

The University of Chicago

“Militancy Breeds Membership”

The Strategies of Public-Sector Unions Since *Janus v. AFSCME*

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Abstract

This paper seeks to explain how public-sector unions have largely maintained their membership over the last five years despite legitimate fear that the Supreme Court's 2018 decision in *Janus v. AFSCME* would be a "death blow" to their power and membership. The decision prohibited agency fee clauses in union contracts for government workers, and was part of a calculated attack on workers and unions, particularly the disproportionate share of women and workers of color who make up the public-sector workforce. I analyzed work stoppage data and census data, then conducted three interviews to identify whether public-sector unions have increased their organizing efforts since *Janus*, and, if so, to what extent they have been successful. Finally, I suggest to workers and their unions that adapting an organizing model, which seeks to sign up new members and empower the rank-and-file, is the key to being successful in the "open shop era."

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Table of contents

Introduction	4
Context	5
Janus v. American Federation of State, County, and Municipal Employees	5
Public Sector Unionism	7
Lead-Up to Janus	9
Literature Review	10
Research Question	18
Methods	18
Quantitative	19
Qualitative	22
Limitations and Further Research	24
Findings	25
Work Stoppage Data	25
Interviews	32
Policy Implications and Recommendations	36
Implications for Union Members and Organizers	36
Implications for Policy Makers	38
Conclusion	39
Works Cited	43
Appendices	48
Appendix A: Abbreviated State Data and Supplemental Graphs	48
Abbreviated State-by-State Data	48
Supplemental Graphs	50
Appendix B: Full Quotes from Two Interviews	51
Joe DeManuelle-Hall	51
Andrew Frangos	52

Introduction

On June 27, 2018, the United States Supreme Court issued what many feared would be a devastating blow to public sector unions in *Janus v. American Federation of State, County, and Municipal Employees* (AFSCME).^{1,2} In a 5 - 4 majority, the conservative wing of the Court ruled that government workers cannot be required to pay for collective bargaining, reversing the unanimous 1977 decision in *Abood v. Detroit Board of Education*, which allowed for agency shop agreements in the public sector.³ But, by many measures, unions that represent workers in the public sector remain strong, having largely maintained their membership and dues base.⁴ Using careful qualitative and quantitative analysis, I argue that the organizing situation created by the *Janus* decision, rather than killing public-sector unions, has served as an impetus for them to step up their organizing efforts, allowing them to maintain, and in some cases even build, their membership and power.

In this paper, I examine the strategies of public-sector unions in the almost five years since *Janus v. AFSCME*, in an attempt to explain how public-sector unions have largely maintained their membership despite warnings that the ruling would lead to a “mass exodus.” I do not consider whether or not *Janus* was correctly decided or engage with proponents of *Janus*, right-to-work laws, or other practices that seek to disempower workers and their unions. Instead, I propose that the response many public-sector unions took to *Janus* is a widely applicable example of one way to build worker power and voice, and other unions can adjust their internal policy to follow suit. I start by charting the specifics of the *Janus* decision, the history and

¹ *Janus v. State, County, and Municipal Employees*, 585 U. S. ____ (2018)

² Liptak, “Supreme Court Ruling Delivers a Sharp Blow to Labor Unions.”

³ *Abood v. Detroit Bd. of Ed.*, 431 U. S. 209 (1977).

⁴ Staff, “The Numbers Are In.”

importance of work in the public sector, and the labor movement that has been essential to it. Then, I establish some frameworks for understanding organizing and power-building as essential tools for organized labor to withstand the historic and current assault from conservative groups. I describe my mixed-methods approach to quantitatively assess the scale of organizing in the public-sector since *Janus* and to what degree it has been successful, then to qualitatively illustrate the mechanisms by which organizing and militancy might lead to these outcomes. I end with a set of suggestions to organizers based on the findings from my data analysis and interviews, and a reminder to policy makers that many of the gains made by the labor movement in American history have been achieved without many of the legal protections we view as vital today. Formal policy making is not the only avenue for organized labor, and amid the threat posed by *Janus*, public-sector unions have embodied the belief that has long been echoed by unionists and their allies: “when we fight, we win.”

