

THE JANUS EFFECT

The Impact of the 2018 Supreme Court Decision on Public Sector Unions



JARRETT SKORUP



The Mackinac Center for Public Policy is a nonpartisan research and educational institute dedicated to improving the quality of life for all Michigan residents by promoting sound solutions to state and local policy questions. The Mackinac Center assists policymakers, scholars, businesspeople, the media and the public by providing objective analysis of Michigan issues. The goal of all Center reports, commentaries and educational programs is to equip Michigan residents and other decision makers to better evaluate policy options. The Mackinac Center for Public Policy is broadening the debate on issues that have for many years been dominated by the belief that government intervention should be the standard solution. Center publications and programs, in contrast, offer an integrated and comprehensive approach that considers:

All Institutions. The Center examines the important role of voluntary associations, communities, businesses and families, as well as government.

All People. Mackinac Center research recognizes the diversity of Michigan residents and treats them as individuals with unique backgrounds, circumstances and goals.

All Disciplines. Center research incorporates the best understanding of economics, science, law, psychology, history and morality, moving beyond mechanical cost-benefit analysis.

All Times. Center research evaluates long-term consequences, not simply short-term impact.

Committed to its independence, the Mackinac Center for Public Policy neither seeks nor accepts any government funding. The Center enjoys the support of foundations, individuals and businesses that share a concern for Michigan's future and recognize the important role of sound ideas. The Center is a nonprofit, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. For more information on programs and publications of the Mackinac Center for Public Policy, please contact:

Mackinac Center for Public Policy 140 West Main Street P.O. Box 568 Midland, Michigan 48640
989-631-0900 Fax: 989-631-0964 Mackinac.org mcpp@mackinac.org

The Mackinac Center for Public Policy

The Janus Effect:

**The Impact of the 2018 Supreme Court
Decision on Public Sector Unions**

By Jarrett Skorup

©2023 by the Mackinac Center for Public Policy
Midland, Michigan



Guarantee of Quality Scholarship

The Mackinac Center for Public Policy is committed to delivering the highest quality and most reliable research on Michigan issues. The Center guarantees that all original factual data are true and correct and that information attributed to other sources is accurately represented.

The Center encourages rigorous critique of its research. If the accuracy of any material fact or reference to an independent source is questioned and brought to the Center's attention with supporting evidence, the Center will respond in writing. If an error exists, it will be noted in a correction that will accompany all subsequent distribution of the publication. This constitutes the complete and final remedy under this guarantee.

Contents

Introduction..... 1

Measuring union membership 2

 National population survey data.....2

 Federal financial reporting forms.....4

 Public records requests of government employers’ payroll information.....6

National results from public record requests..... 6

State-by-state results 8

Michigan: A case study..... 9

Conclusion 12

Acknowledgments 14

Endnotes 15

Introduction

The Illinois Policy Institute, its partner the Liberty Justice Center, and the National Right to Work Legal Defense Foundation filed a lawsuit in 2015 on behalf of Mark Janus, who was an Illinois state employee. The resulting case — Janus vs. AFSMCE — challenged the constitutionality of forcing government employees to financially support public sector unions against their will. The U.S. Supreme Court eventually took up the case and in June 2018 ruled that all local, state and federal government employees have a First Amendment right not to pay dues or fees to a labor union. This includes public school teachers, state employees, police officers, firefighters and other local government workers.

Policy experts and scholars are debating the Janus ruling's impact. One complicating factor is right-to-work laws, which are state laws that prohibit unions from forcing workers to pay dues. At the time of the decision, 28 states had such laws for public sector workers, so the court's ruling only impacted government employees in 22 states.*

Prior to the Janus decision, unionized public employees in states without right-to-work laws had to pay the union in their workplace. They technically had two options: 1) be an official union member and pay full dues, or 2) decline membership but still pay the union a so-called agency fee. These fees are typically not much less than a union's full dues, which reduces the incentive for workers to opt out of membership.

After the Janus decision, the public employees who had already declined union membership and were paying only agency fees were immediately relieved of having to financially support their union. Existing union members and newly hired employees, meanwhile, now faced a different set of options: 1) be an official union member and pay full dues, or 2) decline membership and pay nothing.

The research described in this report aims to estimate how many potential public sector union members have declined membership since the Janus decision. This includes both the preexisting agency-fee payers and workers who declined membership after the Janus decision changed their set of options about financially supporting the union in their workplace.

There is a broad divide of opinions about the potential impact of Janus. Some claim it will devastate government unions, while others claim it will have only a minimal effect, at most. Others believe it will rejuvenate public sector unions and ultimately make them stronger. Public sector labor unions, which are the most immediately affected by the ruling, continue to decry the decision but also tend to claim its effects are trivial.

* For purposes of this analysis, states which had a right-to-work law on the books in June 2018 were considered right-to-work states and not directly affected by the Janus decision. Missouri passed a right-to-work law and other labor reforms in 2017. Some elements of these were later limited, suspended or repealed by court decisions and ballot initiatives. Nevertheless, these reforms significantly impacted public sector union membership in Missouri, which complicates measuring the impact of Janus in the state. For these reasons, Missouri is not included in our calculations.

This report aims to inform that debate. It presents new data about the impact of the Janus decision. These statistics are more accurate and comprehensive than the data commonly used to assess Janus' impact. They result from thousands of public records requests sent to hundreds of public entities across nearly two dozen states.

