

**Addressing the “Union Problem” During the Great Recession: State Policy Approaches to Reforming Collective Bargaining**

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**Abstract:** This article contributes to our understanding of the politics surrounding collective bargaining reform during the Great Recession by shedding light on and offering explanations for states' unique approaches to resolving labor issues, i.e. addressing the "union problem" during the recession. I provide a more detailed analysis of the content of collective bargaining reforms pursued and enacted across the States during the Great Recession. First, I group labor relations proposals into two broad reform categories or "packages" based upon whether their provisions seek to alter: 1) labor union membership, or 2) labor union influence. I then provide a justification for classifying labor laws in this way based upon the observation that states tended to pursue one reform package over the other. I argue this suggests that these packages represent two distinct ways of resolving the same concern: what to do about labor unions in the midst of the Recession. Next, I analyze potential explanations for why states might pursue one type of labor-restricting reform package over the other. I find that partisanship and labor union influence shape lawmakers' choices in meaningful ways: states with strong public sector unions and Democratic-controlled legislatures appear reluctant to pursue union *formation* restrictions, presumably because they do not want to upset their influential labor allies. Nonetheless, Democratic lawmakers still sought to limit the *influence* of entrenched labor unions in the context of a weak state economy, especially with a Republican Governor at the helm.

## **THE GREAT RECESSION AND THE “ASSAULT” ON PUBLIC SECTOR UNIONS**

The tendency for the incumbent President’s party to lose ground during midterm elections rang especially true in the midst of the Great Recession. In addition to the Democrats being notoriously “shellacked” on the national stage, 2010 marked a pivotal time in state party politics: In a spectacular reversal of partisan control, a new wave of Tea-party-endorsed conservatives unseated Democratic lawmakers and governors all across the country. Legislatures in several “rust belt” states with legacies of Democratic or bi-partisan control notably flipped for the Republican Party. Newly empowered Republican leaders seemingly held a mandate to address imminent state fiscal crises according to conservative principles. Governors like John Kasich of Ohio, Rick Snyder of Michigan, Mitch Daniels of Indiana, and Scott Walker of Wisconsin promised to shrink government, reduce taxes, and make government friendlier for business during their election campaigns. As public employees working in these states would soon find out, a key component of this agenda entailed restructuring public sector labor relations through the enactment of labor-restrictive collective bargaining reforms. This article examines the content of collective bargaining reforms pursued across the American states during the Great Recession, paying particular attention to the political and economic foundations of state labor reform agendas.

In Wisconsin, for example, those familiar with the state’s legacy as the first to grant public employees collective bargaining rights were astonished when Republican lawmakers under the leadership of Governor Scott Walker ushered in a new “right to work” era for government employees. These reforms, implemented in 2011 as part of an omnibus reform package referred to as the “Budget Repair Bill” or Wisconsin Act 10 were startling in their draconian nature. This is because the legislation contained elements designed to both 1) restrict union formation and membership, and 2) diminish the influence of existing unions.

On the first count, lawmakers utilized several widely held legal maneuvers to reduce unions' abilities to attract and retain members. First, they banned the hallmark collective bargaining practice of public employees being required to pay fees to a union even if they do not wish to become members. This is otherwise known as the "fair share" fee that individuals are bound to pay for being covered under a union-negotiated contract. Next, the law restricted union members from having their dues automatically deducted from their paychecks, thereby increasing the time costs associated with membership. Additionally, all state bargaining units (except those representing "uniformed personnel" like police officers, fire fighters, and state troopers, who were notably exempted from the legislation) would now have to undergo annual recertification elections, and those unions that did not win majority support would subsequently be disbanded. Finally, rights to exclusive union representation were eliminated for faculty and academic staff at the University of Wisconsin campuses, home health-care workers, nurses and other health-care workers at the UW Hospitals and Clinics. Moreover, on the second count, the legislation sought to diminish the influence of existing unions by narrowing the collective bargaining scope. Upon the enactment of Wisconsin Act 10, approximately 200,000 public employees lost the right to collectively bargaining over issues related to promotion, seniority, and pensions and health benefits, while future wage increases were pegged to the cost of living index, effectively removing salaries from the bargaining scope as well (Kersten, 2011).

In sum, such elements of Walker's Budget Repair Bill go a long way toward restricting current and future unionization in the state of Wisconsin by imposing barriers to bargaining unit certification, increasing the costs associated with union membership, and reducing the unions' sphere of influence in contract negotiations. Understandably, Wisconsin's collective bargaining reforms became highly publicized due to the uproar of organized labor in the state and the embattled Walker recall attempt that followed. However, they were neither novel nor isolated.

Indiana Governor Mitch Daniels actually came out ahead of the curve in 2006 when he rescinded public employees' collective bargaining rights. Then, in 2012, Indiana lawmakers shifted their attention toward private sector workers to pass legislation making Indiana the 23<sup>rd</sup> "right to work" state (NCSL, 2015). Michigan and Ohio also followed Wisconsin's lead to implement similar collective bargaining restrictions for both public sector workers (in the case of Ohio) and all workers (as in Michigan). Chris Christie also signed an executive order on his first day in office that restricted public employee unions in the state from making political campaign contributions, and has since engaged in numerous struggles with public employee unions over salaries, pensions, and health care benefits.

As Cantin points out: "What makes Scott Walker's assault on labor unions so striking, is that in its prominence it called attention to a wave of anti-public-sector-collective-bargaining statutes that were introduced across dozens of states following the 2010 mid-term congressional and state elections" (Cantin 2012). Hard fought battles over public employees' collective bargaining rights in Wisconsin, Ohio, and Michigan merely served to publicize a nation-wide surge of labor-restrictive lawmaking activity that ensued surrounding the Great Recession. Indeed, over 2600 labor restrictive bills were introduced across the American states from 2007-2014. Notably half of these bills were introduced during the 2011-2012 legislative session, indicating a dramatic increase in labor relations reform activity following the midterms. Moreover, in earlier sessions, the number of pro-labor proposals actually exceeded the number of anti-labor reforms. The "anti-labor" bent that the reform agenda took following the 2010 midterms indicates that a sea change in public sector labor relations was underway: between 2011 and 2012 nearly 5 times as many employer-advantaging or labor-restricting bills were introduced compared to the 2007-2008 session.