Context

Janus v. American Federation of State, County, and Municipal Employees

Janus v. AFSCME reached the Court two years after *Friedrichs v. California Teachers Association*, a 2016 case which was similarly aimed at prohibiting agency fee agreements for unions operating in the public sector. But *Friedrichs* was inconclusive because Justice Antonin Scalia passed away after the oral arguments were presented but before the ruling was issued, resulting in a 4 - 4 tie. This upheld the lower court’s ruling in favor of the California Teachers Association but did not set a precedent going forward.⁵ Two years later, Mark Janus, a child support specialist who worked for the state of Illinois, sued AFSCME, saying being forced to

⁵ Liptak, “Victory for Unions as Supreme Court, Scalia Gone, Ties 4-4.”

pay dues to an organization with which he disagreed was a violation of his constitutional rights.⁶ Janus had been paying agency fees, sometimes called “fair share” fees, to the union, which are essentially the cost of standard membership dues minus the amount that is spent on political action. These fees cover the cost of collective bargaining, which is done on behalf of all union members, regardless of whether they agree or disagree with the position of their union.

The constitutionality of agency fee agreements for unions in the public sector was established in the unanimous *Abood* decision on two principles. First, agency fees would prevent “free riders,” people who benefit from the gains made by collective bargaining despite not paying for them. The *Abood* decision distinguished between the union’s political activities, which non-union employees could not be compelled to support, and its collective bargaining activities, which were deemed to benefit all employees and therefore could be funded by mandatory fees. Second, the court found that agency fees would protect labor peace by promoting stable labor relations in unionized workplaces, between workers who chose to be part of the union and those who didn’t, as well as between unions who were competing to represent a workplace.⁷

Janus was supported by conservatives across the country, including then-Illinois Governor Bruce Rauner, organizations affiliated with the wealthy Koch family, and the National Right to Work Legal Defense Fund (NRTWLDF), which had been involved in several lawsuits by individual employees who did not want to pay their dues or fair share fees. These groups were actively engaged in trying to weaken unions state by state through the advancement of so-called right-to-work. Ultimately, the Supreme Court ruled 5 - 4 in favor of Janus, reversing the precedent from *Abood* that established agency fees in the public sector. Justice Samuel Alito

⁶ Liptak, “Supreme Court Ruling Delivers a Sharp Blow to Labor Unions.”

⁷ *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 222 (1977)

wrote the majority opinion, saying that Janus was not a “free rider on a bus headed for a destination that he wishes to reach but is more like a person [kidnapped] for an unwanted voyage,” and was joined by Chief Justice John Roberts and Justices Anthony Kennedy, Neil Gorsuch, and Clarence Thomas.⁸ They concluded that even collective bargaining activities were inherently political and, therefore, mandatory fees collected to fund these activities constituted violations of one’s First Amendment protections of free speech and association.

The four more-liberal justices, Justices Elena Kagan, Sonia Sotomayor, Ruth Bader Ginsburg, and Stephen Breyer, dissented. Justice Kagan summarized her dissent from the bench, a sign of strong disagreement. In it, she highlighted that there was no real reason other than political motivation to overturn the settled precedent in *Abood*, which had held for more than four decades, and said “today the Court succeeds in its six-year crusade to reverse *Abood*.” She wrote that the concerns about free ridership and labor peace were still relevant, and that the conservative wing of the court had upset that balance by reconsidering agency clauses for the public sector. She also wrote that the decision would have a huge fallout, disrupting statutory schemes built on *Abood* in more than 20 states and affecting millions of employees, saying that “judicial disruption does not get any greater than what the Court does today.”⁹

Public Sector Unionism

Public-sector employees were excluded from the legal right to strike and bargain collectively in the National Labor Relations Act of 1935 (NLRA), which established much of American labor law. Workers in the public sector were largely left behind in the wave of organizing that came after the passage of the NLRA.¹⁰ National organizations like the American

⁸ *Janus v. State, County, and Municipal Employees*, 585 U. S. ____ (2018)

