accountable to their members.

III. UNION MEMBERSHIP & ORGANIZATION EFFORTS

Organized labor faces a serious crisis in membership. Overall, since 1956, union membership has decreased from approximately one-third of the workforce to 12.5 percent in 2004.³¹ This is down from 20.1 percent in 1983 and 13.5 percent in 2000.³² In the private-sector, only 7.9 percent of the workforce belongs to a union, down from 8.2 percent in 2003.³³

Labor's future prospects are not heartening. Less than five percent of workers between the ages of 16 and 24—what should be the future of the labor movement—are unionized.³⁴ Without an influx of young workers, the average age of union members is rapidly increasing.

On the other hand, public-sector unions are alive and well, with unionization rates consistently higher than in the private-sector. The unionization rate for government workers (federal, state, local) was 36.4 percent in 2004, down slightly from 37.2 percent in 2003.³⁵

Considering these figures, the Change to Win coalition that left the AFL-CIO in July (the membership of which largely consists of private-sector employees) justifiably feels more urgency in addressing the decline in union membership. As a result, the Change to Win coalition seeks to invest more resources in organizing new sectors of the workforce, rather than investing only in a top-down strategy of winning federal elections in order to implement favorable policies.

Given the push to unionize new sectors of the workforce, it is vital that employees be protected from coercive organizing tactics.

Case study: Washington state

The unionization of Washington public employees serves as an example of the coercive and secretive practices union officials can employ in order to organize thousands of employees.

The Washington Legislature passed the Personnel System Reform Act of 2002, which allows public-sector unions to negotiate wage and hour guidelines for state employees. Accordingly, the governor's office and representatives of nearly twenty public-sector unions negotiated the first collective bargaining agreements in 2004.

Just before the deadline for negotiations to conclude, the negotiating teams inserted a union security clause into the master contracts.³⁶ Union security clauses require all employees in a bargaining unit to pay union dues, regardless of whether an employee wants to join the union.

The negotiated contracts were subject to a vote by all affected state workers in late September 2004. Unfortunately, the unions failed to adequately notify affected workers, and according to employee reports, thousands were never informed of the details of the contract or of their right to approve or deny it. Many employees were unable to obtain a copy of the contract they were asked to ratify, making it impossible to know what they were voting on.

Workers who had not previously joined the union were supposed to be allowed to vote on the contract, as it also affected them, but union officials tried to stack the odds in their own favor by misleading employees. According to employees covered by the Washington Public Employees Association contract, nonmembers were told they would have to join the union for the right to ratify the contract, amounting to an unjust poll tax for the privilege of voting on their own contract.

The unions' inadequate notification to affected employees resulted in a low turnout by employees eligible to vote on the contract. For example, of the approximately 30,000 general government employees covered by the Washington Federation of State Employees (the state's largest public employee union), only 6,133 participated in the ratification vote—a 20 percent turnout.³⁷

Workers organized grassroots efforts in dozens of bargaining units in order to decertify union representation. By April 1, 2005, workers in thirty-two bargaining units filed decertification petitions with the Public Employment Relations Commission.³⁸ These units represented 36 percent of the unionized work force in general government and 15 percent of unionized higher education employees. Most decertification petitions failed, however, as petitioners were unable to obtain the necessary 30 percent show of interest because of time and location restrictions on signature gathering efforts.

Ultimately, the contracts were ratified by a small percentage of the employees impacted—most of them current union members, and the contracts went into effect July 1, 2005. Tens of thousands of employees were forced to join the union or pay a “representation fee” upon threat of termination.

Inclusion of the union security clause in the Washington public employee contracts effectively doubled the size and strength of the state's public-sector unions. Before ratification of the collective bargaining agreement, only 24,030 general government employees paid union dues (July 2004). Starting July 1, 2005, 44,198 general government employees were forced to pay dues union dues or be terminated. The changes also affect 18,600 higher education employees.³⁹

This jump in Washington public-sector union membership is not the result of employee demand or the triumph of democracy, but was accomplished by secretive negotiations, poor dissemination of the contract, and blatant disregard for worker preferences.

Conclusion: Organization efforts must be conducted democratically

A recent poll of non-union workers by Zogby International and the Public Service Research Foundation reveals widespread disinterest in unionizing.⁴⁰ Only one in three workers (35 percent) would consider bringing a union into the workplace, with just half of that group (16 percent) strongly in favor of unionizing. On the other hand, 56 percent of all non-union workers surveyed said they would vote against unionizing. Opposition to unionization was strongest among workers age 30 to 49, where 60 percent said they would not support unionizing.