Labor scholars and activists argue such heightened collective bargaining reform activity amounts to an assault on organized labor and question whether state lawmakers will soon pound the

final nails into the coffin of the American labor movement (McCartin 2011). Scholars of state politics and public policy, on the other hand, are interested in identifying the set of circumstances that coalesce to shape state policy reform agendas. In this article, I analyze the content of collective bargaining reforms pursued across the States during the Great Recession to distinguish states' unique policy agendas. I do this using an expansive original data set categorizing 2500 bills introduced across the 50 states from 2007-2014. This collection of bills aims to capture the universe of state collective bargaining reforms introduced during the four legislative sessions that bookended the 2008-2009 financial crisis.

My research highlights two key approaches states took toward resolving labor issues in the midst of the financial crisis. First, I group labor relations proposals into two broad reform categories or “packages” based upon whether their provisions seek to alter: 1) labor union membership, or 2) labor union influence. I then provide a justification for classifying labor laws in this way based upon the observation that states tended to pursue one reform package over the other. I argue that this suggests that these packages represent two different ways of resolving the same concern: what to do about labor unions in the midst of a Recession. Next, I analyze potential explanations for why states might pursue one type of labor-restricting reform package over the other. I find that partisanship and labor union influence shape lawmakers' choices in meaningful ways: states with strong public sector unions and Democratic-controlled legislatures appear reluctant to pursue union *formation* restrictions, perhaps because lawmakers do not want to upset influential labor unions. Nonetheless, lawmakers still sought to limit the *influence* of entrenched labor unions in the context of state with a weak economy and a Republican Governor at the helm.

#### **ADDRESSING THE UNION PROBLEM: OPTIONS FOR REFORM**

A significant amount of attention was called to the myriad “problems” associated with labor unions, and in particular, government employee unions during the Great Recession. The image of

greedy teachers and police union bosses defending their members' profligate salaries and pensions while the rest of the American workforce suffered deep losses in earnings and real estate became synonymous with government waste, greed—and even corruption. Public employees, in the words of former Minnesota Governor Tim Pawlenty, were “over-benefited and overpaid.” (Kimball, 2010) On this topic, New Jersey Governor Chris Christie hedged, adding: “I don't think teachers are the problem. I think unions are the problem” (Portnoy, 2013). This is because in many states, public employee unions have become quite effective in their ability to negotiate for the “overly generous” benefits and salaries enjoyed by teachers and other public employees.

In an era where so few among the American working class belongs to a labor organization (12.4% overall, and merely 7.6% among private sector workers), an unfavorable view of labor unions also prevails among large swaths of the American public: in 2009, fewer than half of Americans reported to *Gallup* that they supported unions. Moreover, by 2010, a Pew Research poll found that almost 60% of Americans had an unfavorable view of unions and felt they had too much power (Surowiecki, 2011). Around this same time, a barrage of academic and media reports sought to show that public employees *are* paid more than their private sector counterparts, depending on how this is measured (and specifically whether fringe benefits are included in compensation).

Related to this, some suggest it is mostly the generous pensions and benefits of unionized government employees that private sector workers are envious of. Olivia Mitchell, economist and executive director of the *Pension Research Council*, has even coined a term to describe this feeling: “pension envy” (Schurenberg, 2010). And it is easy to see why: public employees may very well represent the only segment of the American workforce that is still guaranteed (at least until the recent reform movement) a retirement package with defined benefits paying out amounts approaching 90% of peak salary. As *Fiscal Times* reporter Eric Schurenberg observes: “Only two sorts of people survived the Great Recession with their retirement plans intact. The first were a

handful of market geniuses who moved their portfolios to safety in late 2007, just before the crash. The second were...well, garbage collectors” (2010).

Tongue-in-cheek aside, the issue of public sector pensions is highly politicized, and has become even more due to the flagging economy. This is because, according to Schurenberg, public pensions are seen by envious non-government workers as “the last, most profligate manifestation of the pre-401(k) era.” As such, “the mismatch between the average worker’s post-crash retirement prospects and that of the average government employee has started to rankle voters” (Schurenberg, 2010). Moreover, pundits and politicians politicize public employee unions when they draw attention to their members’ occasional 6-figure salaries, “double-dipping” by pensioners, gold-plated health care plans, job tenure, and *union-negotiated* pay increases in the midst of a recession. In this way, those on the Right who had been waiting for an opportunity to weaken the unions that serve as chief financiers of their political competition, seized upon the Recession as an opportunity to cast unions as a problem that needed to be solved. Justification supported by anecdotes drew clear lines from government inefficiency, to the financial crisis, to public employees and their unions, and then back to government inefficiency. This proved to be a popular position as anti-government sentiment mounted among voters discontented by the economy.

Accordingly, public employee remuneration presents both a problem *and an opportunity* for elected officials in states facing steep budget deficits. On the one hand, many states faced legitimate fiscal shortfalls exacerbated by public pension liabilities. In such instances, somewhat goliath-like public employee unions who are naturally resistant to pension reductions for their members present a problem that must be addressed in order to move forward with cost-saving reforms. On the other, as hot-button issues, purportedly lavish public employee compensation and benefits may be heralded to justify a long-sought program of collective bargaining reform aimed at weakening the influence of public employee unions in state politics once and for all.



Further, the popularity of the “public employment = government inefficiency” meme coupled with growing anti-union sentiment also meant that public employee unions posed a unique problem for Democratic lawmakers, many of whom rely upon continued union support to defend their offices and repeatedly run on pro-labor platforms. This is because even in Democratic strongholds like Massachusetts and New York, strained state finances stoked demand for public sector reforms. Public pension reform has been deemed an essential component of addressing state budget deficits; increasing public employees’ health care payments has also been prominent on the reform agenda. Making such changes in the face of opposition from organized labor has been an especially difficult task for Democratic lawmakers. Unlike their Republican counterparts, Democrats need to enable employers (in this case, state governments) to circumvent labor unions in contract negotiations while still supporting them as interest groups who hold significant sway during election time.