These data show clearly that the Janus decision has had a significant effect on public sector unions. A little more than one in five government workers have exercised their right to resign fully from their unions since the Janus ruling. Newly hired local and state government employees also appear to be declining union membership at a similar rate. The most immediate and significant effect of this is on public sector union dues revenues, which we estimate are lower by \$720 million annually based on the estimated 1.2 million government employees who have resigned or declined union membership.

Measuring union membership

Although they represent public employees and bargain with government employers over how to spend taxpayer resources, public sector unions are technically private organizations. They are not subject to laws and rules that aim to make government entities transparent to the public. Information about them is, therefore, relatively limited.

There are just a few sources of information that can be used to measure union membership rates: 1) national population surveys, such as the U.S. Census Bureau's Community Population Survey; 2) federal financial reports, such as the 990 and LM-2 forms that labor unions must file; and 3) public records requests of government employers' payroll information. These sources use different methods to collect information about public sector workers and their unions, and each has its strengths and weaknesses. These are discussed in detail in the following sections.

National population survey data

The U.S. Department of Labor's Bureau of Labor Statistics releases annual survey data about union membership. This data is based on two questions included in the Community Population Survey overseen by the U.S. Census Bureau.

The questions are: 1) "On this job, are you a member of a labor union or of an employee association similar to a union?" and 2) "On this job, are you covered by a union or employee association contract?" If survey responders answer "yes" to the first question, they are counted as union members. If they answer "no," they are prompted with the second question. Answering this question in the affirmative classifies the respondent as being represented by a union. Respondents must answer "no" to both questions to be counted as a nonunion employee.¹

Extrapolating from CPS results, the U.S. Bureau of Labor Statistics estimates that there were 7,062,000 public sector union members nationwide in 2022 — that is, the total number of local, state and federal government employees who would answer "yes" to the first question.² This is down from 7,216,000 in 2017, the last data available before the Janus decision.³ That's a loss of

154,000 members, a 2.1% decline. The overall percentage of public sector workers saying they are union members dropped from 34.4% to 33.1% over this five-year period.⁴

The number of public sector employees who said they are covered by a union contract but were not members of a union also increased during this time. These are employees who presumably work in a unionized job but are not members of a union. The BLS estimated there were 773,000 such public employees in 2022, up from 735,000 in 2017, a 5.2% increase.⁵

The CPS covers all 50 states, but only union members in states without right-to-work laws were affected by the Janus decision. Public employees in right-to-work states were already able to opt out of joining the union at their workplace. Breaking out the 22 non-right-to-work states, the BLS estimated that there were 5,234,327 public sector union members in non-right-to-work states in 2017. In 2022, that number fell to 5,173,817. That's a drop of 60,510 union members, a change of 1.2%.⁶

The number of employees in non-right-to-work states who were covered by a union contract but not members of a union, however, increased. In 2017, the BLS estimated there were 327,303 such public workers. In 2022, there were 366,946, an increase of 12.1%.⁷

But this federal survey data has severe limitations.

A major shortcoming is that some respondents misunderstand the questions. For instance, in North Carolina, South Carolina and Virginia, public sector collective bargaining has been or still is illegal.⁸ Despite this, about one in 10 public employees in those states claim to be covered by a collective bargaining agreement, according to the CPS.⁹ Further, in Georgia, Indiana, Tennessee and Texas, collective bargaining is not allowed for certain public employees.¹⁰ Yet, according to the CPS data, these states have similar public sector unionization rates with states that permit collective bargaining for all government employees.¹¹

Another issue relates to the survey sample sizes. As noted by other researchers, the CPS results are imprecise and subject to sudden swings, especially at the state level.¹² The sample size upon which the data is based comes from only one-quarter of the 60,000 people surveyed, or 15,000 responses from across the country.¹³ These responses include private sector union members, so filtering the results to include only public employees reduces the sample size further. State-level results for public sector union members are based on even smaller sample sizes.

Despite the issues, this survey is probably the most-cited data by media outlets and reporters. This is likely because it includes official statistics from the federal government and is relatively easy to understand. But it is the least reliable way to measure trends in public sector union membership.

Federal financial reporting forms

Most nonprofit organizations, including nearly all labor unions, must file an annual Form 990 with the Internal Revenue Service.¹⁴ Unions disclose summary statistics about their revenue and other financial information on their 990s. They are not required to report their membership levels, however, so these reports offer only a limited view of the Janus ruling's effect.*

Fortunately, there are other federal reports unions file that do require them to provide information about their current membership. Unions that represent at least one private sector employee and have annual receipts of \$250,000 or more must file an LM-2 report with the U.S. Department of Labor.¹⁵ These provide much more detailed information than 990s, including membership levels, individual officer compensation, total receipts and revenue by source, political contributions and itemized spending.†

LM-2s are valuable because they are comprehensive, easily accessible through the DOL and presumed to be accurate. The data is provided directly by unions, and it must be signed by the union president and treasurer who are both “personally responsible for its filing and accuracy.”¹⁶ It is a crime to provide false information on these forms. LM-2s must be filed every year, and they are the best source for investigating financial trends among large public sector unions.

There are several limitations to using LM-2 data to assess the impact of Janus, however.

The most significant one is that most public sector unions are not required by federal law to file LM-2s because they do not represent any private sector workers. A review of the unions required to file LM-2s suggests that there is information from only 66 large public sector unions in the 22 non-right-to-work states affected by the Janus decision. In 2018, these unions represented about 3.4 million people collectively, according to their LM-2 reports. There were nearly 5.6 million people working under union contracts in those states, according to the BLS survey data.¹⁷

With those caveats, data from LM-2 reports shows that membership in these 66 public sector unions in the 22 non-right-to-work states decreased from 3,359,807 before Janus to 2,980,492 in the latest reports covering 2022. That's a loss of 379,315 dues and fee payers, or 11.3%.