Labor unions thrive on creating a common enemy to collectively oppose, whether it be an employer or presidential administration. When the average worker is apathetic about union membership, however, labor faces a unique challenge.

Unionization efforts in the face of worker opposition will likely result in serious violations of worker rights, particularly where organization efforts are aided and abetted by compulsory unionism laws.

IV. POLICY SOLUTIONS FOR PROTECTING WORKER FREEDOM

Given organized labor's dual focus of aggressive organizing and rampant political spending, policymakers can implement a number of measures for the protection of worker freedom.

Paycheck Protection

Paycheck Protection is an important legislative remedy designed to curb the power of compulsory unionism and free workers from being forced to subsidize union political spending with which they disagree.

Paycheck Protection requires unions to seek written permission from members before using their dues money for political activity. Paycheck Protection relies on the principle that employees have the fundamental right not to subsidize political activities with which they disagree, or be forced to associate with people or ideas that conflict with their own internal moral compass.

Paycheck Protection measures are necessary to ensure unions spend money in line with member preferences. At the national level, 90 percent of the National Education Association's federal contributions went to Democrats in 2004,⁴¹ despite a recent admission by NEA President Reg Weaver that members are evenly divided between Republicans, Democrats, and independents.⁴² As a result, a significant percentage of U.S. teachers are forced to support candidates for whom they did not vote.

Paycheck Protection was first passed by initiative in Washington state in 1992 and implemented in 1994. Contributions by members to the Washington Education Association political action committee immediately dropped from 80 percent of the membership to only 11 percent.⁴³

The Utah Legislature passed a Paycheck Protection bill in 2001.⁴⁴ Before passage, about 68 percent of Utah Education Association members made annual contributions to the union's political committee. After the first full year of the law's implementation, the number of contributors fell to 6.8 percent: a 90 percent drop-off in the number of teachers contributing to the union's political activity.⁴⁵

Utah's Paycheck Protection law is the most comprehensive in effect today. It bans public employers from diverting employee wages to political committees via automatic payroll deduction; it requires public-sector unions to collect funds through voluntary member contributions; all political funds must go into and out of a segregated fund; and no general member dues can be transferred into the political fund.

California voters will have an opportunity to vote on a Paycheck Protection measure during the California special election on November 8, 2005.⁴⁶

Right to Work

Right to Work (RTW) laws rely on the principle that employees should not be forced to pay dues to a union in order to keep their jobs. When Congress passed the National Labor Relations Act

(NLRA) in 1935, it gave union officials tremendous power by inserting language that allowed unions to compel workers to pay dues—commonly referred to as “collective bargaining.”

Collective, or “monopoly” bargaining, allows a union, once certified, to negotiate employment contracts with employers that force every worker in that bargaining unit to pay dues to the union as a condition of their continued employment. Workers in that unit are no longer able to negotiate with their employers individually for wages, working conditions, and benefits.

The NLRA, and the forced dues provisions it allowed, heralded the glory days of the early labor movement. Soon union coffers overflowed with forced dues monies from millions of American workers, money that union officials quickly parlayed into vast political influence with both the Congress and state legislatures (primarily in industrial states in the Midwest and Northeast).

In 1947, Congress passed the Taft-Hartley Act, which modified the NLRA and significantly curtailed union power. Section 14(b) of Taft-Hartley allowed state legislatures to opt out of monopoly bargaining—no small change in federal labor law. Many states in the South and Rocky Mountain West quickly passed these new Right to Work laws forbidding forced dues contracts as a condition of employment. In these states, unions cannot rely on state-sanctioned compulsion forcing workers to pay dues just to keep their jobs.

Today, 22 states have Right to Work laws, most recently Oklahoma, which passed RTW by initiative in 2001. Right to Work is the most *comprehensive* remedy to compulsory unionism at the state level, but the measure faces enormous political opposition. In states with dominant labor unions where pro-union legislators are deeply entrenched, citizen-sponsored initiatives may be the best hope for passage of RTW.

Enforcement of Beck Rights

The U.S. Supreme Court decision *Communications Workers v. Beck* (1988) held that private-sector union members can only be required to pay dues for services related to collective bargaining, organizing, and communicating with their membership. Employees cannot be required to subsidize the political spending portion of union budgets.

Unfortunately, case precedent is not self-enforcing and most union members are not aware of their *Beck* rights. EFF supports reforms that would require notification of workers’ *Beck* rights.