I argue that state lawmakers face these dual imperatives in their efforts to address the “union problem” during the Recession, and they are largely mediated by partisanship. Both may want to weaken unions, but in different ways to serve different ends. Republicans, then, may introduce reform packages aimed at reducing overall union density to ultimately extricate organized labor from politics. The passage “right to work”-style legislation (which restricts the collection of union fees from non-members to thwart union formation and growth) under unified Republican governments in Indiana and Wisconsin exemplifies this policy-making approach. Democrats, on the other hand, may feel pressure to restrict unions’ leverage in collective negotiations in order to restructure public employees’ salaries, pensions, and benefits as part of a larger project of fiscal reform. Following this, instances of labor-restrictive reforms being passed by Democratically-controlled legislatures in Massachusetts and New Jersey can be better understood. Backed up against a wall (or large budget deficit) Democratic lawmakers allied with Republicans to respond to the union problem by

weakening unions' influence so that putatively necessary fiscal reforms could occur. By leaving unions' organizing rights intact, however, such policy reform approaches signal a much different approach (and end game) than the more sweeping union formation restrictions pursued by Republican-controlled governments during this time.

In this way, the reform packages that I identify represent two different approaches to solving the labor problem during the Great Recession. I argue that the first motive—the eradication of unions—can be seen through the pursuit of various labor reforms that seek to weaken the ability of unions to certify new bargaining units or to entice members to join existing ones. Right-to-work provisions in legislation provide an example of this. The second motive, subtly diminishing union influence in contract negotiations, may be seen in a second constellation of reforms that seek to make technical changes to bargaining terms and mediation procedures while leaving union organizing rights intact. Provisions that aim to remove wages or pensions from the mandatory bargaining scope are an example of this.

Following these observations, I offer a parsimonious classification scheme for grouping labor-related legislation into two broad categories based on whether bill provisions seek to structure incentives for labor union formation and membership outright, or instead seek to restructure the influence of labor unions in both contract negotiations and electoral politics. I refer to bills in the first category as “ex ante” reforms because they seek to preclude or encourage the formation of strong unions “before the event” by creating an institutional environment that is initially un/favorable to union certification and dues collection. Conversely, I refer to bills in the union influence restricting category as “ex post facto” reforms because they seek to weaken or strengthen the position of existent labor organizations “after the fact” (of union formation) during contract negotiations, impasses, and in political activities. In the analyses that follow, I further subdivide these categories into proposals that are either labor-restricting (anti-labor) or labor-enabling (pro-labor),

paying particular attention to the factors associated with states pursuing *labor-restricting* forms in either category.

## **LABOR REFORM PACKAGES: STATE APPROACHES AND CLUSTERS**

I have argued that public sector unions presented a problem for both Republican and Democratic lawmakers seeking to soothe state budget crises in the wake of the 2007-2008 financial collapse. For Republicans, however, resolving the “union problem” promised a twofold victory: public sector pay and benefits could be reined in via reforms aimed at eroding unions’ membership bases, thereby reducing union influence and shrinking the public sector at the same time. For Democrats, however, addressing the union problem potentially proved trickier—and more costly. This is because strategies for reducing steep budget deficits coupled with public support for government belt-tightening had to be considered alongside the potential backlash from public sector unions should reforms go too far. Democratic lawmakers, then, could not pursue sweeping “right-to-work” style reforms aimed at thwarting union formation because they could not risk eradicating their union allies from the political playing field. Rather, they needed to devise ways to erode the influence of public employee unions while keeping their membership bases intact.

As I have previously shown, state political and fiscal characteristics play an important role in shaping the direction (pro-labor versus anti-labor) and intensity (frequency of introduced legislation) of state legislative agendas. In particular, intense anti-labor reform agendas are related to negative state fiscal conditions. Nonetheless, not all labor-restrictive reforms are created equally; lawmakers on both sides of the aisle may want to implement labor reforms but may pursue different tactics for doing so. In this section I develop a classification scheme that elaborates the types of reforms pursued by state government seeking to address the union problem in line with other (particularly partisan and fiscal) prerogatives. First, I classify labor reform proposals into two broad reform “packages” including several types of provisions. Categorizing reforms in this way is both novel and

useful because it reveals two distinct approaches to reforming labor relations that necessarily have arisen due to the unique commitments of states. Further, it enables me to parse a substantial amount of bill content data into a manageable conceptual schema. Next, I examine the characteristics of states that shape the reform tools pursued by governments seeking to address the union problem in the midst of a recession.

To do this, I first divided the universe of collective bargaining legislation included in my dataset (approximately 2600 bills introduced across the 50 states from 2007-2014) into 5 reform types (see below). Next, I combine categories 1 and 5 together to form the *ex ante* reform package, and categories 2-4 to form the *ex post facto* reform category. I argue that the reform proposals contained within these categories reflect two very different approaches to reforming labor relations. I further find good cause to disaggregate bills in this broad way because states do exhibit clear tendencies in preferring one reform package over the other. Indeed, states appear to fall into two distinct reform “clusters” based on the distinct reform packages that they pursued during the Great Recession.

### **Labor Relations Reform – Broad Types**

1. Omnibus union organizing rights: includes omnibus legislation, union representation, election, and certification, dues collective rules, and “right-to-work” laws.<sup>1</sup>
2. Contract negotiations: includes terms and conditions of employment and bargaining scope, meet and confer, memoranda of understanding, bargaining or mediation process bills, study bills, labor history curriculum studies and resolutions, and provisions that increase transparency or confidentiality in contract negotiations.
3. Impasses: includes provisions relations to mediation, arbitration, and striking.
4. Politics, money, and influence: regulates union fundraising, use of dues for political purposes, and financial reporting of unions.
5. Public contracts: Provisions that enable or restrict contracting out, and relate to the use of project labor agreements.

