

## SB 5551 would promote worker rights, workplace democracy, and union accountability

By Erin Shannon, Director, Center for Small Business & Labor Reform

March 2017

### Key Findings

1. **SB 5551 would provide for regularly scheduled recertification elections that would allow public-sector workers to vote regularly on their union representation.**
2. **Under current law, recertification elections are difficult, time-consuming and complex; 99 percent of public workers have not voted in a union certification election in over five years.**
3. **Regular workplace elections would make it easier for workers to decide whether they want a union to represent them.**
4. **Elections would encourage unions to be more accountable and responsive to their members.**
5. **Regular recertification elections would inject competition into the process. Alternative unions would have the opportunity to seek to represent workers. Competition would benefit workers.**
6. **Greater union accountability is popular with union members; 77 percent believe workers should be able to vote regularly on whether they want their union to continue representing them.**
7. **SB 5551 reflects a long-standing WPC policy recommendation that every worker should have a choice in whether he wants to be represented by a union, and if so, which one.**

### Introduction

This Legislative Memo provides an overview and analysis of SB 5551. The bill would give public employees who are represented by a union the opportunity to vote regularly on their union's performance and thus increase union accountability to members.

SB 5551 would require regularly scheduled recertification elections that would allow public-sector workers to vote on whether they want to continue to be represented by their union. The periodic elections would enable government workers to confirm their support for their union, reject that union, or choose a different union to represent them.

The bill reflects a long-standing Washington Policy Center recommendation that every worker should have a choice about whether he wants to be represented by a union, and if so, which one.

### Background

In 2002, the legislature created a mandatory collective bargaining system for government employee unions. The scope of collective bargaining includes setting the wages, hours, benefits and other conditions of employment for state workers, as well as a process for grievance arbitration.

The Public Employment Relations Committee (PERC) is the state agency charged with overseeing the state's public sector labor relations and administering the eight collective bargaining laws that cover 350,000 public sector workers in Washington state.<sup>1</sup> In addition to resolving labor-management disputes, PERC officials are responsible for conducting representation elections to

1 "Agency Overview: About PERC," Washington State Public Employment Relations Committee, accessed February 9, 2016 at <http://perc.wa.gov/agency-overview/>.

determine whether public employees want to be represented by a union.

Once a union is certified as the representative for a group of public employees, they become a bargaining unit and the union becomes their exclusive bargaining agent. Unions do not need to earn employees' support to remain the sole bargaining representative. The union represents those workers indefinitely, unless it is decertified by union members in a special workplace election.

Decertifying a public sector union is a difficult, time-consuming and complex process. Government employees covered by a current collective bargaining agreement who no longer want to be unionized, or want to change which union represents them, must meet a difficult standard in a very limited period of time.

Individuals or small groups of workers cannot file a petition to remove themselves from a larger bargaining unit. A petition to decertify or change unions must cover all workers in the entire unit. Accordingly, to change their representation workers must demonstrate a "showing of interest," defined as the written support of at least 30 percent of the workers in their bargaining unit who are represented by the union. And they may only file the petition during a short 30-day "window period," which has a start and end date determined by the expiration date of the current collective bargaining agreement.<sup>2</sup>

For most state employees, the 30-day window can only begin 120 days before the expiration of the contract.<sup>3</sup> If a union contract lasts three years, workers seeking a decertification election have only a single four-week period out of 156 weeks to ask for one.

The difficulty in decertifying or changing public sector union representation means it is not a frequent occurrence. There are over 2,000 public sector bargaining units representing around 350,000 workers in

Washington state. Between 2010-2015, public employees filed 89 petitions to decertify or change the government union that represents them. Of the 80 petitions that qualified for a vote, workers voted to decertify their union 15 times and voted to change the union that represents them 33 times.<sup>4</sup>

The number of workers covered by the 80 petitions totals just over 3,700. This means slightly more than one percent of the state's 350,000 unionized public workers have had the opportunity to vote on the union that represents them over the past five years. The other 99 percent of unionized government workers have had no say at all.

## Policy Analysis

SB 5551 would require the Public Employment Relations Committee to hold union re-certification elections via secret ballot for bargaining representatives every four years. Public employees would have the option of voting to recertify their union and continue current representation, replacing their union with another one, or eliminating union representation altogether.

