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# CHAPTER SEVEN

## CREATING JOBS AND PROTECTING WORKER RIGHTS

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### **1. Policy Recommendation: Protect worker rights by making Washington a right-to-work state**

The principle of right-to-work is simple. It is the legal right of a person to hold a job without having to pay mandatory dues or fees to a union. It does not outlaw unions; it ensures that union membership is voluntary, in order to protect every worker's basic right to employment and freedom of association.

#### **Worker rights gaining prominence**

Right-to-work laws are gaining prominence across the country as state leaders strive to improve job creation, promote economic development and attract new businesses. Five states recently passed right-to-work laws. These are Indiana, Kentucky, Michigan, Wisconsin and West Virginia. In all, 27 states now protect basic worker rights, with more states introducing legislation and debating the issue every year.<sup>1</sup> Washington state does not currently have a right-to-work law.

Further, the U.S. Supreme Court ruled in *Janus v. AFSCME* that state and local employees cannot be fired or otherwise punished if they choose not to join a union. The ruling means right-to-work is the law for all public-sector workers, although this right is often

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1 "Right-to-work resources," Labor and Employment, National Conference of State Legislatures, accessed September 25, 2019, at <http://www.ncsl.org/research/labor-and-employment/right-to-work-laws-and-bills.aspx>. States with right-to-work laws are Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan (private/public), Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin and Wyoming.

unfairly restricted, as discussed in the next section.

### **Right-to-work is not anti-union**

A right-to-work law does not prevent employees from joining a labor union. Labor unions operate in right-to-work states. Right-to-work laws do not force unions to represent “free riders” who take advantage of union representation but do not pay dues. Rather, right-to-work laws require unions to give workers a choice about financially supporting those efforts.

### **Right-to-work laws promotes business and jobs**

Studies show that states with right-to-work laws attract more new business than states without such laws. Right-to-work states consistently outperform non-right-to-work states in employment growth, population growth, in-migration and personal income growth. Adjusted for cost-of-living, workers in right-to-work states enjoy higher real disposable income than workers in non-right-to-work states.<sup>2</sup>

A 2015 economic study measured the business and employment effects if Washington became a right-to-work state.<sup>3</sup> The findings are dramatic. Like other right-to-work states, Washington would benefit from a permanent boost in employment and income growth.

What is more, these benefits would come with no cost to the

2 “Right-to-work laws: The economic evidence,” by Jeffrey A. Eisenach, Ph.D., Insight in Economics, NERA Economic Consulting, May 2018, at [https://www.nera.com/content/dam/nera/publications/2018/PUB\\_Right\\_to\\_Work\\_Laws\\_0518\\_web.pdf](https://www.nera.com/content/dam/nera/publications/2018/PUB_Right_to_Work_Laws_0518_web.pdf), and “Real Earnings Higher in Right to Work States,” Stan Greer, Senior Research Associate, National Institute for Labor Relations, January 1, 2001, at, [www.nilrr.org/2001/01/01/real-earnings-higher-right-work-states/](http://www.nilrr.org/2001/01/01/real-earnings-higher-right-work-states/).

3 “Impact of right-to-work on the state of Washington,” by Eric Fruits, Ph.D., Policy Brief, Washington Policy Center, June 2015, at [www.washingtonpolicy.org/library/docLib/Shannon-\\_fruits\\_study.pdf](http://www.washingtonpolicy.org/library/docLib/Shannon-_fruits_study.pdf).

state. In fact, the study estimated the state would likely enjoy greater tax revenue from the increased economic growth:<sup>4</sup>

- Increased employment – After five years, the state would have almost 120,000 more people working as a right-to-work state, with more than 13,100 in increased manufacturing employment, than it would have without a right-to-work law;
- Increased incomes – After five years, the state’s wage and salary incomes would be \$11.1 billion higher and average annual wage and salary would be more than \$560 higher, than otherwise.