### **Labor Relations Reforms “Packages” - *Ex Ante Reforms***

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<sup>1</sup> Note, it is important to understand that reforms are not mutually exclusive; any individual piece of legislation may contain provisions that relate to both union formation and influence. In such instances, bills are labeled as “omnibus” labor relations reforms if they include provisions that seek to alter both union formation and influence, and as such are categorized as *ex ante* reforms.

These reforms preclude/encourage the formation of strong labor unions “before the fact.” In the labor-restrictive context they do so by erecting roadblocks before the bargaining unit certification and dues assessment and collection phases of union organizing. The labor-friendly variant of these reforms makes union organizing easier by establishing exclusive representation rights for labor organizations and streamlined procedures for certifying bargaining units and collecting union fees. This also includes requirements that project labor agreements be used or not depending on the direction of the legislation. In sum, nearly 1200 bills were introduced that included provisions in the ex ante reform package. There were slightly more pro-labor bills introduced than anti-labor, and roughly equal numbers of bills that affected union representation and certification and dues collection and deductions were also introduced (see summary below).

#### **Ex Ante Labor Reforms Summary**

Anti-labor: 557

Pro-labor: 619

Neutral: 10

Union Representation and Certification: 584

Dues Collection and Deduction Rules: 605

Enables/Restricts Contracting Out: 195

Some examples of enacted Ex Ante labor reforms from the period surrounding the Recession, from 2007-2014 are as follows:

- **Illinois 2009: SB2497** amended the *Illinois Public Labor Relations Act* to redefine "public employee" to include peace officers employed by school districts, thereby extending collective bargaining rights including rights to exclusive representation to school district peace officers.
- **Tennessee 2011: HB1605** outlawed the practice of a labor organization establishing any “maintenance of membership clause” that prohibits employees from withdrawing from a union or employee organization prior to an agreement's expiration.
- **Utah 2011: SB206** required that employers cease the automatic deduction of union dues from an employee’s paycheck upon the written request of the employee. Further stated that fulfillment of such requests could not be conditions by a labor organization's advance notice or consent.
- **Alabama 2011: HB64** proposed an amendment to the Constitution “to provide that the right of individuals to vote for public office, public votes on referenda, or votes of employee representation by secret ballot is guaranteed.”

- **Indiana 2012: HB1001** made it a Class A misdemeanor to require an individual to: “become or remain a member of a labor organization, pay dues, fees, or other charges to a labor organization...as a condition of employment or continuation of employment.”
- **Colorado 2013: SB25** granted firefighters the right to negotiate collectively through an exclusive representative establishing “the right to organize, form, join, or assist an employee organization or refrain from doing so.”
- **Georgia 2013: HB361** amended the Code of Georgia to establish employees’ rights to participate in secret ballot elections (for union certification) and employers’ rights to refuse to recognize a labor organization based upon a review of authorization cards until a secret ballot election has been conducted in adherence with federal labor laws.

### ***Ex Post Facto Reforms***

These weaken or strengthen the position of public employees in bargaining situations “after the fact” (of certification or membership). They do this by restricting the ability of labor unions to secure gains for their members “after the fact” of being covered by an exclusive bargaining unit. Anti-labor variants of such provisions do not restrict union formation or membership, but rather narrow the bargaining scope, place restrictions upon contract negotiations, require increased transparency, reduce unions’ political influence, and weaken arbitration and mediation rights. Conversely, labor-enabling reforms extend impasse procedures and seek to tip the scales toward employees during contract negotiations with employers. In this reform package, we find that much like the *ex ante* reforms, where are roughly equivalent numbers of reforms introduced on both sides, however in this package the advantage goes for the labor-restrictive reforms. Moreover, we see that impasse resolutions procedures were an important part of this reform package, as were provisions related to the mandatory bargaining scope and contract negotiation process.

### **Ex Post Facto Reforms Summary**

Anti-labor: 624  
 Pro-labor: 594  
 Neutral: 141  
 Impasse Resolution Procedures: 592  
 Contracts & Negotiations: 451  
 Narrows/Widens Bargaining Scope: 360  
 Regulates Political Activities: 144  
 Procedural/Miscellaneous: 195

Some examples of Ex Post Facto reforms that passed the legislature during this time include:

- **Michigan 2011: SB0158** made it a requirement for collective bargaining agreements between a public employer and public employees to include a provision that allows an “emergency manager” to reject, modify, or terminate the collective bargaining agreement as provided in the Local Government and School District Fiscal Accountability Act. **HB4152** (also enacted in 2011) additionally required that wages and benefits for certain public employees be frozen during contract negotiations, and that retroactive wage or benefit levels could not be awarded upon commencement of negotiations.
- **New Hampshire 2011: SB1** eliminated the requirement that the terms of a public employee collective bargaining agreement automatically continue if an impasse is not resolved at the time of the contract’s expiration.
- **Louisiana 2012: HB89** prohibited collective bargaining agreements involving public employers from being accepted or presented for acceptance until the agreement has been made publically available (online) for a specified period.
- **Idaho 2013: HB261** provided that decisions to institute layoffs and the selection of employees subject to termination is the sole discretion of a board of trustees and not to be made based solely on consideration of employee seniority or contract status.
- **Missouri 2013: SB29** requires authorization by employees before labor unions may use dues and fees to make political contributions. Also bars unions from withholding earnings from paychecks for political purposes. (This wasn’t signed into law but was passed by both houses.)
- **Vermont 2014: SB241** prohibited teachers and school administrators from striking and school boards from imposing contracts, establishing mandatory binding arbitration as a ultimate impasse resolution procedure.
- **California 2014: AB1611** made it a requirement for public school employers to give written notice to of any intent to make changes to matters within the scope of representation of employees represented by an exclusive bargaining representative, i.e. employee organization

Finally, illustrative of the usefulness of my categorization schema two findings stand out. First, roughly equivalent numbers of reforms fit into either category, with about 1300 on each side. Next, when state reform agendas were modeled using the frequency of introduced legislation in either category, I find that states most states exhibit a clear preference for one reform package over the other. Indeed, in 34 states at least 40% more bills in one reform package were pursued than the other; in many states this preference was upwards of 80%. Further, when “low reform activity” states like Wyoming, West Virginia, Montana, and North Dakota are discounted I find that roughly equal numbers of states pursued *ex ante* versus *ex post facto* union restricting reforms.