Similar results are found by zooming out to look at the impact of Janus on the largest public sector unions that file LM-2 reports. The National Education Association, American Federation of Teachers and American Federation of County, State and Local Employees file these federal reports but almost exclusively represent public sector employees. These unions had 5,292,481 members in the year prior to the Janus decision and have 4,743,397 members today. That's a loss of 549,084, a 10.4% decline. However, the federal LM-2 reports filed by those three unions do not

* The information in publicly available 990s also lags by two years, which further reduces their value in assessing the real-time impact of Janus.

† Itemized spending is required for accounts or transactions valued at \$5,000 or more. “Instructions For Form LM-2 Labor Organization Annual Report” (U.S. Department of Labor, Office of Labor-Management Standards, April 2020), <https://perma.cc/Z3ZW-8YKG>.

break out the data by state, so these numbers include members from all 50 states. That is, it includes data from the 28 right-to-work states where the Janus decision had no legal impact.

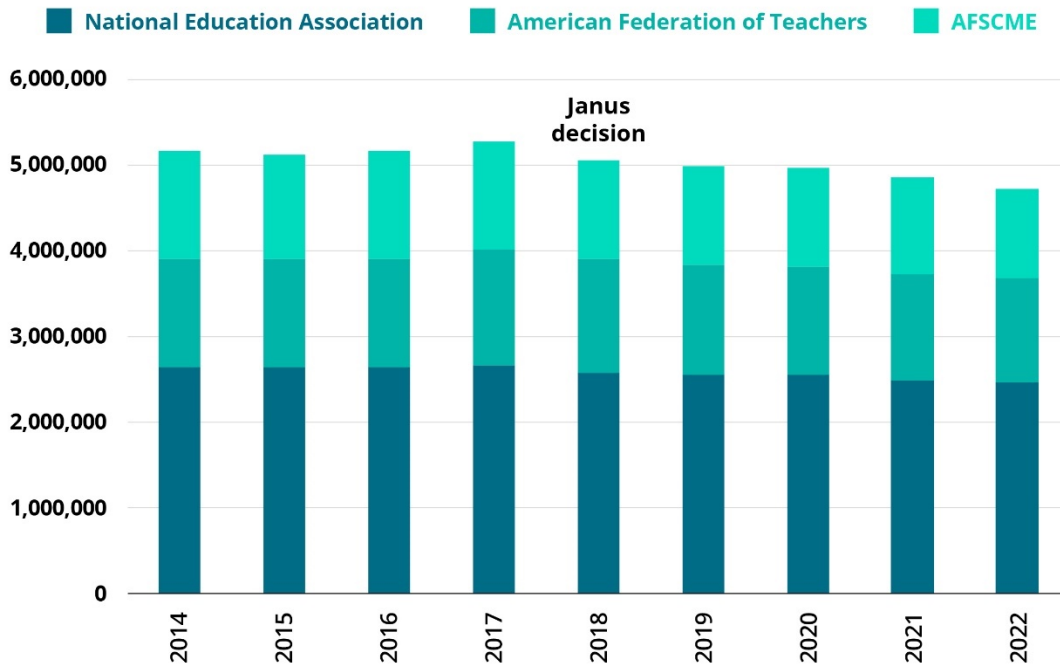
Graphic 1: Large public sector union membership, 2014-2022

Union	2014	2015	2016	2017	2018	2019	2020	2021	2022	Change since Janus	Change
NEA	2,649,702	2,641,931	2,648,175	2,666,339	2,591,602	2,563,163	2,560,178	2,501,719	2,463,076	-7.6%	-203,263
AFT	1,265,880	1,269,068	1,276,785	1,369,781	1,318,168	1,285,291	1,275,424	1,247,245	1,228,650	-10.3%	-141,131
AFSCME	1,267,805	1,241,879	1,269,094	1,256,361	1,155,440	1,158,596	1,151,502	1,130,264	1,051,671	-16.3%	-204,690
Total	5,183,387	5,152,878	5,194,054	5,292,481	5,065,210	5,007,050	4,987,104	4,879,228	4,743,397	-10.4%	-549,084

Source: Union LM-2 forms. This includes the total number of active/working dues and fee payers in each union, meaning non-student, non-retirees and non-associate members

mackinac.org 

Graphic 2: Large public sector union membership, 2014-2022



Source: Union LM-2 forms. This includes the total number of active/working dues and fee payers in each union, meaning non-student, non-retirees and non-associate members

mackinac.org 

LM-2 reports are commonly used to track union membership for individual unions. But the fact that only public sector unions that also represent private employees are required to file them greatly reduces their usefulness in assessing the impact of the Janus decision.

Public records requests of government employers' payroll information

For nearly five years, the Mackinac Center for Public Policy has gathered data on union membership through public records requests. Based on various states' Freedom of Information laws, we ask for payroll information from state and local government employers — primarily state departments, school districts, public universities and county and city governments. Sending and tracking these requests is time-consuming, but the resulting data on public sector union membership are the most precise, accurate and timely of the available information.