⁹ *Ibid.*

¹⁰ Agricultural workers and domestic workers were also excluded from the protections of the NLRA and other New Deal-era reforms. Then, as now, jobs in those sectors were disproportionately held by Black workers, and excluding

Federation of Labor did not take up organizing in the public sector because the limits on legal protections for going out on strike and collective bargaining made it an unviable path for building membership or solidarity. Public-sector workers began building power on their own in the 1960s and 70s, with collective actions like the 1968 Memphis Sanitation Workers Strike, the 1970 U.S. Postal Service Strike, and teachers' strikes in multiple cities in 1973. In 1962, President John F. Kennedy signed an executive order granting federal employees the formal right to collectively bargain, but not to go out on strike.¹¹ Cities and states began granting public employees the right to collectively bargain in 1958 and 1959, respectively, and public-sector labor law is still set state-by-state, rather than at the national level.

The NLRA outlined four types of union security agreements, which define the terms of union membership and dues payment. Closed shop agreements require employers to hire only people who are already a member of the union, and were essential in building the power of the organized labor movement in the first half of the 20th century. Union shop agreements require that new hires join the union, but do not limit hiring to union members. In an agency shop, new employees are not required to join the union or pay dues, but have to pay "agency fees" or "fair share fees," which cover the cost of collective bargaining but can not be used for political activity. Finally, in an open shop, employees are not required to join a union or pay dues, though if a union does exist at their workplace, the union still has a legal obligation to represent nonmembers. It is worth noting that unions have to negotiate over union security terms in their contracts. Merely being in a state that permits union shop language in contracts does not guarantee the establishment of a union shop. Generally, only powerful unions can secure union shop provisions in their contracts.

them from important legal protections was central to President Franklin Delano Roosevelt's acquiescence to the segregationist, racist Democrats who controlled Congress at the time.

¹¹ "5 U.S. Code § 7311 - Loyalty and Striking."

In 1947, the Taft-Hartley Act, which was passed over President Truman's veto, amended the NLRA with several significant blows to organized labor's power. It prohibited closed shop agreements and allowed employers to campaign against unions in the workplace, opening up the door to widespread union busting, and even making it an industry unto itself. It also banned wildcat strikes, where workers withhold their labor without notice or an authorization vote, and sympathy strikes, where one union withholds their labor to support another union's labor dispute. Banning sympathy strikes eroded solidarity between workers in different sectors and workplaces, and with it the power of the labor movement overall.¹²

Taft-Hartley also gave states the power to ban union shop agreements, a practice that has become known as "right-to-work."¹³ Right-to-work laws constrain unions' power, breaking down solidarity between workers in a workplace and throughout the labor market. A number of states, including a majority of the south, seized on the opportunity to pass right-to-work laws, protecting Jim Crow segregation by weakening unions, which threatened to promote solidarity between Black and poor white workers, strengthening overall worker power.¹⁴ Since Taft-Hartley, 26 states have passed right-to-work laws, and Ohio allows workers to opt out of their unions but allows unions to negotiate agency shop agreements. Michigan became the first state to repeal right-to-work, which is set to take effect in 2024.

Lead-Up to *Janus*

In the decades leading up to the *Janus* decision, the American labor movement was defined by two processes: the declining power of organized labor and the increasing power of

¹² McAlevey, 58-59.

¹³ The source of this term is disputed, but it is understood by all to be a misleading way to advocate against unions, implying that workers have a right to not belong to unions that work for their own good. Even without right-to-work laws, workers have the opportunity to do away with their union, either by calling for decertification elections or moving to non-union firms, which there are many of.

¹⁴ McAlevey, 60-61.

socially and politically conservative institutions backed by wealthy corporate dollars, who often wielded their power to attack the labor movement and the workers who constitute it. While these two phenomena are inextricably related to one another, neither one explains the whole history of declining wages and worker power after 1980. Though we can look at countless attacks on the labor movement from the right, unions also became stagnant or sleepy in their own right, defaulting to a service model that engaged members only transactionally, rather than an organizing model that was focused on expanding membership and fighting for all workers.