**Table 1. Reform Clusters: States favoring at least 20% more reforms in either package:**

<b>Ex Ante/Union Formation Reform States</b> <b>(Percent of introduced ex ante reforms)</b>	<b>Ex Post Facto/Union Influence Reform States</b> <b>(Percent of introduced ex post facto reforms)</b>
Alabama (85.7)	California (85.7)
Colorado (100)	Connecticut (76.9)
Delaware (60)	Florida (68.2)
Georgia (85.7)	Hawaii (72.5)
Indiana (80)	Idaho (66.7)
Kansas (77.8)	Illinois (81.3)
Kentucky (90.9)	Massachusetts (75.9)
Louisiana(62.5)	New Jersey (87.7)
Maine (76.9)	New York (73.9)
Maryland (90)	Oregon (75.7)
Missouri (75)	Rhode Island (82.5)
Montana (75)	South Dakota (66.7)
New Hampshire (75)	Utah (75)
New Mexico (72.7)	Vermont (100)
North Carolina (88.9)	Wisconsin (75)
North Dakota (100)	
South Carolina (100)	
West Virginia (100)	
Wyoming (100)	

Such findings suggest that my scheme for classifying reforms in terms of their overall intention is illuminative: states do tend to “cluster” in their pursuit of a more draconian and highly visible approach to restricting union formation altogether, or a more technocratic and obscure approach to weakening unions’ abilities to secure gains for their members in contract negotiations. However, I am not arguing that labor-restricting reforms in either category are *quantifiably* less devastating for the influence of organized labor in a state. For example, individuals may be less inclined to support a union when they know that the legal bargaining scope is very narrow, for example. But narrowing the bargaining scope is categorized as a reform that weakens unions “after the fact,” not before. However, these reform packages still have arguably distinct aims. A question that follows, then, is: what is the difference between states *union formation restricting* versus *union influence restricting* reforms?

## **EXPLAINING VARIATION IN ANTI-LABOR STATE REFORM APPROACHES**



In this section, I analyze potential explanations for why states might prefer to adopt one type of labor-restricting reform package over the other. I hypothesize that party dynamics and labor union influence shape government labor reform agendas because they determine the costs associated with the pursuit of reforms that seek to impose losses on organized labor. I find that states with Republican Governors but Democratic legislatures pursued more *ex post facto* reforms that sought to limit the extant *influence* of relatively strong public employee unions. On the other hand, states with relatively weak unions and Republican legislatures were more likely to pursue *ex ante* reforms aimed at preventing increased unionization.

### **Ex Ante Reform States**

To reiterate, the goal of the anti-labor variant of *ex ante* collective bargaining reforms is to restrict the formation of strong unions by making it harder to certify new bargaining units or extract monies from employees covered by a bargaining unit. Following this, a few observations about states that cluster into this reform pattern stand out: first, a considerable number of *ex ante* reform states have already been “right-to work” states for private sector workers for some time. This is particularly true among the southern states in this cluster—with Alabama, Georgia, Kansas, and North Carolina having been right-to-work states since the 1950s and Louisiana, since the 1970s. Resultantly, these states have low (single-digit) levels of private sector union density. Moreover, they also have much lower levels of public sector unionization than the national average of around 35%. Ostensibly, lawmakers in these states intend to keep unionization low by placing further restrictions on the formation of unions, particularly in the public sector who may not be covered under existing private sector right-to-work laws.

Conversely, states like Colorado, Delaware, Montana, Maine, and New Hampshire have relatively high levels of public sector unionization, but also displayed a preference for *ex ante* reforms. This may be in part due to the occasion of such states turning redder during the Recession

following the 2010 midterms. In these states it appears that partisanship promoted the pursuit of a reform agenda aimed at reducing union density more so than state finances. Simply put, states with strong unions that trended Republican following the recession tended to pursue the most decisive package of public sector union-formation restrictions. This was also true regardless of whether they had support from the Governor. An additional goal of this particular constellation of reforms, then, may be to restrict the growth of labor unions to enable such states to remain red.

### **Post Facto Reform States**

Next, post facto reform states were more likely to be those with a legacy of divided government. In particular, such states tend to have Democratic-controlled legislatures but Republican Governors. Examples abound: California, Connecticut, Hawaii, and Vermont (until 2011), New Jersey under Christie, Rhode Island, Wisconsin, and Idaho. Moreover, these are states that are typically union-friendly with strong unionization and relatively labor-friendly policies: in 2007, California, Connecticut, Hawaii, Illinois (44.2), MA, New York, New Jersey, Oregon, Vermont (42.6) and Wisconsin all had public sector union density rates of at least 10 points higher than the national average of 33% at that time. These are also more ideologically liberal states. Arguably, public employee unions operate as political “insiders” in these states and enjoy a fair amount of institutional support from elected officials in return for their political and financial support.

However, there are several seeming outliers that displayed a preference for post facto reforms—Florida, Idaho, South Dakota, and Utah. First, except for Florida these are right to work states with low unionization overall. Moreover, two of these outliers are “low intensity” reform states: Utah introduced 9 union-restricting reforms of either type during the 8-year period; South Dakota only introduced 10. Clearly, these are states where public employee unions on the whole do not enjoy much political or institutional support. Hence, they aren’t perceived as a problem to be solved or a threat to be extricated with union-restricting legislation. Nonetheless, *individual* public

employee unions in these states may wield political or budgetary influence, like teachers unions in Idaho and Florida; lawmakers in these states have accordingly have tried to reduce the ability of *key unions* to negotiate gains for their members.