We ask these public entities for annual payroll information that shows the number of workers paying dues or fees to a union. This information is precise because public employers must know which employees are covered by a union contract and which ones are paying dues or fees when calculating the amount for each employee's paycheck. Nearly all public employers in these states deduct union dues and agency fees directly from employees' paychecks and remit this to the appropriate union.

The Mackinac Center has collected data each year on public sector union membership in the 22 non-right-to-work states affected by the 2018 Janus decision. This involves filing more than 600 public records requests with the largest government entities in those states. These include unionized employees of state governments, and workers employed by the largest cities, counties and public school districts in these states. The data collected covers 3.3 million of the 5.6 million public workers employed in unionized workplaces in these non-right-to-work states.

We ask two questions: 1) How many workers does your public entity employ who are covered by a union contract? and 2) How many workers have union dues withheld?* From this data, we can calculate annual changes in union membership levels and the number of workers who have opted out of joining the union. This information then allows us to estimate the overall effect of the Janus decision across the 22 non-right-to-work states, such as on total public sector union revenue.

National results from public record requests

We measure change in union membership since the Janus ruling by subtracting the number of workers paying union dues today from the number who were paying dues in 2018. There were 3,108,670 people paying union dues in the public entities surveyed before the Janus decision. Based on the most recent data we have received, there were 2,563,318 dues payers employed by these public employers. That's a decline of 17.5%.

According to federal government data, total state and local government employment has increased by 24,000 from 2017 to 2022 (from 17,304,000 to 17,328,000).¹⁸ This shows up in the public records request as well, where most public entities surveyed have hired more employees over the past five years. This is important to take into consideration when estimating the impact

* This is the verbatim language we send to public employers: "Via your state's public records laws, I request the following information from the [state/city/school district/public entity] payroll for the first pay period of [month/year]: (1) The number of people (union members) who are having dues withdrawn from their paycheck; (2) The total number of people covered by collective bargaining agreements (union contracts)."

of Janus. If the number of potential dues-paying members grew from 2018 to 2022, the data snapshots presented above would underestimate the ruling's effect.

To account for this, we ask government employers to provide the total number of people covered by union contracts as a way to measure the number of potential union members. This is then compared to the total number of employees who are paying dues. From 2018 to 2022, the surveyed public entities of workers covered by union contracts increased by about 184,000 people.

Public records requests made in 2022 to hundreds of cities, counties, state departments, universities and school districts produced records for 3,293,008 government employees working under union collective bargaining agreements. Of these, 2,563,270 workers were having union dues withdrawn. That means nearly 730,000 public employees, or 22.2%, were working in a unionized workplace but not paying union dues in 2022.

Graphic 3: The impact of the Janus decision on union membership



Source: Public records requests to 450 public entities across the 22 states affected by the Janus decision

MACKINAC CENTER
FOR PUBLIC POLICY
mackinac.org

According to the Bureau of Labor Statistics survey, there were an estimated 5.6 million public sector workers covered by collective bargaining agreements in the 22 states directly affected by the Janus decision in 2018. A 22.2% opt-out rate means there are 1.2 million fewer public employees paying union dues than there otherwise would have been. Assuming a conservative average of \$600 paid in dues per year per unionized employee, this means the U.S. Supreme Court's decision in Janus costs public sector labor unions about \$720 million in revenue every year.*

* Union dues vary and there is no easily accessible data from which to calculate an estimate of the national average. Local, state and federal union affiliates independently determine how much they will charge, and most unions do not publicize these amounts. Michigan's largest teachers union — and largest public sector union — sets dues at \$645, plus extra for local and national dues. "MEA/NEA Dues" (Michigan Education Association, 2021), <https://perma.cc/AK58-7PLY>. Members of the nation's largest state-affiliate teachers union — the California Teachers Association, with more than 300,000 members — pay \$768, not including national dues. "Membership Dues Structure 2022-23" (California Teachers Association, 2022), <https://perma.cc/Q456-YQJ2>. The California School Employees Association, whose 250,000 members are nonteaching school employees, charges \$472.50 in annual dues, but local affiliates can require additional payments on top of this. "Membership Advantage" (California School Employees Association, 2023), <https://perma.cc/G6RL-ELJ8>. As an Illinois state employee, Mark Janus paid \$540 annually. "The Facts About Janus v. AFSMCE" (Liberty Justice Center, 2022), <https://perma.cc/9CCJ-L7MW>.

State-by-state results

The table below shows the results of our public records requests from 2022 for each of the 22 states directly affected by the Janus decision. It includes the number of workers employed by government entities who are covered by collective bargaining agreements, the total number of union members in these states and the percentage of these employees who are not paying dues.

Graphic 4: Public employment and union membership in states impacted by Janus decision, 2022

State	Total Workers Covered By Union Contracts	Total Union Members	Decline Union Membership
Total	3,293,066	2,563,318	-22.2%
Alaska	28,836	18,600	-35.5%
California	656,433	463,496	-29.4%
Colorado	69,389	34,256	-50.6%
Connecticut	63,580	54,967	-13.5%
Delaware	28,460	22,512	-20.9%
Hawaii	64,732	51,794	-20.0%
Illinois	166,773	146,118	-12.4%
Maine	15,539	10,414	-33.0%
Maryland	135,789	106,318	-21.7%
Massachusetts	108,748	89,593	-17.6%
Minnesota	83,496	56,873	-31.9%
Montana	12,806	9,521	-25.7%
New Hampshire	15,930	10,928	-31.4%
New Jersey	102,054	78,313	-23.3%
New Mexico	31,785	12,102	-61.9%
New York	1,304,194	1,079,273	-17.2%
Ohio	95,780	79,850	-16.6%
Oregon	46,893	36,317	-22.6%
Pennsylvania	103,865	80,899	-22.1%
Rhode Island	26,350	23,568	-10.6%
Vermont	9,581	7,547	-21.2%
Washington	122,053	90,059	-26.2%

Source: Public records requests to many of the largest government employers, including the state, schools, cities, counties and universities


 MACKINAC CENTER
 FOR PUBLIC POLICY
 mackinac.org

Michigan: A case study

The effects of the Janus decision on labor unions have been significant. But will union membership in the public sector continue to decline? The state of Michigan provides a good case study of what might happen in the years to come.