Literature Review

There is no comprehensive study of the strategies and outcomes of public-sector unions since the *Janus* decision, but there are several academic and journalistic pieces that have contributed valuable information about unionism and the public sector. These include books about the history of unions and the organized labor movement, advice to public-sector unions as they enter the open-shop landscape created by *Janus*, and statistical analysis of union membership and action.

Two of organizer-turned-author Jane McAlevey's books, *A Collective Bargain: Unions, Organizing, and the Fight for Democracy* and *No Shortcuts: Organizing for Power in the New Gilded Age*, are especially useful. In *No Shortcuts*, McAlevey differentiates between a service model for unions and an organizing model. The service model refers to unions that primarily provide services to their members, like handling grievances and negotiating contracts, but do not try to organize new members or make big gains in contract negotiations through collective action. Unions that operate under the servicing model can be described as stagnant and complacent, and McAlevey charges them, in part, with the decline in power of American

workers over the last several decades. She advocates instead for an organizing model, where unions try to bring in new members and workplaces, empower rank-and-file employees and union members, and take collective action to make their power felt. Organizing unions are fighting unions, and by organizing they can build power to advance the interests of workers not just at work, but in the other communities they are part of, even through electoral politics.

Where *No Shortcuts* is a scholarly guide to organizers, *A Collective Bargain* recounts the history of the labor movement's ebbing power, along with case studies of how some unions have managed to build power despite the unfavorable conditions, through organizing drives and other tactics described in *No Shortcuts*. In the second chapter, "Who Killed the Unions?" McAlevey lays out three rounds of action by employers: first to "gut the NLRA, demobilize the best organizers, [and] contain existing private-sector unions;" then to "eliminate private-sector unions altogether;" and, third and finally (at the time of writing), to "eliminate public-sector unions."

This third round is most relevant. She begins by describing the "myth of two separate sectors," an idea reflected in American labor law that mistakenly claims the economy is divided neatly into the public and private sector, when in reality it is an "integrated economic system in which shareholders and CEOs extract extraordinary sums of taxpayer money for their personal fortunes and have little to no accountability for their personal actions".¹⁵ Corporations rely on massive government cash transfers, including tax breaks and public assistance to workers, essentially subsidizing companies and their practice of doling out wages that are far too low to live on. She highlights the history of the public-sector labor movement, starting in the wake of Reverend Dr. Martin Luther King's assassination at the 1968 Memphis sanitation workers strike, when "public-sector workers at the state and local levels ... kicked off another big round of

¹⁵ McAlevey, 73.

strikes across the United States.” She credits this wave with the favorable opinion in *Abood*, which created for the first time a national way for public-sector unions to collect dues.

Then, she turns to the corporate assault on unions. Though *Janus* was the start of the fight for many public-sector union members who suddenly felt their collective power weakened, for conservatives, corporations, and billionaires, it was the culmination of a decades-long fight to destroy worker power and the labor movement. Conservatives had been taking aim at workers and their unions for decades, in courts, legislation, and the workplace.¹⁶ But even as unions in the private sector took hits, public sector union membership remained surprisingly steady.^{17, 18} As

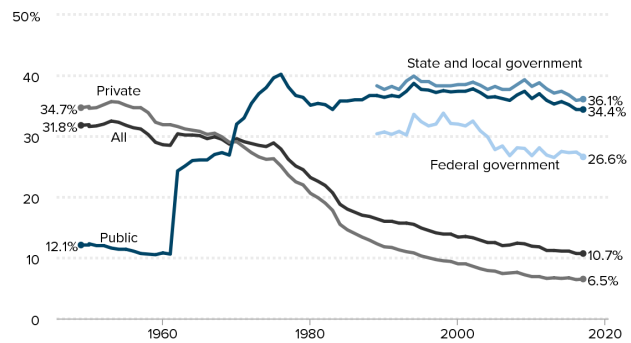
shown in the graph from a report by the Economic Policy Institute, public-sector union membership took off in the early 1960s due to the executive order that gave federal government employees the right to collectively bargain. Since then, it has stayed pretty steady with around 36% of public-sector workers belonging to unions.¹⁹