Following these observations, I hypothesize that union presence and partisan control of government are important determinants of a state's preferred "package" of union restricting reforms. Fiscal imperatives were still present in most of the American states that faced serious budget shortfalls during the Recession. However, I suggest that the political will to eradicate unions altogether was weaker in the states that pursues *ex post facto* reforms (with the exception of Michigan and Wisconsin, which became *de facto* right-to-work states for public employees during the Recession.) This is best explained by acknowledging that not all reforms are created equally. Moreover, the Wisconsin "Budget Repair Bill" contained aspects that both restricted union formation and influence, as did the Michigan bill. These examples may indicate that unified Republican governments are more likely to enact *ex ante* reforms once they assume power, but may pursue more technocratic *ex post facto* changes until then.

To test these hypotheses I ran several multiple linear regression analyses, both with pooled and individual state sessions that correlated the percentage of anti-labor reforms in either package with state political and fiscal characteristics. My findings are reported below for both the pooled sessions data and session #3, which I identify as the "Bellwether" legislative session because it occurred both following the height of the Recession (2011-2012) and the Republican's midterm elections victory, and represents the most active legislative session for labor relations reform activity. The results of the analyses basically comport with the hypotheses offered: partisanship and union influence, coupled with state financial indicators, matters in determining the type of reform package that a labor union pursued.

**Pooled Sessions, Summary:**

<b>EX ANTE/UNION FORMATION RESTRICTING</b>	<b>POST FACTO/UNION INFLUENCE RESTRICTING</b>
Non-Republican Governor*	Republican Governor*
Stronger Finances/More Budget Reserves*	Weaker Finances/Lower Budget Reserves*
Weaker Public Employee Unions**	Stronger Public Employee Unions**
<b>Also included in the model, unreported because not found significant at the <math>p &gt; .10</math> level:</b> Legislative Professionalism (Squire), Ideology, Unfunded pensions, HPI Change from peak, Income change from peak, Unemployment rate.	

**By “Bellwether” Session #3 (This analysis uses 2011-2012 state political and economic characteristics:**

<b>EX ANTE/UNION FORMATION RESTRICTING</b>	<b>POST FACTO/UNION INFLUENCE RESTRICTING</b>
Republican-Controlled Legislature*	Non-Republican Controlled Legislature*
Non-Republican Governor*	Republican Governor*
Stronger Finances/More Budget Reserves*	Weaker Finances/Lower Budget Reserves*
Weaker Public Employee Unions**	Stronger Public Employee Unions**
<b>Also included in the model, unreported because not found significant at the <math>p &gt; .10</math> level:</b> Legislative Professionalism (Squire), Ideology, Unfunded pensions, HPI Change from peak, Income change from peak, Unemployment rate.	

In summary, labor relations reform packages have been pursued across the board—in states with strong and weak unions, governed by Democrats and Republicans alike. However, much less attention has been paid to the reforms pursued by Democratic lawmakers than the highly publicized efforts of Republican administrations to weaken labor unions with sweeping union-organizing restrictions. The story of reforms pursued and enacted by Democratic legislatures is important, I argue, because they reveal the sheer magnitude of the union problem states were tasked with addressing during the Great Recession.

It is noteworthy that Democratic states experiencing strained finances exhibited a clear tendency to pursue post facto/union influence restricting reforms in response to the Recession. Was the pursuit of such reforms a mere technocratic approach to an intractable budget situation? In this

way, did Democratic lawmakers who moved to restrict union influence hope to avoid permanently disrupting their states' "pro-labor" ethos? Unlike their Republican counterparts who pursued more sweeping reforms with a clearer union-formation restricting intention, it is plausible that even Democrats felt intense pressure to weaken the influence of their union allies in order to implement collective bargaining restrictions aimed at enabling fiscal reforms in response to the Great Recession.

In New Jersey, for example, a Democratic-controlled legislature has repeatedly compromised with minority Republicans to enact various collective bargaining restrictions promoted by the Christie administration. Next, in Massachusetts, the passage of a series of union-influence restricting reforms in late 2011 represented the first successful effort by a "solid blue" state to impose serious collective bargaining limitations on public employees, leading observers to question whether Massachusetts wasn't becoming "Wisconsin-like" in its approach to resolving labor issues. I next discuss these cases in greater detail to illuminate the constraints faced by lawmakers in addressing the union problem in the midst of a state fiscal crisis, and to shed light on why Democratic lawmakers have even been seen signing onto collective bargaining reform in this particular formation.

### **EX POST FACTO REFORM STATE CASES: NEW JERSEY AND MASSACHUSETTS**

The advent of Republican Governors like Walker and Kasich leading the charge for collective bargaining reform during the Recession has received widespread attention. A straightforward reading of such events suggests that Republican Governors were able to pursue labor reforms of the more draconian *ex ante* variety because they enjoyed unified government in the midst of severe state fiscal crises. One of the major accomplishments of this legislation, for instance, was removing the "fair share fee," the element of the legislation that made Wisconsin a right-to-work state for public employees. However, the highly publicized cases in Ohio, Wisconsin, and

Indiana, where Republican governments imposed collective bargaining restrictions tell only part of the reform story occurring across the States during this time.

Indeed, many Democratically-controlled and divided state governments quietly pursued a particular variety of labor reform in response to hard economic times during the Recession. In both Massachusetts and New Jersey, for example, Democratic lawmakers enacted major legislation aimed at weakening the influence of labor unions in these states during contract negotiations over pensions and health care benefits. More, while such reforms may appear “Wisconsin-esque,” I argue that they differ in that they are “ex post facto” reforms intended to weaken the influence of extant unions, rather than “ex ante” reforms seeking the ultimate eradication of unions from public sector labor relations. My rationale stems from the observation that these reforms were enacted in states where public employee unions are important political actors. As such, they are not entities to be easily or entirely dismantled by [Democratic] lawmakers. Nonetheless, Democratically-controlled legislatures moved to constrain unions in many states in an effort to address fiscal problems exacerbated by ballooning public pensions and health care spending. To illustrate, I highlight New Jersey’s and Massachusetts’ enactment of key ex ante reforms during the Great Recession.