Reforms for Public-Sector Employees

Agencies that negotiate contracts with public employees should seek the following reforms:

- (1) Conduct negotiations under “open meetings” law.
- (2) Forbid public-funded “release time” for union negotiators.
- (3) Remove “union security” clause (forced dues employment contracts) where possible.
- (4) Specify clear and unambiguous no-strike clauses and stiff penalties for unions that break the law.

- (5) Widely publicize employment contracts to give state workers adequate notice of payroll deduction/forced dues language before public-sector employees vote on such contracts.
- (6) Notify employees of their right to decline full union membership and become “agency fee” payers.

Eliminate Payroll Deduction of Unions Dues

Public-sector unions use the mechanism of payroll deduction of union dues to “strap members to the mast” and enforce compulsory unionism. Taxpayer-subsidized bill collection, however, is not a core function of government. States can eliminate this practice, as was done in Colorado by Governor Owens in 2001.

Union Financial Disclosure

The ability of workers to make good decisions regarding their careers depends on their access to relevant information. Of particular importance are the financial dealings of their union representatives. Unless employees know the details of a union’s income and expenditures, they cannot be expected to make an informed decision as to the benefit of union representation.

One need only read the daily newspaper headlines detailing union corruption scandals where millions of dollars of union member’s dues are embezzled and spent on lavish lifestyles.

Current financial disclosure requirements for private-sector unions were mandated by the Labor-Management Reporting and Disclosure Act of 1959 and are enforced by the U.S. Department of Labor. Unfortunately, the original disclosure forms mandated by the Department of Labor have not kept up with the myriad changes in the financial and accounting world, allowing unions to manipulate loopholes by “parking” political and lobbying entertainment expenses under categories that do not require itemization.

In October 2003, the Department of Labor issued regulatory changes that modernized disclosure requirements and called for greater itemization of union spending. Predictably, unions filed suit against Secretary of Labor Elaine Chao. After a lengthy court battle, the Department of Labor prevailed in May 2005, and the new disclosure requirements are in the process of implementation.

The disclosure mandated by federal law is only required of unions that represent workers in the private-sector. State legislatures can pass similar requirements to mandate disclosure by public-sector unions.

Ban Collective Bargaining for Public Employees

Three examples of worker freedom reform come from Kentucky, Indiana, and Missouri.

Kentucky Governor Ernie Fletcher paved the way for reforming state government by rescinding the state’s collective bargaining agreement in 2003. Public-sector collective bargaining agreements mandate benefits, working conditions, inefficient work rules and state subsidy of

union activity. Kentucky's long history of union political dominance makes such a reform particularly important and a landmark in the fight to streamline government services and protect workers from coercion.

The newly-elected governors of Indiana and Missouri followed suit in 2005. Approximately 55,000 state workers were subsequently freed from collective bargaining agreements when Governor Mitch Daniels of Indiana and Governor Matt Blunt of Missouri rescinded collective bargaining by executive order.

Governor Daniels' office cited reports that Indiana state employees were spending in excess of 100,000 man-hours on union activity,⁴⁷ a staggering amount of time that could have been spent delivering services to the taxpayers of Indiana. The governor also cited the 15-year bargaining authority as a major roadblock to his attempts to quickly reform state government.

Governor Blunt's motivation for rescinding his state's forced-dues bargaining agreements was less about efficiency and more about worker freedom. Blunt's decision was based on his opposition to forcing workers to pay for union representation against their will. "People work hard for their money, and they should not have fair share fees taken out of their paycheck and used to support something they do not support or belong to," said Blunt spokesman Paul Sloca.⁴⁸

Banning collective bargaining for state employees is an option for reforming state government, protecting taxpayers and shielding state workers from coerced unionism.

V. KEY FINDINGS

1. Organized labor's numbers are shrinking overall. Unionization in the private-sector has reached a crisis point, while public-sector unions are relatively healthy.
2. The defection of three major unions from the AFL-CIO is essentially a disagreement over how to reverse organized labor's declining numbers. The AFL-CIO will continue to pursue a top-down strategy of electing pro-labor candidates to state and federal office; the dissident Change to Win coalition will focus primarily on organizing new sectors of workers.
3. Unions wield tremendous influence in national, state and local elections. For example, in the 2004 election cycle, California's public-sector unions gave \$38 million to candidates and ballot measures. Eighty-nine percent of partisan donations went to Democrat candidates.
4. Despite a politically-diverse membership, unions political spending overwhelmingly benefits a single political party. Since 1989, 96 percent of union political contributions went to Democrats.
5. Reported union political contributions are only a fraction of actual union spending. Unions are able to conceal hundreds of millions in member education and voter mobilization efforts.
6. When given a choice, union members overwhelmingly refuse to support union political activity. Over 90 percent of Washington state public school teachers decline to contribute to their union's political action committee. Additionally, nearly 95 percent of Utah public school teachers choose not to contribute to their union's political fund.
7. Mandatory union laws and collective bargaining agreements restrict worker freedom by forcing workers to associate with unions against their will.
8. Union organization efforts can be undemocratic and often violate individual worker rights. Unions should fully disclose of the terms of representation, and should allow all workers affected by representation to participate in contract ratification.
9. Paycheck Protection laws, Right to Work laws, union financial disclosure requirements and other policy measures protect workers from abuses by union officials.