If a majority of workers who vote choose to replace their union, the new union could end the existing labor/management contract 60 days after its (the new union's) certification.

If a majority of workers select no union representation, then the existing contract would end on its normal expiration date, or its third anniversary date, whichever is sooner. No attempt to unionize that workplace could be raised within one year of an attempted certification or a successful decertification.

Regularly scheduled union re-elections would make it easier for workers to decide whether they want a union to represent them. The current process of requiring workers to proactively seek decertification, combined with the restricted "window period", is unnecessarily burdensome and restrictive. It also places dissenting workers in the public

2 "Representation FAQ: What do I need to know to file a representation petition?" Washington State Public Employment Relations Commission, accessed February 9, 2016 at <http://perc.wa.gov/representation-faq/>.

3 Ibid.

4 "By the Numbers: Union Decertifications in Washington," by Maxford Nelson, Freedom Foundation, February 7, 2014, at [www.myfreedomfoundation.com/blogs/liberty-live/numbers-union-decertifications-washington](http://www.myfreedomfoundation.com/blogs/liberty-live/numbers-union-decertifications-washington).

crosshairs of the government union. If the decertification petition is not successful, those who supported the effort face ostracism and even retaliation from their pro-union co-workers and union officials.

A standing re-certification election in which workers cast secret ballots would allow workers to participate in workplace democracy without having to navigate the complex decertification process, and the public exposure that can come with it. Workers would have input into who represents them and their privacy would be protected, allowing them to make the decisions about what representation is best for them.

Regular union elections would encourage labor officials to be more accountable and responsive to workers. Currently unions hold a monopoly; the difficult decertification process means they will effectively remain workers' exclusive bargaining representative indefinitely. Workers who are not satisfied with their union often find it easier to keep silent, and tolerate their union representation rather than challenge it.

Under SB 5551, union officials would have to routinely convince workers of their value, just as elected representatives do when they run for re-election.

The regular union elections proposed by the bill would also inject competition into the process. Alternative unions would have the opportunity to compete for the dues of those workers. As with businesses in the free market, competition between government unions would keep costs low, encourage change and innovation, and drive increased efficiency and improved customer service.

Not surprisingly, union officials argue the regular re-certification elections would “inject instability” into public sector unions by “end-running current democratic rules for choosing union representation.” They contend regular recertification “takes away workplace freedom.”<sup>5</sup>

---

5 “WFSE members, other public employees speak out against bad bill that takes away freedom,” AFSCME Council 28, Washington Federation of State Employees, February 2, 2016, at <http://wfse.org/scl-20116/>.

Clearly, allowing government workers the opportunity to vote regularly for or against their union is not an end-run around democratic rules for choosing union representation. Nor would it take away workplace freedom. To the contrary, SB 5551 would increase workplace democracy, freedom and choice by ensuring workers have an opportunity to vote.

But what about the union argument that regular workplace elections would “inject instability” into public sector unions?

Union officials who do a good job representing their members should have nothing to fear from a recertification election. After Wisconsin passed its re-certification law for public workers, many unions did not file for re-election, believing they would lose. But 85% of the school employee unions that ran for re-election in 2011, won.<sup>6</sup> Some union officials lowered the cost of monthly dues in response to worker concerns. For example, the Wisconsin Education Association reduced dues by 30 percent.<sup>7</sup> The change in dues policy is a good indicator of how workplace elections increase a union's responsiveness to its own members.

In a further show of accountability, organized labor in Wisconsin now urges government unions to view recertification elections as an opportunity to “build your union.” They advise unions to “engage in campaigns on the issues teachers and school employees care about.” The constant pressure of convincing workers to re-elect their union provides incentive for those unions to fight for their interests and help solve their problems.

One union official said, “Since we couldn't conduct bargaining like we had in the past

---

6 “Most school employees vote to recertify unions under bargaining law,” by Steven Verburg, *Wisconsin State Journal*, December 9, 2011, at [http://host.madison.com/wsj/news/local/govt-and-politics/most-school-employees-vote-to-recertify-unions-under-bargaining-law/article\\_a701e680-21f0-11e1-8d17-0019bb2963f4.html](http://host.madison.com/wsj/news/local/govt-and-politics/most-school-employees-vote-to-recertify-unions-under-bargaining-law/article_a701e680-21f0-11e1-8d17-0019bb2963f4.html).