### **Christie “Delivers Democrats” in Support of Pension and Health Care Reform**

Chris Christie ran for the Governorship of New Jersey at the height of the global financial crisis while the state was embroiled in a severe fiscal crisis. In his campaign, Christie laid out “88 Ways” he would fix New Jersey’s economy, education, and ethics. Prominent on his list of promises included repairing state finances by reducing employee health and retirement benefits and making full use of his veto powers to shape legislative budget policy (Reitmeyer, 2010). Upon assuming office in 2010, Christie’s administration inherited a 1.3 billion dollar budget deficit. Then, roughly a month into his term, on February 11, 2010, Christie declared a “state of fiscal emergency” in the State of New Jersey via Executive order. A series of budget battles ensued between New Jersey

Democrats who controlled the legislature and Governor Christie. Many of these related to public sector pensions and health insurance reform. The primary focus of Christie's political agenda during this time centered on reducing New Jersey's budget deficit. Collective bargaining reform aimed at enabling changes to public pensions and benefits were deemed an important component of this project.

Two examples reveal the nature of this reform agenda as being directed at weakening union influence "after the fact" or *ex post facto* of already strong unionization. The first occurred a year into Christie's term, when he signed a controversial public pension and benefit reform bill that passed the legislature with support from Democratic leadership in the Assembly and Senate. The law required state and local government employees, including teachers, police and firefighters, to pay more toward their pensions and health insurance while barring collective bargaining on healthcare issues for at least four years. It was considered controversial for two reasons: first, because it split the Democratic Party. In order to secure a majority, a handful of Democrats led by Senate President Stephen Sweeny (and Iron Workers Union VP) joined with minority Republicans to pass legislation that was "virulently opposed" by two-thirds of Democratic lawmakers in the state. Secondly, it was controversial because it stripped public employees of their right to collectively bargain on the issues they value most, the act of which seemed strikingly reminiscent to Wisconsin (Magyar, 2011). By narrowing the bargaining scope in an effort to shore up New Jersey's budget problems, union influence has been greatly restricted in the state. In this way, the reform is quintessentially an *ex post facto* measure.

The next example of union-influence restricting reform enacted with bi-partisan support was a two percent cap on base salary increases for public employees in arbitration awards; it was reauthorized at the beginning of Christie's second term, in 2014. By capping interest-arbitration awards the measure weakens the ability of unions to negotiate for pay increases that are outside of

the constraints set by the law. This, coupled with restrictions on collective bargaining over pensions and benefits, means that unions now wield far less influence in contract negotiations. However, New Jersey has strong unions, with the *New Jersey Education Association* and the *New Jersey Communication Workers* playing major roles in state politics. In acknowledgement of this, Democrats in the legislature have attempted to walk a fine line by agreeing to changes that restrict the influence of labor unions while resisting bigger changes to union certification and membership rules.

In this way, these reforms do not appear to share the same broad goal of de-unionizing the state of New Jersey as the right-to-work style reforms pursued by some unified Republican governments during the Recession. Presumably, this is because Democrats do not want to weaken the important political ally they have in organized labor. Still, New Jersey's case highlights the willingness of Democratic lawmakers to compromise with Republicans during the Recession in order to enact what were deemed as necessary cost-saving collective bargaining reforms. In the case of Massachusetts, however, a different scenario emerged, with Democrats leading the charge for reform absent any pressure from Republican leadership. I argue that this shows the pressure lawmakers on both sides felt to address the union problem while further illustrating the distinctness of the approaches pursued by more liberal, pro-labor state governments compared to the right-to-work style reforms sought in Republican-controlled states.

### **Massachusetts Democrats curtail collective bargaining, but it's "not Wisconsin"**

Massachusetts is one of the "bluest" states in the US. The state legislature has been controlled by a Democratic supermajority for decades and Democrats enjoyed unified government control under Deval Patrick for the duration of the Great Recession, from 2007-2014. Commonly used measures of citizen ideology also place Massachusetts toward the most liberal end of the scale (Fording, 2012). Correspondingly, although a slew of Republicans occupied the Governor's Mansion during the 1990s and early 2000s, and a Republican was recently elected to the position for 2015,



Republican Governors from Massachusetts (like Mitt Romney and Paul Cellucci) tend to hold liberal views on key social issues, and even gun control in Cellucci's case (Finucane, 1998). Labor unions are also relatively strong in Massachusetts: overall state union density has remained roughly twice the national average over the past decade, peaking at 16.6% in 2009, and then falling to just under 14% in 2014 (in line with nation-wide de-unionizing trends following state legislative activity to curb collective bargaining). Moreover, public employee unionization in Massachusetts was particularly strong in the 2000s and early 2010s, peaking at over roughly 63% in 2011, significantly higher than the nation-wide public sector union average during this time of roughly 37% (Macpherson, 2015).

Now, the fact that organized labor has a relatively stronger presence in Massachusetts than the national average and many other states is unsurprising given the state's ideological and partisan composition. What is puzzling, however, is that such a liberal, pro-labor state with a unified Democratic government moved to severely restrict public employees' collective bargaining rights during the Great Recession. Indeed, on the heels of the sweeping collective bargaining reforms that were enacted in Ohio and Wisconsin in 2011, Massachusetts became the first solidly blue state to restrict public employee collective bargaining rights with legislation that stripped police officers, teachers, and other municipal employees of the right to collectively bargaining over health care. Moreover, a noteworthy observation of this particular charge to constrain collective bargaining rights is that it was led by Democrats, passing the Massachusetts House by a resounding 111 to 42 margin. Although all but two of the House Republicans voted in favor, the bill would have still passed without a single Republican vote (Goodnough, 2011). It was also signed into law by a Democratic Governor Deval Patrick who enjoyed overwhelming union support in his bid for the Governorship and maintains longstanding political and financial ties (like many Massachusetts Democrats) to the state's public employee unions (CapeCodToday.com, 2006).