McAlevey continues by writing

that “the asymmetry between the private-sector and public-sector unionization rates shifted corporate billionaires’ sights from the earlier target, large numbers of men in manufacturing, to the new targets: the mostly women and people of color who perform public services, who still

State/local government has had the highest union membership rate (36.1%) for decades

Union membership rate, by sector, 1949–2017



Notes: Data allowing for a disaggregation of the public sector into federal government and state and local government became available in 1989. The sharp increase in the public-sector union membership rate between 1961 and 1962 can be attributed to the passage of Executive Order 10988, which gave federal employees the right to collectively bargain (see “50th Anniversary: Executive Order 10988,” Federal Labor Relations Authority, 2012).

Source: EPI analysis of Current Population Survey Outgoing Rotation Group microdata and Labor Research Association data

Economic Policy Institute

¹⁶ McAlevey, *A Collective Bargain*, chap. 2: “Who Killed the Unions?”

¹⁷ McAlevey, 76-77.

¹⁸ Greenhouse, *Beaten Down, Worked Up*, chap. 13: “The Assault on Public-Sector Unions”.

¹⁹ Wolfe and Schmitt, “A Profile of Union Workers in State and Local Government.”

work in unionized workplaces and thus still have a decent standard of living.”²⁰ The Koch brothers and other wealthy conservatives who funded the NRTWLDF “put serious, unprecedented resources into state races so that they could weaken public-sector labor law, thus unions, state by state.”²¹ This came to a head in Wisconsin in 2011.^{22, 23, 24} Weeks after taking office Republican Governor Scott Walker proposed Act 10, with the nominal purpose of solving Wisconsin’s budget shortfall.^{25, 26} It would prohibit public sector unions from negotiating on anything other than wages, cap wages increases to inflation, and require a recertification election every year for unions to be allowed to collectively bargain at all, an impossibly costly and time consuming task. Despite mass protests against it, especially at the state house in Madison, Walker got the bill through and made it virtually impossible for public sector unions to bargain collectively. Since 2010, total union membership in Wisconsin has fallen more than 40 percent, and the drop has been even more precipitous for workers in the public sector.²⁷ Republicans in other parts of the country looked to Wisconsin with hope, thinking that if they could get similar legislation in many other states it might be fatal both for unions and the Democratic party as a whole.^{28, 29} The NRTWLDF found some success in Florida, Iowa, Michigan, and other states, but could not make gains in solidly Democratic states with strong unions, so they started bringing legal challenges, eventually backing Mark Janus.

McAlevey returns to the public sector in her case study of how the United Teachers of Los Angeles (UTLA) rebuilt their power from a moribund, service model union that had not

²⁰ McAlevey, 76-77.

²¹ McAlevey, 79.

²² Greenhouse, chap. 13.

²³ Buhle and Buhle, *It Started in Wisconsin*.

²⁴ “2011 Wisconsin Act 10.”

²⁵ Shelton, “Chapter 4: Walker’s Wisconsin and the Future of the United States,” 74.

²⁶ Pernsteiner et al., “Budget Repair or Budget Spectacle?,” 510.

²⁷ “WEAC Turns to Local Focus after Massive Membership Loss.”

²⁸ Greenhouse 2020.

²⁹ McAlevey 2020.

gone on strike since 1989 to mount a successful strike in 2019. Her whole discussion of that process is relevant, but I was particularly interested in a card signing campaign launched in direct response to *Janus*.

They launched a campaign called ‘All-In’ ... in the same month that the highest court was deliberating *Janus*. Among the many threats posed by *Janus* was that every public-sector union member in the nation would have to re-sign and reaffirm their membership to every union, which would be an incredible drain on time and resources for those unions. ... All-In was UTLA’s effort to proactively sign brand-new union membership cards ... Over just several days, more than twenty thousand of the union’s members would sign the new, *Janus*-ready and *Janus*-specific membership and authorization cards.³⁰

All-In also served as what McAlevey and other organizers call “structure tests.” Structure tests are successively bigger steps taken at workplaces to assess the capacity of workers to take action together, with the eventual goal of being strike-ready, often as unions are going into contract negotiations or organizing campaigns. These actions bring workers together, often in unfamiliar ways, and requires them to rely on and trust each other as the stakes get progressively higher, building solidarity for future actions.³¹