APPENDIX A: REPORT ON WASHINGTON’S PAYCHECK PROTECTION LAW

Paycheck Protection is designed to give union members the choice of whether to contribute to the union’s political activities. While several U.S. Supreme Court cases affirm an employee’s right to obtain a refund for all union political spending, these precedents are not self-enforcing. Paycheck protection requires unions to seek written authorization from individual members *before* spending dues on politics.

The nation’s first Paycheck Protection law was adopted by Washington state voters in 1992. Approved by more than 72 percent of the state’s voters, Initiative 134 included, among other campaign reform items, a requirement that before payroll deductions for politics were taken, annual, written permission had to be obtained from the employee.

Paycheck Protection is working

When given a choice, union members overwhelmingly refuse to contribute to their union’s political activity. Washington’s Paycheck Protection law had an immediate and dramatic effect on unions’ ability to collect dues for political activity. After the first full year of implementation in 1994, over 85 percent of the members of the Washington Education Association (WEA) refused to contribute to the union’s political action committee. Voluntary contributions by members have never exceeded twenty percent in ensuing years.

Washington Education Association voluntary member contributions ⁴⁹

Year	WEA members	Member Donors	Percent donors
93-94	60,000	48,000	80.0%
94-95	62,000	6,921	11.2%
95-96	63,000	9,411	14.9%
96-97	64,000	11,671	18.2%
97-98	65,740	10,032	15.3%
98-99	67,213	11,520	17.1%
99-00	68,253	11,121	16.3%
00-01	69,199	9,826	14.2%
01-02	71,449	6,437	9.0%
02-03	71,449	3,371	4.7%
03-04	74,089	4,537	6.1%

Violations by the Washington Education Association

In early 1996, at the urging of a group of teachers, the Evergreen Freedom Foundation uncovered the Washington Education Association’s elaborate scheme to circumvent the Paycheck Protection provisions of Initiative 134. The WEA devised and implemented a \$1.5 million dollar political plan of attack for 1996 despite its less than \$12,000 per month political income.

The Evergreen Freedom Foundation presented evidence of these violations to the Public Disclosure Commission (PDC). The executive director of the PDC described WEA's 1996 campaign activities as "the most serious campaign finance violations in state history." The PDC referred the case to the Washington state attorney general, who filed a lawsuit against the WEA on February 12, 1997.

The state's suit against the WEA was promising, as it afforded the opportunity for true enforcement of the nation's first law codifying the free speech rights enumerated by the 1988 U.S. Supreme Court decision in *Communications Workers v. Beck*. But, sadly for everyone interested in open, free elections and in a workers' basic civil rights, state courts never heard the case as prepared by the attorney general.

On February 27, 1998, then-Washington Attorney General Christine Gregoire announced a settlement with the WEA that dismissed "all lawsuits, administrative charges and pending complaints" between the teachers' union and the state. In return for the dismissal, the WEA agreed to pay the state a \$100,000 penalty (paid from union dues), reduce dues by \$5 for each member the following year and abide by "guidelines" drafted by the attorney general's office.

Subsequent investigation by the Evergreen Freedom Foundation revealed that WEA attorneys prepared the first draft of the attorney general's settlement agreement. A comparison of the initial WEA draft and the final settlement from the attorney general demonstrates that the state permitted WEA officials to write their own settlement.

Attorney General Gregoire's 1998 settlement with the WEA gave Washington unions a free pass to violate the intent of the Paycheck Protection law. The attorney general's guidelines stipulated in the settlement suggest that rather than relying on political funds collected by voluntary member contributions, unions could use general funds for political purposes.

An excerpt from the attorney general's "guidelines" reveals the heart and intent of her decision.