As a result of this legislation, the design of municipal employee health plans would no longer be a permissible subject of collective bargaining. This came after the legislature had been urging municipalities to rein in health care costs for the past seven years. It was intended to bring local costs for health care “in line” with state costs because localities could now alter copayment rates or deductibles without entering into arduous collective negotiations with all the affected local bargaining units. Democrats who supported the legislation thus asserted the change was needed to avoid cost-driven layoffs and service reductions. According to Democratic chairman of the House Ways and Means Committee and co-author of the bill, Representative Brian Dempsey, the legislation was necessary to curb rising health care costs and avoid “disastrous” reductions in public safety and education services. Of the bill’s passage, he said, “We have to get a handle on this,” he said. “The fact of the matter is costs are going up and the money is not going to the areas we desperately need it to” (Goodnough, 2011).

Like most of the US states during the recession, Massachusetts faced a steep budget deficit as demand for services outpaced state revenue growth. Massachusetts problems were also particularly severe, with a projected Debt/GDP ratio of over 20%, Massachusetts ranked among the top 3 most indebted US states in 2009 with steep unfunded pensions liabilities (37%) and health care liabilities (98%) (Snow, 2010) According to lawmakers who supported the collective bargaining restrictions, the state’s fiscal problems were exacerbated by long-standing issues related to the rising cost of public employee health benefits in the state. The state’s fiscal situation coupled with rising healthcare costs, spurred significant changes to public employees’ collective bargaining rights. As such, a popular justification of the legislation is that this particular restriction of collective bargaining was necessary in order to save union members jobs. Said Michael J. Widmer, the president of the Massachusetts Taxpayers Foundation, a nonpartisan watchdog group that supported the plan, “Yes, it’s a small curtailment of their collective bargaining powers...but with the corollary that it will save

lots of their members' jobs." Further, Mark Jefferson, the Wisconsin Republican Party's executive director, naturally praised the legislation, stating that it was "refreshing" to see liberal Democrats from Massachusetts finally acknowledging the importance of collective bargaining reform (Goodnough, 2011).

Nonetheless, Massachusetts labor leaders and public employees expressed mixed feelings about the passage of this legislation. For instance, Geoff Beckwith of the Massachusetts Municipal Association, acknowledged the necessity of enacting legislation aimed at curbing healthcare costs, adding that it still left employees with significant bargaining power, making it "galaxies away from Wisconsin's" (Smith, 2011). Others felt outright betrayed by their supposed Democratic allies in the legislature. Massachusetts A.F.L.-C.I.O. President Robert J. Haynes signaled his dismay, stating, "It's hard for me to understand how my good friends in the Massachusetts House, that have told me they support collective bargaining, could do this." A local fire Captain, Doug Conrad, similarly stated that he felt betrayed by Democrat lawmakers that supported the legislation, many of whom he had considered loyal friends (Smith, 2011).

Finally, comparisons to Wisconsin also abounded. But the key point about these comparisons is that they highlight not so much the similarity, but the difference in these cases. So, although some like the fire captain Conrad worried Massachusetts may be "going the way of Wisconsin in one of the bluest states in the nation." Others have noted that the Massachusetts reform is quite different in its intention. AFL-CIO President Robert Haynes, for instance, had this to say: "I would not equate what happened in the House as Wisconsin-esque. I may have said it in a fit of anger here and there. But it is Wisconsin-like ... that you take pieces — particularly important pieces of collective bargaining away from us."

Director of labor studies at the University of Massachusetts, Amherst, Eve Weinbaum, also acknowledged the significance of the reform occurring in a solidly Democratic state because "we

don't expect this kind of attack," while adding the caveat "it's not same as Wisconsin, but it's part of the same trend." According to Weinbaum such legislation has arisen out of a "perfect storm" due to the heightened public awareness of public employees' generous benefits during a time of growing economic uncertainty among the working-class and distrust of government (Smith, 2011).

I argue that these observations from New Jersey and Massachusetts show that although such reforms may appear to be Wisconsin-like, it is important to evaluate the reforms pursued by state lawmakers for their intention and long-term potential effects on the position of organized labor. Moreover, by contrasting reforms implemented in Massachusetts that clearly limit the bargaining scope with more draconian reforms that limit the bargaining scope while also cutting unions off from their key source of revenue – union fees and fair share fees – we see two very different approaches being pursued by lawmakers who addressed the union problem during the Recession. On the one hand, Democratic lawmakers pursuing ex post facto reforms argued that they had no alternative, while Republican lawmakers made similar arguments they imposed reforms that could not be justified solely out of fiscal necessity.

## **CONCLUSION AND DISCUSSION**

I have shown that states "cluster" in terms of the labor reform agendas they pursued during the Recession. My analyses of the patterns associated with state reform packages indicates that partisanship and labor union influence, combined with economic factors combined in states to determine the possible menu of reforms they pursued. I argue that during the Great Recession, state fiscal conditions provided lawmakers with the necessity and impetus to pursue public sector labor reforms. However, state governments had choices in the approach to reform they pursued, and exhibited clear preferences based on legislative partisanship, economic conditions, and the existing political influence of public employee unions.

Therefore, unified Republican-controlled governments pursued comprehensive union formation-restricting packages of reform, while Democratic-controlled legislatures resisted full-scale de-unionizing reforms to instead pursued union influence restrictions. Such reforms aimed at tipping the scales toward the employer in contract negotiations to enable reductions in public employee salaries and pensions while leaving union organizing somewhat intact. By highlighting the cases of New Jersey and Massachusetts, I have illustrated that even Democratic-controlled legislatures felt immense pressure to resolve the “union problem” during the Recession in order to force union concessions on public employee pensions and benefits. In conclusion, I suggest further research to illuminate the conditions under which reforms like this are likely to continue in the future.

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