Michigan passed a right-to-work law in 2012, prohibiting unions from getting workers fired for not paying them dues. The impact of the new law was gradual, as it applied only to new union contracts ratified after March 2013.

This was roughly five years before the Janus decision. Another five years have passed since the ruling. The results in Michigan may signal whether union membership nationwide will continue to decrease and how large the opt-out rate might become.

In Michigan, perhaps unique among the 50 states, all the major public sector unions submit annual financial forms to the federal government that list their membership numbers. The largest unions are roughly split between representing public and private sector workers.

This data shows that since the right-to-work law went into effect, union membership, including employees in both the private and public sectors, has declined by 143,000 in Michigan, or 26.3% overall. Further, this membership loss has come at a time when the number of jobs in most of these unionized sectors has grown.¹⁹

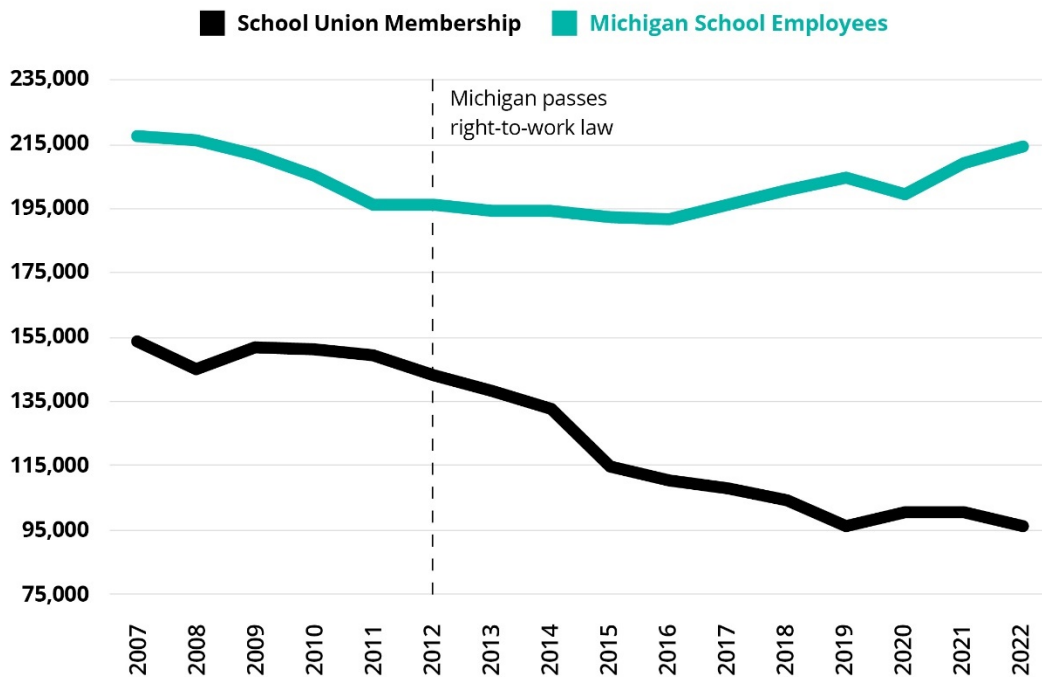
Graphic 5: Membership change in Michigan's unions, 2012-2022

Union	2012 membership	2022 membership	Percent change
United Auto Workers	144,375	133,946	-7.2%
Michigan Education Association	117,265	79,839	-31.9%
United Food & Commercial Workers	46,389	40,697	-12.3%
Teamsters	45,625	34,869	-23.6%
AFSCME	48,625	22,921	-52.9%
State of Michigan (variety)	32,680	21,945	-32.8%
American Federation of Teachers-Michigan	25,068	16,994	-32.2%
Service Employees International Union	47,805	15,217	-68.2%
Michigan Regional Council of Carpenters	14,010	12,999	-7.2%
Michigan Nurses Association	11,149	10,738	-3.7%
Operating Engineers 324	10,620	10,386	-2.2%
Total	543,611	400,551	-26.3%

For example, the Michigan Education Association and American Federation of Teachers Michigan, the two largest teachers' unions, have lost more than 45,000 union members combined, according to their LM-2 filings. Both of their memberships have decreased by 32%.

This decline cannot be explained by job losses in public school employment. In the 2022-23 school year, there were 213,990 full-time equivalent staff. That's up from 196,990 FTEs in 2012-13, the school year Michigan's right-to-work went into effect. Counting just public school teachers, the statewide total has increased from 98,608 in 2012-13 to 100,882 in 2022-23.²⁰

Graphic 6: Michigan school employee union membership and school employment, 2007-2022



Source: Union LM-2 forms and Michigan Department of Education

mackinac.org **MACKINAC CENTER**
FOR PUBLIC POLICY

In other words, unions representing public school employees lost one-third of their membership during a period when the number of their potential union members — public school employees — increased. Full-time teachers are the most unionized school employees, and their numbers rose as well, albeit more modestly.