### **Right-to-work promotes fairness**

The fairness inherent in right-to-work laws is clear. Worker rights advocates say workers should have the freedom to decide whether they want to support a union financially. If workers find union membership is worthwhile, they will voluntarily pay union dues. If they do not believe the benefits are worthwhile, or if they disagree with the politics and campaign spending of the union, they should not be forced to support it.

Similarly, the economic arguments supporting a right-to-work law in Washington are simple. As more states increase their competitiveness by adopting right-to-work laws, Washington’s non-right-to-work status increasingly hampers the state’s business climate.

### **Conclusion**

When comparing state business climates, Washington enjoys high marks for not having an income tax, for access to world markets and for an educated, innovative workforce. Adding a right-to-work law to protect private-sector workers would serve the public interest, because it would enhance Washington’s economic

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<sup>4</sup> Ibid.

competitiveness and promote fairness and social justice for workers.

## **2. Policy Recommendation: Make it as easy for public-sector workers to leave a union as it is to join one**

In June 2018 the U.S. Supreme Court ruled that public-sector workers cannot be forced to join a union as a condition of employment. In *Janus v. AFSCME* the court affirmed the freedom of association rights of all state, county and local government employees freely to join or refuse to join a union, without penalty, harassment or loss of employment.<sup>5</sup>

### **Imposing barriers to worker rights**

In April 2019, however, the Washington state legislature passed a bill, HB 1575, imposing a series of barriers on public-sector workers who wish to exercise their Janus rights. The bill passed along party lines, with only Democrats voting for it and Republicans opposing it. Governor Inslee signed the bill into law on April 30th.<sup>6</sup>

The new law imposes a number of restrictions on public-sector workers:

- Allows unions to sign up a worker based on electronic or

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<sup>5</sup> *Janus v. American Federation of State, County and Municipal Employees (AFSCME)*, No. 16-1466, Supreme Court of the United States, decided June 27, 2018, at [https://www.supremecourt.gov/opinions/17pdf/16-1466\\_2b3j.pdf](https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf).

<sup>6</sup> HB 1575, “Strengthening the rights of workers through collective bargaining by addressing authorizations and revocations, certifications, and the authority to deduct and accept union dues and fees,” Washington state legislature, introduced January 24, 2019 by Rep. Monica Jurado Stonier (D-Vancouver), enacted April 30, 2019. at <https://www.washingtonvotes.org/Legislation.aspx?ID=184135>.

recorded voice message –clear written permission from the worker is no longer required;

- Requires any worker who wishes to leave the union to submit the request in writing;
- Forbids employers from recognizing a worker’s Janus rights without first getting approval from the union;
- Ends ballot secrecy protections when workers vote on whether to be represented by a union. Instead workers must sign or reject a public “show of interest” card in person in the presence of union organizers;
- Weakens safeguards against forcing union representation at a government agency, cutting the approval threshold from 70% of workers to only 50%. Combined with ending ballot secrecy in union elections, the provision allows unions to pressure workers who wish to exercise their Janus rights and not join.

A number of proposed amendments designed to restore ballot secrecy and allowing workers, not union executives, to decide for themselves whether to pay dues failed along party lines.

### **Clear purpose is to protect the powerful**

The clear purpose of HB 1575 is to protect the powerful status of unions within government agencies and to make it difficult for public-sector workers to exercise their Janus rights. In return, unions play an influential role at election time, providing financial support to candidates who promise to protect the union’s privileged position.

The new law also makes it easier for public-sector unions to collect dues from unwilling employees, and to pressure workers against speaking out.

## Anti-Janus rights bill is likely unconstitutional

Since it represents a clear violation of freedom of association, HB 1575 is almost certainly unconstitutional. This point was raised during committee debate in the state House.<sup>7</sup> Rep. Drew Stokesbary (R-Auburn) noted the bill makes it,

“...incredibly more difficult to opt out [of a union] than it is to opt in,” and that it exposes the state to liability for wrongful withholding of employee wages.