While McAlevey’s work is largely responsible for introducing me to the concepts of organizing and power-building for unions that make up much of this thesis, it was Eric Blanc who brought forward the idea of applying those concepts to the time since the *Janus* decision. In *Red State Revolt: The Teachers’ Strikes and Working-Class Politics*, Blanc analyzes the Red-for-Ed movement, when teachers, mostly in West Virginia, Oklahoma, and Arizona went out on massive wildcat strikes beginning in February 2018. He retells the historic victory for public-school teachers in states that had been thought to be unwinnable for organized labor, saying the book “is about the power of strikes.”³²

³⁰ McAlevey, 213-14.

³¹ McAlevey, 157.

³² Blanc, *Red State Revolt*, 3.

Though the Red-for-Ed movement mostly took place before *Janus*, Blanc retells how teachers did away with the long-standing tendency for the working class to resign rather than to resist. In addition to winning raises for educators and more funding for students, the strikes also served as revolutionary political education for the teachers who got to be involved and the countless others who watched on. Blanc recalls how “teacher after teacher recounted epiphanies produced in the heat of struggle, ranging from disillusionment in Republican politics and a newfound sense of individual and collective power.”³³ Though they were not in the classroom, students “learned firsthand that mass action is both legitimate and effective,” in a way we might finally be feeling the effects of as workers at Amazon, at Starbucks, and in higher education begin organizing at work with a new ferocity.

Blanc’s brief consideration of *Janus* leads me to the mechanism I have proposed in this thesis:

Pundits across the political spectrum announced that *Janus* would be the nail in organized labor’s coffin. But the walkouts clearly showed the potential for the revitalization of trade unions, even in the face of ‘right to work’ laws and legal bans on strikes. In fact, if the walkouts in Arizona, Oklahoma, and West Virginia are any indication, this Republican offensive may prove to be counterproductive for the ruling rich: by destroying the last remnants of public sector union security, the Supreme Court decision may thereby make militant workplace actions *more* likely. As a union lawyer for AFSCME warned the court, *Janus* risked raising ‘an untold scepter of labor unrest throughout the country.’

In a special edition published after *Janus*, “Rebuilding Power in Open-Shop America: A Labor Notes Guide,” the editorial staff at labor magazine Labor Notes echoed McAlevey’s plea to unions to take up organizing in a way they had not for decades. They connected the challenges posed by *Janus* to the conditions unions in right-to-work states already faced, writing “*Janus* is a serious blow—but we have good news. As plenty of unions in open-shop states and sectors can testify, it’s still possible to win campaigns and maintain high membership rates despite the legal

³³ Blanc, 4.

hurdles.”³⁴ Like McAlevey, they wrote that success in the new open-shop era depended on building power, and that unions could sustain membership by empowering the rank-and-file: “here’s the punchline: the unions that build power in open-shop America will be the ones that fight hard on workplace issues their members care about, and where large numbers of rank-and-file members take on their own fights.” They warned that this project was simple but would not be easy, and ended by stressing its importance, saying “your workplace, and every workplace, is the training ground to build a better world.”³⁵

The Economic Policy Institute (EPI) has published a wealth of data and analysis on workers in the public sector. Three weeks before the *Janus* decision came out, Julia Wolfe and John Schmitt³⁶, put out a report called “A profile of union workers in state and local government: Key facts about the sector for followers of *Janus v. AFSCME Council 31*.” It detailed the demographics of the 17.3 million state- and local-government workers across the country and discussed who among them would feel the effects of *Janus* the most. Though it was published before *Janus* and does not speak to the methods used by public-sector unions to stave off the decision’s threats, it is essential to my understanding of who is being attacked when corporate and conservative interest groups turn their sight on public sector workers. Women and people of color makeup disproportionate shares of the public-sector workforce and of those covered by union contracts in the public sector.³⁷ This is consistent with the history of public-sector jobs as a pathway to employment and economic mobility for marginalized groups. They also highlight that more than one in four of state- and local-government union workers are teachers. Altogether,

³⁴ “Rebuilding Power in Open-Shop America.”