Government unions representing state employees in Michigan experienced an even sharper decline. About 5%-7% of state employees in Michigan were fee payers before Michigan became a right-to-work state, according to state data (see Graphic 3). Recall that fee payers are unionized employees who decline full union membership but are still forced to pay a fee to their union. These employees typically only make up a small minority of the workplace as there is not much to gain from opting out of full membership in a non-right-to-work state.

Michigan’s right-to-work law changed this significantly. The percentage of state employees declining union membership steadily increased after it went into effect, rising from 7.2% in 2013 to 22.4% in 2020.²¹

The Michigan Civil Service Commission — a board that regulates the employment of most state employees — passed an opt-in requirement in 2020. Workers now had to annually opt into the union operating in their workplace. In other words, employees do not join a union by default; they must regularly consent to waiving their First Amendment right established by the Janus decision.

The opt-out rate for civil service workers jumped from 22.4% to 31.5% in the two years since that policy took effect, according to the latest report from the MCSC.²²

Overall, state employee union numbers have dropped by 10,607 members since Michigan passed right-to-work. The number of state employees covered by a collective bargaining agreement has declined by more than 3,000, which explains a good chunk of that decrease. But that does not change the fact that the opt out rate has gone from 7.2% to 31.5% over the decade.

Graphic 7: Unionized state employees in Michigan, 2005-2022

Year	State of Michigan Employees	Covered by union contract	Union Members	Declined Union Membership
2005	54,507	39,117	36,318	7.2%
2006	54,347	38,939	36,674	5.8%
2007	52,927	38,013	35,991	5.3%
2008	53,501	38,504	35,987	6.5%
2009	53,707	38,524	36,363	5.6%
2010	52,307	37,354	35,091	6.1%
2011	49,974	36,210	33,579	7.3%
2012	49,545	35,356	32,681	7.6%
2013	49,378	35,092	32,552	7.2%
2014	48,617	34,316	30,804	10.2%
2015	48,927	34,544	30,363	12.1%
2016	48,610	34,071	29,010	14.9%
2017	48,984	34,193	28,708	16.0%
2018	49,052	33,949	27,949	17.7%
2019	49,282	33,890	26,482	21.9%
2020	48,464	33,431	25,956	22.4%
2021	47,755	32,605	22,898	29.8%
2022	47,806	32,057	21,945	31.5%

Source: State of Michigan annual workforce reports

mackinac.org



In the four years since the Janus decision went into effect, the data from our public records requests show a loss of 17.4% in the number of workers financially supporting labor unions nationally. Around half of this decrease (8.4%) occurred in the first year alone, likely explained by fee payers being immediately dropped from the union rolls. But, in the three years since, unions have continued to see a steady drop in membership of 2%-3% per year.

This mirrors the drop of union membership in Michigan. Unions steadily lost members for the first four years after the state’s right-to-work law was in place, and declines continued through the

following decade. This suggests that national union membership in the public sector will continue a slow but steady decline in the years to come.

Conclusion

In the months leading up to the Janus decision, labor unions predicted doom and gloom if the court ruled the way it eventually did. Valerie Strauss of *The Washington Post* reported, “There have been different predictions about how teachers’ unions would be affected if the court rules in favor of Janus. Some have argued that the membership of the two major teachers unions ... could sharply decline. Others have said an assault on public sector unions could spark a new union movement that could swell membership, but union officials are already planning for the former.”²³

After the Janus decision, public sector unions changed their tune and put forth a show of strength, repeatedly downplaying the effects the decision was having or might have. In July 2018, a few weeks after the court decision, *The American Prospect* quoted optimistic union leaders.²⁴

For instance, Randi Weingarten, president of the American Federation of Teachers, told the publication, “The membership numbers are higher than they have ever been, in places all over the country where we have been bombarded by the right wing and by their allies.” And Lily Eskelsen Garcia, president of the National Education Association, reportedly said, “Educators have the wind — and the public — at their back. This is a galvanizing moment for educators and our labor movement.”

In November 2018, *POLITICO* reported, “Teachers unions appear to have dodged a serious blow to their political activity and membership rolls following a sweeping Supreme Court ruling earlier this year. [...] Nine union leaders in eight states ... reported modest but anticipated drops in membership since the court decision, in addition to the loss of thousands of non-members who used to pay mandatory union fees.”²⁵ The article went on to note that unions in Illinois, Ohio, Pennsylvania and Montana reported only small losses in membership.

In March 2019, *The 74 Million* reported that the AFT claimed it had added 88,500 new members in 2018, the year Janus was decided. This more than made up for the 84,600 agency fee payers who were no longer required to pay the union as a result of the decision.²⁶ In the same month, Lee Saunders, president of AFSCME said, “In overwhelming numbers, AFSCME members have blunted the attacks of the wealthy special interests and chosen to stick with their union.”²⁷

In the years since, these claims have quieted down. The reason may be that the decision has had a prolonged and significant effect on union membership. As detailed earlier in this report, federal data from the three largest public sector unions show a collective drop of nearly 550,000 people financially supporting them, more than a 10% decline. The payroll records from public employers we requested — the most accurate information available — shows that 22.2% of people covered by union contracts decline membership. In these 450-plus public entities alone, nearly 730,00 people have opted out of union membership.