Democrats asserted the legislature does not have to be concerned about the constitutionality of proposed bills, saying,

“It is not in our purview to make those decisions,” and that the legislature “is not the venue where we determine constitutionality, it happens across the parking lot [at the state supreme court].<sup>8</sup>”

## Conclusion

Lawmakers should repeal the HB 1575 law and enact safeguards that protect the rights of workers in the public-sector at all levels of government. State leaders should make sure that it is as easy to leave a union as it is to join one, and that all public employees are informed of their right to leave a union whenever they wish, without threats, harassment or job loss.

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7 Hearing on HB 1575, “Collective Bargaining/Dues,” Rep. Drew Stokesbary (R-Auburn), House Appropriations Committee, Washington state House of Representatives, March 11, 2019.

8 Hearing on HB 1575, “Collective Bargaining/Dues,” Rep. Timm Ormsby, (D-Spokane), House Appropriations Committee, Washington state House of Representatives, TVW, February 26, 2019, at <https://www.dropbox.com/s/a9sin5ywg1wvdjj/1575%20Debate.mp4?dl=0>.

### **3. Policy recommendation: End the SEIU dues skim, to stop unions from taking money from monthly Medicaid payments**

Home health care workers are hired by disabled Medicaid recipients or their legal guardians to provide in-home personal care services. The hired worker is often a family member caring for an elderly parent or disabled child.

The Medicaid program provides a modest monthly payment, administered through the state, which allows elderly and disabled people to live in their own homes, providing a loving and cost-saving alternative to going to a nursing home or a state institution.

#### **Union skims money from monthly checks**

Thousands of disabled Medicaid recipients are unaware, however, that the Service Employees International Union (SEIU) union has made a special arrangement with the state to take part of their monthly Medicaid check. SEIU says it takes the money as “dues” to pay for union representation, even though many people do not know the state has labeled these home care workers as “union members.”

The arrangement is highly profitable for the union. Every year SEIU skims a staggering \$27 million from the Medicaid care payments sent to our state’s in-home care providers.<sup>9</sup>

#### **Labeling home care workers “state employees”**

SEIU executives say they take the money because family caregivers are supposedly “state employees.” What they do not mention is home caregivers are classified by the state as “state

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<sup>9</sup> Form LM-2 Labor Organization Report, filed March 30, 2017, available at [http://optouttoday.com/sites/default/files/SEIU-775-2016\\_LM-2.pdf](http://optouttoday.com/sites/default/files/SEIU-775-2016_LM-2.pdf).

employees” only to collect dues, and for no other reason.

This is a legal fiction. Caregivers for Medicaid recipients are clearly not state employees. They are not hired, fired or even supervised by state managers. They do not receive the generous pay, vacation, retirement and health benefits that real state employees get.

But they must pay union dues to SEIU if they want to work as a caregiver, even to care for a member of their own family.

SEIU does not even have to do the collecting. A state agency automatically takes the money from the caregivers’ Medicaid payment and gives it to the union. Home caregivers never even see the money before it is diverted to SEIU.

## **Union dues skim invalidated by the courts**

In 2014, the U.S. Supreme Court invalidated the SEIU’s Medicaid dues-skim. The Court ruled that home care workers cannot be forced to pay union dues or fees against their will. To further protect the rights of the elderly and disabled, the U.S. Department of Health and Human announced in 2019 that states cannot take part of monthly Medicaid payments in order to financially benefit of a third party, such as a union.<sup>10</sup>

Not surprisingly, SEIU executives were not happy with the court’s ruling. Since then the union has aggressively worked to prevent workers from exercising their right not to pay union dues.

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<sup>10</sup> “Feds officially end SEIU dues skim of Medicaid funds,” by Erin Shannon, Washington Policy Center, May 2, 2019, at <https://www.washingtonpolicy.org/publications/detail/feds-officially-end-the-seiu-dues-skim-of-medicaid-funds>.