³⁵ “Rebuilding Power in Open-Shop America.”

³⁶ No relation

³⁷ More than a half of state- and local-government union workers are women, and almost a third are people of color.

their analysis shows that when public-sector unions are attacked, it is an attack on women workers, workers of color, and already-under-resourced public education.³⁸

In another EPI report titled “Unions can reduce the public-sector pay gap: Collective bargaining rights and local government workers,” Monique Morrissey and Jennifer Sherer highlight the positive effects of strong unions for these public sector workers. The report was first published in July 2021 and updated in March 2022 and finds that “[states] where teachers and school staff, bus drivers, firefighters, police, and other local government workers have stronger collective bargaining rights have smaller gaps between these workers’ pay and the pay of private-sector workers” with similar backgrounds and jobs. They also highlight the importance of closing the pay gap for public-sector jobs, which would “especially [help] Black workers and women, who are disproportionately represented in local government jobs,” and write about the widespread effects of improving public-sector work “for local governments facing acute, growing staffing shortages.” Unions’ role in this is not lost, and Morrissey and Sherer write that public-sector unions “help reduce inequality, promote social mobility, and advocate for better public services.”³⁹

Finally, in Erik Loomis’ discussion of the 1981 Professional Air Traffic Controllers Organization strike, which is the ninth chapter of his detailed book *A History of America in Ten Strikes*, he touches on some of the questions that define more theoretical conversations about the role of unions in the public sector. He poses these questions—“Were they workers or were they primarily public servants? Could they strike, and if they could, was this an attack on the people themselves?”⁴⁰—then goes on to describe how they have played out at a couple key moments in American labor history. He highlights that when postal workers went out on strike across the

³⁸ Wolfe and Schmitt, “A Profile of Union Workers in State and Local Government.”

³⁹ Morrissey and Sherer, “Unions Can Reduce the Public-Sector Pay Gap.”

⁴⁰ Loomis, *A History of America in Ten Strikes*, 180.

country in 1970, they were technically breaking the law.⁴¹ Their victory, which was aided by shows of solidarity from National Guard members called in to replace striking mail carriers, ushered in massive growth of government unions and a wave of militancy from the public sector.⁴² By the late 1970s, however, the government had turned hostile to public unions, portraying stoppages as needlessly disruptive, selfish acts from workers who, according to their opponents, were on the whole much better off than other workers.

Research Question

Broadly, I am looking to explain the fact that rates of union membership and coverage for workers in the public sector have remained relatively steady despite the very real fear that the conservative ruling in *Janus v. AFSCME* would lead to a “mass exodus.” Did public-sector unions change their methods in response to the 2018 *Janus v. AFSCME* Supreme Court ruling, and if so, how and why? In states where labor laws were suddenly under attack, how did unions’ organizing, recruiting, and action efforts change? How were they able to find success, both to build power and maintain their membership? And how can the lessons from their methods and success be applied more broadly, not just to private-sector unions, but to workers everywhere interested in building and exercising their collective power?

Methods

I used a mixed-methods approach to address these questions. I used quantitative analysis of work stoppage data and census data to compare trends in public-sector union action to

⁴¹ Loomis, *A History of America in Ten Strikes*, 182.

⁴² Loomis pulls out a few useful statistics to illustrate this, writing that by 1980, “40 percent of the nation’s public workers were union members, and the number of public worker strikes skyrocketed from 36 in 1960 to 536 in 1980.”

changes in union membership and wages. I also conducted three interviews to illustrate the mechanism by which increased militancy has led to unions retaining membership and to flush out the theoretical questions of what it means for public-sector workers to build and to hold power. Together, these methods provide a clear picture of changes in public-sector union methods and outcomes over the last 30 years and an understanding of how those changes have been realized within individual workplaces and unions.