7 “Unelected Unions: Why Workers Should be Allowed to Choose Their Representatives,” by James Sherk, The Heritage Foundation, August 27, 2012, at [www.heritage.org/research/reports/2012/08/unelected-unions-why-workers-should-be-allowed-to-choose-their-representatives#\\_ftn40](http://www.heritage.org/research/reports/2012/08/unelected-unions-why-workers-should-be-allowed-to-choose-their-representatives#_ftn40).

[i.e. from a monopoly position], we had to demonstrate the need for the union.”<sup>8</sup> The Vice President of the Milwaukee Teachers Education Association said, “we show our strength by recertifying.”<sup>9</sup>

Labor leaders in Washington could similarly use recertification elections as an opportunity to strengthen their union. In fact, the Executive Director of the Washington Federation of State Employees, Greg Devereux, said challenges to the current model of compulsory unionism should be used to build a stronger union. Speaking about the U.S. Supreme Court case, *Friedrichs v California Teachers Association*, that would have ended the forced unionism of all public sector employees, Devereux said a ruling ending compulsory unionism, “may force change that we’ve needed for a long time, but I don’t think that’s a bad thing necessarily.”<sup>10</sup>

Devereux urged his union to “see *Friedrichs* as an opportunity.” He believes many members are disconnected from the union because they often don’t see union representatives in their workplace, fighting for their interests and solving their problems. According to Devereux, a U.S. Supreme Court ruling ending compulsory unionism would force labor to “internally organize in a way we never have before” to demonstrate to workers “the value and power” of unions:

*“This is not rocket science, we know first hand that when members see the power of the union in action solving their problems in the work place it moves people to remain members.”<sup>11</sup>*

Ultimately, the U.S. Supreme Court did not end forced unionism in their ruling on *Friedrichs* last year. The Court deadlocked in a 4-4 tie after the unexpected passing of Justice Antonin Scalia a month after hearing

oral arguments on the case. Cases similar to *Friedrichs* have since been filed and will be heard after a new Justice is confirmed on the Court. Regardless of the case, just as a U.S. Supreme Court ruling ending the compulsory unionism of public workers would not need to cripple unions, nor should requiring regular recertification elections.

## Conclusion

Greater union accountability is popular with union members; 77 percent believe workers should be able to vote regularly on whether they want their union to continue representing them.<sup>12</sup>

Just as regular elections force democratically elected officials to be answerable to voters, so too would requiring unions to regularly run for re-election in the workplace. The possibility of defeat in a recertification election would make union officials more competitive, accountable and responsive. This would benefit workers.

Recertification elections are not “anti-union.” Workers who are happy with their union could easily re-elect it. SB 5551 would simply provide the opportunity for workers to confirm their support for their union, reject the union, or choose a different union to represent them.

SB 5551 reflects the WPC policy recommendation that every worker should have a choice in whether they want to be represented by a union, and if so, to choose which union they want to represent them. The bill would increase democracy, freedom and choice for government workers, and for that reason it is good public policy for Washington state.

Erin Shannon is  
Washington Policy Center’s  
director of the Center for  
Small Business & Labor  
Reform.

*Nothing here should be  
construed as an attempt to  
aid or hinder the passage of  
any legislation before any  
legislative body.*

Published by  
Washington Policy Center  
© 2017

Visit [washingtonpolicy.org](http://washingtonpolicy.org)  
to learn more.

8 “Stewards Corner: Use Recertification to Build Your Union,” by Samantha Winslow, Labor Notes #431, February 16, 2015, at <http://labornotes.org/2015/02/stewards-corner-use-recertification-build-your-union>.

9 Ibid.

10 Greg Devereux, Executive Director, Washington State Federation of State Employees, 2105 Washington State Labor Council Constitutional Convention, July 23, 2015, at [http://tvw.org/index.php?option=com\\_tvwplayer&view=entID=2015070023#start=9604](http://tvw.org/index.php?option=com_tvwplayer&view=entID=2015070023#start=9604).

11 Ibid.

12 “What does the Employee Rights Act accomplish: Union Recertification,” accessed February 11, 2016, at <http://employeerightsact.com>.