## **Blocking homecare worker rights**

SEIU has sent confusing information to caregivers, filed hostile lawsuits and even sponsored a misleading (and widely criticized) ballot initiative in 2016 to keep home care providers from being informed.<sup>11</sup>

In addition to those tactics, SEIU skirted the U.S. Supreme Court ruling by imposing an “opt-out” system that puts the burden of stopping dues collection on the caregivers, not on the union. Worse, the union has made the “opt-out” system as confusing and difficult as possible, saying caregivers can only leave the union during one 15-day period each year.

## **Conclusion**

Medicaid dollars are supposed to enable the elderly, sick children, and the disabled to receive loving in-home care, rather than go to a nursing home or a state institution. Instead, much of this care support is being siphoned away to enrich a private union.

Lawmakers should end the SEIU dues skim in Washington state, see that home care worker rights are respected, and ensure they receive the full monthly Medicaid payment to which they are entitled.

## **4. Policy recommendation: End secret union negotiations by subjecting collective bargaining to the Open Public Meetings Act**

Washington state has one of the strongest open government laws in the country. The state’s Public Records Act and the Open Meetings Act (OPMA) require that both laws be “liberally construed” to promote open government and accountability to the

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<sup>11</sup> Initiative 1501, Washington state, passed November 8, 2016.

public. The law says:

“The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”<sup>12</sup>

### **Billions of dollars in public spending negotiated in secret**

Despite this strong mandate for government transparency, government collective bargaining contracts in Washington are usually negotiated in secret. There is no option for the public to know what transpires in such negotiations until well after those negotiations have been concluded and agreements have been signed.

These secret negotiations between government unions and public officials often involve billions of dollars in public money.

### **Public shut out of talks**

In practice, this means the public does not have access to the details of any contract negotiations between government officials and union executives until after an agreement has been struck. At that point, the final contract and its cost is posted on the website of the state Office of Financial Management. Even then, the details of the proposals and ensuing negotiations that led to the collective bargaining agreement are kept secret.

In order to learn exactly what a government union asked for, what the governor or local officials gave up, one must wait until

<sup>12</sup> Revised Code of Washington, Title 42, Chapter 42.30, Section 010, Open Public Meetings Act, at <http://app.leg.wa.gov/rcw/default.aspx?cite=42.30>.

the contract is signed then file a public records request.

It typically takes two to three months to get the records. That is not an open, nor timely, means by which taxpayers, union members, lawmakers, and the media can learn what was negotiated before a contract agreement was reached.

### **Public employees have a right to know**

It is not just taxpayers who are deprived of their right to know. Rank and file public employees on whose behalf the union negotiates are also left in the dark.

Public employees are taxpayers as well, and they may be concerned about the financial obligations public officials are committing the public to paying, especially when such obligations are agreed to in secret.

Only the government officials and union executives who negotiated the deal know what offers were made, and rejected, in collective bargaining negotiations. Public employees and the public are left wondering whether, and how well, their interests were represented.

### **Open collective bargaining is common in other states**

Secrecy is not the rule in every state. Washington's neighbors to the south and east, Oregon and Idaho, require collective bargaining negotiations be open to the public. Of the 47 states that allow government workers to collectively bargain, 22 states allow some level of public access to these negotiations,

In addition, seven local governments in Washington have recently ended secrecy and embraced transparency. A policy of open collective bargaining has been adopted by Gig Harbor, Ferry

County, Lincoln County, Kittitas County, Spokane County and Pullman School District and Kennewick School District.

Voters in the City of Spokane are deciding in November 2019 whether to adopt a similar policy of collective bargaining openness in their community.

## Conclusion

Negotiations with powerful public-sector unions should not be negotiated in secret. The public should be allowed to follow the process and hold government officials accountable for the spending decisions they make on taxpayers' behalf.