The PDC is aware that membership organizations, such as the WEA, collect dues from their members which go to their general treasury. . . . Such general treasury funds may be expended as contributions to candidates and political committees, including affiliated political committees such as WEA-PAC without creating a political committee. The PDC interpretation of RCW 42.17.680(3) is that it does not apply to the dues deductions that generate WEA's general treasury funds because as presently constituted the WEA is not a political committee. WAC 390-17-100.

The loophole created by the attorney general's settlement encourages unions to ignore member preferences in order to preserve political power.

RECOMMENDATIONS FOR IMPROVING PAYCHECK PROTECTION

The intent of Washington’s Paycheck Protection law is to give union members a choice in supporting their union’s political activity. No one should be forced to support a political candidate or cause against his or her will.

After ten years of monitoring Paycheck Protection in Washington state, the Evergreen Freedom Foundation has identified key improvements that would strengthen the measure.

1. The Attorney General and Public Disclosure Commission should exercise strong enforcement.

Having a good law on the books is not enough; laws require enforcement.

2. Amend RCW 42.17 to prohibit use of general dues for political purposes.

While members continue to exercise a choice in supporting the union’s political activity, unions circumvent the clear demonstration of member preferences by supplementing their political committees with general funds. For example, although over 90 percent of teachers have refused to contribute to the WEA’s political action committee (WEA-PAC) in the last three years, the WEA compensates by using general funds to engage in political activity.

WEA in-kind contributions to WEA-PAC⁵⁰

Year	In-kind Contributions
2002	\$292,989
2003	\$344,943
2004	\$441,335

RCW 42.17 could be amended by adding a provision that prohibits the use of general dues for political purposes, which would ensure that unions only spend the dues money members affirmatively authorize for political use.

3. Amend RCW 42.17 to require unions to register political action committees.

The public has a right to know who influences state elections, and union members deserve to know how their money is being used.

Under a 2002 Washington Court of Appeals decision, unions need not report general fund political expenditures under requirements that govern political action committees. This allows unions to spend millions from collective bargaining dues, thereby bypassing the requirement for member authorization.

For example, the Washington Federation of State Employees Legislative Fund was one of the state’s largest political action committees, spending more than \$1,060,000 in 1996. Yet after

being penalized by the Public Disclosure Commission in 1999 for inaccurate reporting, the fund simply stopped reporting as a political action committee, with no adverse consequences.

In order to prevent unions from spending general dues on politics, unions could be required to create a segregated fund for all political spending, which must then register and report as a political action committee. This mechanism has proven effective in Utah, where the Voluntary Contributions Act prohibits the transfer of general dues into the political fund.

4. Amend RCW 42.17 to prohibit use of payroll deduction for political contributions.

Public-sector unions collecting general dues and PAC contributions do so through the use of payroll deductions. While the state can facilitate the collection of dues, there is no justification for the state to process political contributions on the behalf of public-sector unions.

RCW 42.17 could be amended to prohibit the use of state resources to collect political funds by payroll deduction.

APPENDIX B: FOLLOW THE MONEY: HOW DOES THE NEA USE TEACHER DUES?

Teacher contracts are negotiated at the local level. What are state and national union officials doing with all the money they collect?

Washington Education Association members/fee payers:	76,000
Average dues:	\$762.00 each (\$137 - NEA) (\$342 - WEA) (\$283 - local/regional, estimated)
Annual revenue:	\$57 million from Washington state educators
<i>EFF estimates that only 20% of this amount is spent on traditional, “chargeable” union activities: collective bargaining, contract negotiation and grievance adjustment.</i>	
Amount left for politics and other purposes:	\$45 million (\$90 million per two-year election cycle)

National Education Association

NEA admits...

Officials admitted to spending at least \$118.7 million (or 44% of total expenditures) on activities not related to collective bargaining (“nonchargeable”). At an arbitration hearing to contest the nonchargeable percentage, the NEA representative admitted that the NEA provides no direct services to members.

EFF estimates...

Based on our investigation of union financial documents, we believe the amount of dues spent on nonchargeable activities is closer to 100% of total expenditures.

Washington Education Association

WEA admits...

Officials admitted spending \$5,710,239 (26.4% of total expenditures) on activities not related to collective bargaining.

EFF estimates...

Based on our investigation of union financial documents, we believe the amount of dues the WEA spends on nonchargeable activities is closer to 80% of total expenditures.

Local/Regional (UniServ Dues)

WEA admits...

Union officials typically refund 6% of all local/regional dues as nonchargeable activities.

EFF estimates...

Based on EFF’s estimates, members paid an average of \$283 each for local and regional dues in 2004-05. Based on our investigation, we believe the amount of local/regional dues spent on nonchargeable activities is closer to 70%.

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