If the percent of people declining union membership is applied to the 5.6 million public employees working under union contracts across the 22 states affected by the Janus decision, we can project that 1.2 million people are declining to pay union dues, costing public sector labor unions about \$720 million in revenue annually. Since the Janus decision in 2018, an increasing number of public employees are exercising their First Amendment right to opt out of union membership, and that trend is likely to continue.

Acknowledgments

The author would like to thank for the following people for their help in reviewing and improving the content of this report:

- Daniel Disalvo, professor and chair, department of political science, Colin Powell School for Civics and Global Leadership at The City University of New York, and senior fellow, Manhattan Institute.
- Ken Girardin, fellow, Empire Center for Public Policy.
- Maxford Nelson, director of labor policy, Freedom Foundation.

Endnotes

- 1 “Union Membership (Annual) News Release” (Bureau of Labor Statistics, Jan. 19, 2023), <https://perma.cc/7CFG-VAZT>.
- 2 “Union Membership (Annual) News Release” (Bureau of Labor Statistics, Jan. 19, 2023), <https://perma.cc/7CFG-VAZT>.
- 3 “Union Membership (Annual) News Release” (Bureau of Labor Statistics, Jan. 19, 2018), <https://perma.cc/CGV4-Y5HP>.
- 4 “Union Membership (Annual) News Release” (Bureau of Labor Statistics, Jan. 19, 2018), <https://perma.cc/CGV4-Y5HP>; “Union Membership (Annual) News Release” (Bureau of Labor Statistics, Jan. 19, 2023), <https://perma.cc/7CFG-VAZT>.
- 5 “Union Membership (Annual) News Release” (Bureau of Labor Statistics, Jan. 19, 2018), <https://perma.cc/CGV4-Y5HP>; “Union Membership (Annual) News Release” (Bureau of Labor Statistics, Jan. 19, 2023), <https://perma.cc/7CFG-VAZT>.
- 6 Author’s calculations based on Barry T. Hirsch, David A. Macpherson and William E. Even, “Union Membership, Coverage, Density and Employment by State and Sector, 1983-2022” (Unionstats.com, 2023), <https://www.unionstats.com>.
- 7 Author’s calculations based on Barry T. Hirsch, David A. Macpherson and William E. Even, “Union Membership, Coverage, Density and Employment by State and Sector, 1983-2022” (Unionstats.com, 2023), <https://www.unionstats.com>.
- 8 Priya M. Brannick and Andrew Holman, “The Battle for Worker Freedom in the States: Grading State Public Sector Labor Laws,” third edition (Commonwealth Foundation, September 2022), 15-16, <https://perma.cc/4UDV-G6FR>.
- 9 Author’s calculations based on Barry T. Hirsch, David A. Macpherson and William E. Even, “Union Membership, Coverage, Density and Employment by State and Sector, 1983-2022” (Unionstats.com, 2023), <https://www.unionstats.com>.
- 10 Priya M. Brannick and Andrew Holman, “The Battle for Worker Freedom in the States: Grading State Public Sector Labor Laws,” third edition (Commonwealth Foundation, September 2022), 15-16, <https://perma.cc/4UDV-G6FR>.
- 11 Author’s calculations based on Barry T. Hirsch, David A. Macpherson and William E. Even, “Union Membership, Coverage, Density and Employment by State and Sector, 1983-2022” (Unionstats.com, 2023), <https://www.unionstats.com>.
- 12 Maxford Nelson, “Measuring Public-Sector Union Membership After *Janus*” (Freedom Foundation, June 2019), <https://perma.cc/AK4V-2DZ9>.
- 13 “Union Membership (Annual) News Release” (Bureau of Labor Statistics, Jan. 19, 2023), <https://perma.cc/7CFG-VAZT>.
- 14 For more information, see: “Form 990 Resources and Tools” (Internal Revenue Service, Feb. 8, 2023), <https://perma.cc/9KDU-JBYV>.
- 15 For more information, see: “Form LM-1 Labor Organization Information Report and Forms LM-2, LM-3, and LM-4 Labor Organization Annual Reports” (U.S. Department of Labor, April 28, 2023), <https://perma.cc/8DDX-WTW6>.
- 16 “Instructions For Form LM-2 Labor Organization Annual Report” (U.S. Department of Labor, Office of Labor-Management Standards, April 2020), 2, <https://perma.cc/Z3ZW-8YKG>.

Endnotes (cont.)

- 17 Author's calculations based on Barry T. Hirsch, David A. Macpherson and William E. Even, "Union Membership, Coverage, Density and Employment by State and Sector, 1983-2022" (Unionstats.com, 2023), <https://www.unionstats.com>.
- 18 Author's calculations based on "Union Members — 2018" (Bureau of Labor Statistics, Jan. 18, 2019), <https://perma.cc/9235-RRDM>; "Union Members — 2022" (Bureau of Labor Statistics, Jan. 19, 2023), <https://perma.cc/8QQT-JA86>.
- 19 Holly Wetzel, "More Than 140,000 Michiganders Have Left Their Unions Since 2012" (Mackinac Center for Public Policy, Dec. 12, 2022), <https://perma.cc/H9GS-VCC6>.
- 20 "Staffing Count" (MI School Data), <https://perma.cc/4EH4-PNYS>.
- 21 Author's calculations based on annual workforce reports published by the Michigan Civil Service Commission, available here: <https://perma.cc/C9GQ-H7M4>.
- 22 "Forty-Third Annual Workforce Report, Fiscal Year 2021-22" (Michigan Civil Service Commission), <https://perma.cc/C9UG-9NMZ>.
- 23 Valerie Strauss, "Who is financing Supreme Court case against public-sector unions (including those representing teachers)" (The Washington Post, June 12, 2018), <https://perma.cc/N3JN-SDZR>.
- 24 Eliza Newlin Carney, "The Teacher Paradox: Educators Organize Under Fire" (The American Prospect, July 12, 2018), <https://perma.cc/CRA2-C58W>.
- 25 Caitlin Emma and Mel Leonor, "Teachers unions skirt political blow from Janus ruling ahead of midterms" (POLITICO, Nov. 1, 2018), <https://perma.cc/T4GC-2UTJ>.
- 26 Carolyn Phenicie, "It's Been One Year Since the Supreme Court Heard the Janus Case. The Lawsuits Challenging Unions Aren't Anywhere Near Over" (The 74, March 5, 2019), <https://perma.cc/9NQW-LKQA>.
- 27 AFSCME Staff, "The Numbers Are In: AFSCME Members Are Sticking with Their Union" (AFSCME, March 27, 2019), <https://perma.cc/8W2Q-RRTS>.