Opening public employee collective bargaining is clearly working in many states, and even in some Washington local governments, creating more open, honest, and accountable government. Lawmakers should adopt the same policy of transparency and public openness for the state, for counties and for local-level government.

## 5. Policy recommendation: Legalize private workers' compensation insurance

Washington is one of only four states that bar business owners from buying affordable workers' compensation insurance in the competitive market. Only Ohio, North Dakota, Washington and Wyoming enforce monopoly systems.<sup>13</sup> In 46 states, employers have the ability to choose among many competing private insurers, to get the best coverage for their workers at the best price.

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13 Workers' compensation laws – state by state comparison,” Legal compliance, workers' compensation, National Federation of Independent Business (NFIB), June 7, 2017, at <https://www.nfib.com/content/legal-compliance/legal/workers-compensation-laws-state-by-state-comparison-57181/>.

### **Outlawing competition**

In contrast, Washington state runs its own insurance company and sets its own prices. Buying the product is mandatory, and state officials have passed a law to make sure they face no competition. Measured in private-sector terms, the state-run insurance company is highly profitable and guarantees long-term and lucrative employment for its executives and staff.

As a result the system is one of the most expensive in the nation. Increasing insurance choices through legal competition would help make workers' compensation more effective and less expensive.

### **Private insurance would increase worker safety**

Legalizing private insurance would help reduce workplace injuries. Employers know a dangerous work environment and slow rehabilitation for injured workers is expensive. Private insurance companies in other states have created extensive safety training programs designed to reduce accidents and protect workers. By working closely with employers, insurance companies have dramatically reduced the risk of workplace injuries.

For example, in 2006 lawmakers in West Virginia ended a state-run monopoly and legalized private workers' compensation insurance. As a result the cost of work-related injuries fell an average of 27 percent, saving employers about \$150 million a year. Even as costs declined, injured workers received more protections and better service. The West Virginia market comprises over 270 insurance carriers, and since the year private coverage was legalized aggregate loss costs have dropped by 75%.<sup>14</sup>

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14 Workers' compensation," Offices of the Insurance Commissioner, West Virginia, accessed September 26, 2019, at <https://www.wvinsurance.gov/Workers-Compensation>.

## **State insurance monopoly offers no choice**

By running its own insurance monopoly, Washington lags behind other states. Real-world experience shows that allowing competition reduces workers' compensation costs and improves safety.

Currently, state managers know their insurance program can never go out of business. Rates go up and workplace injuries may increase, but buying state-sponsored coverage is the law and employers have no other choice.

## **Conclusion**

Legalizing market competition would reduce the number of accidents and help workers who are injured return to work sooner. As the vast majority of states have found, private coverage reduces costs, increases safety and protects workers.

In a system of private choice, the state could maintain a safety-net program by being the “insurer of last resort” for firms that, for whatever reason, cannot get private worker protection coverage.

**Additional resources**

“Right-to-Work: What it is and how it works,” by Erin Shannon, Policy Brief, Washington Policy Center, December 2014

“Impact of Right-to-Work on Washington state,” by Eric Fruits, Ph.D., Policy Brief, Washington Policy Center, June 2015

“End the union’s skim of home health care wages,” by Erin Shannon, Policy Brief, Washington Policy Center, October 2017

“Local governments can improve transparency and accountability by opening secret collect bargaining sessions to the public,” by Jason Mercier, Policy Brief, Washington Policy Center, August 2017

“Six common myths about the minimum wage,” by Erin Shannon, Policy Brief, Washington Policy Center, December 2017.

“Transparency in public employee collective bargaining: How Washington compares to other states,” by Erin Shannon, Policy Brief, Washington Policy Center, December 2018

“How to leave your union – everything you need to know about the Janus right-to-work decision,” by Erin Shannon, Washington Policy Center, June 1, 2018

“2019 Legislative Session: Unions – 2; workers – 0,” by Erin Shannon, Washington Policy Center, May 1, 2019