BOARD OF DIRECTORS

Hon. Clifford W. Taylor

*Board Chairman
Retired Chief Justice
Michigan Supreme Court*

Rodney M. Lockwood Jr.

*Board Vice Chairman
President
Lockwood Construction Co., Inc.*

Joseph G. Lehman

*President
Mackinac Center for Public Policy*

Jim Barrett

*Retired President and CEO
Michigan Chamber of Commerce*

Daniel J. Graf

*Chief Investment Officer
Amerisure Mutual Holdings, Inc.*

Richard G. Haworth

*Chairman Emeritus
Haworth, Inc.*

J.C. Huizenga

*President
Westwater Group*

Edward C. Levy Jr.

*Executive Chairman for
Edw. C. Levy Co.*

Joseph P. Maguire

*President and CEO
Wolverine Development Corp.*

Richard D. McLellan

*Attorney
McLellan Law Offices*

BOARD OF SCHOLARS

Dr. Donald Alexander

Western Michigan University

Dr. Brad Birzer

Hillsdale College

Dr. Peter Boettke

George Mason University

Dr. Theodore Bolema

Wichita State University

Dr. Alex Cartwright

Ferris State University

Dr. Michael Clark

Hillsdale College

Matthew Coffey

Central Michigan University

Dr. Dan Crane

University of Michigan Law School

Shikha Dalmia

Mercatus Center

Dr. Chris Douglas

University of Michigan-Flint

Dr. Jefferson Edgens

University of Wyoming

Dr. Ross Emmett

Arizona State University

Dr. Sarah Estelle

Hope College

Dr. Hugo Eyzaguirre

Northern Michigan University

Dr. Tawni Ferrarini

Lindenwood University

Dr. Burton Folsom

Hillsdale College (ret.)

John Grether

Kettering University

Dr. David Hebert

Aquinas College

Dr. Michael Hicks

Ball State University

Dr. Ormand Hook

Mecosta-Osceola ISD

Prof. Harry Hutchison

George Mason University School of Law

Dr. David Janda

Institute for Preventative Sports Medicine

Annette Kirk

Russell Kirk Center

David Littmann

Mackinac Center for Public Policy

Dr. Dale Matcheck

Northwood University

Charles Meiser

Lake Superior State University (ret.)

Dr. Glenn Moots

Northwood University

Dr. George Nastas III

Marketing Consultants

Dr. Todd Nesbit

Ball State University

Dr. John Pafford

Northwood University (ret.)

Dr. Mark Perry

University of Michigan-Flint

Lawrence W. Reed

Foundation for Economic Education

Gregory Rehmke

Economic Thinking

Dr. Steve Safranek

Wiss, Janney, Elstner Associates, Inc.

Dr. Howard Schwartz

Oakland University

James Sheehan

SunTrust Robinson Humphrey

Rev. Robert Sirico

Acton Institute

Dr. Bradley Smith

Capital University Law School

Dr. Daniel Smith

Middle Tennessee State University

Dr. Chris Surprenant

University of New Orleans

Dr. Jason Taylor

Central Michigan University

Dr. John Taylor

Wayne State University

Dr. Richard K. Vedder

Ohio University

Prof. Harry Veryser Jr.

University of Detroit Mercy

John Walter Jr.

Dow Corning Corporation (ret.)

Dr. Gary Wolfram

Hillsdale College



Jarrett Skorup is the vice president for marketing and communications at the Mackinac Center for Public Policy where he has worked in various roles since 2009. Skorup has authored reports on occupational licensing, civil asset forfeiture and more while playing a leadership role in marketing efforts, media strategy, and overseeing policy campaigns and objectives.



The Mackinac Center for Public Policy is dedicated to improving the understanding of economic and political principles among citizens, public officials, policymakers and opinion leaders. The Center has emerged as one of the largest and most prolific of the more than 50 state-based free-market “think tanks” in America. Additional information about the Mackinac Center and its publications can be found at www.mackinac.org.

Additional copies of this report are available for order from the Mackinac Center.

For more information, call 989-631-0900, or see our website, www.mackinac.org.

© 2023 Mackinac Center for Public Policy, Midland, Michigan

ISBN: 978-1-942502-69-2 | S2023-05 | Mackinac.org/s2023-05

140 West Main Street P.O. Box 568 Midland, Michigan 48640

989-631-0900 Fax 989-631-0964 Mackinac.org mcpp@mackinac.org