Quantitative

To assess the amount of organizing unions have done, I used a listing of every work stoppage with more than a thousand workers since 1993 from the Bureau of Labor Statistics (BLS). Quantifying the amount of organizing done by unions, regardless of sector, presents a significant challenge because organizing can take a lot of different forms. However, stoppages are a useful proxy because they include a broader category of action than strikes, which have specific demands and are bound by a whole cadre of regulations, varying widely by industry and state. Additionally, stoppages are a good example of “structure tests,” which unions use to both make their presence and strength felt to management and to recruit workers to further actions by showing them that they are part of a fighting union.⁴³ For a work stoppage to take place, workers must have already developed a sense of solidarity and collective power. However, the act of a work stoppage also serves to strengthen the power of workers and enables them to assert their collective power more effectively in the future.

Though my data starts in 1993, which is well after unions in both public and private sectors entered their era of downturn and inactivity, it still provides a good picture of the state of unions in the lead up to *Janus*. It also means the stoppages are split neatly into pre- and

⁴³ McAlevey, *No Shortcuts*.

post-*Janus*. Only including stoppages with more than a thousand workers should not be too large of a limitation on the quality of this analysis. Though there are certainly important strikes, stoppages, and unions with fewer than a thousand workers, I expect them to be spread pretty evenly through the labor movement as a whole.

I started by looking at the general trends in the number of stoppages over time, overall and by sector. The BLS data lists whether stoppages took place at the state or local government level (or, in the case of one 1994 stoppage in Hawaii, state and local government), but I did not find it useful to differentiate between levels of government and instead grouped all public-sector stoppages together for most of my analysis. Only looking at a local stoppages' state, rather than municipality, should not have an impact on my analysis of the scope or impact of organizing. Despite rampant preemption laws, often used to limit what laws municipalities can pass to improve working conditions, there are no cities in so-called right-to-work states that allow for union security clauses.

I coded stoppages by whether they began before or after the *Janus* decision, and compared how the number of stoppages a month changed in each sector. Then I started focusing on public-sector stoppages, coding each stoppage (each of which was entirely in one state, save for a 2016 stoppage by port and harbor operators in New York and New Jersey) by whether it took place in a state with right-to-work laws in 2018. For my state-by-state analysis, states without right-to-work laws in 2018 are the treatment group, because they would have been suddenly affected by the *Janus* decision, whereas unions in right-to-work states already had to organize in open-shop conditions. I compared the change in the number of stoppages a month before and after *Janus* in right-to-work states and union security states, and also looked at the percentage change in the number of stoppages, which proved to be unreasonable because a

number of states had zero stoppages between 1993, when my data starts, and the *Janus* decision in June 2018.

Finally, I looked at how increased action, measured by the change in the number of stoppages per month in the dataset, correlated with outcomes for union membership and public-sector wages. To do this, I looked at the census microdata made available by the EPI from the Community Population Survey (CPS) Basic Monthly.^{44,45} For the datasets from 1993 and 2021, the start and end of the stoppage data, I filtered for public-sector employees, then took the percentage that were a member of a union for each state. This is not a perfect replication of union membership, as there are some public-sector employees who work in management or are otherwise not eligible to be part of a bargaining unit, but it is a good proxy for union membership. The membership data I found closely mapped to the actual membership data the EPI has reported for each state's public-sector union membership in 1989 and 2017.⁴⁶ For each state, I took the percent change in union membership from 1993 to 2021, then tested whether it correlated with the change in union activity.

To get an idea of how changes in the number of stoppages affected outcomes more directly felt by workers, I took the median public-sector hourly wage for each state in 1993 and 2021. Then I took the median wage for the entire census dataset in both years and found the percent change, which was 120.7%. This is not a perfect calculation for inflation, but was a useful benchmark to see how wages across the labor market changed over this 30-year period. For each state, I took the difference between the percent change in median wage workers and the aggregate percent change in median wage as a measure of how wage growth for public-workers in each state compared to the national labor market.

⁴⁴ "Wage: Hourly Wage (Adjusted) - EPI Microdata Extracts."

⁴⁵ "Data Library."

⁴⁶ Wolfe and Schmitt, "A Profile of Union Workers in State and Local Government."

Qualitative

To deepen my understanding of public-sector unionism, the effects of *Janus*, and how unions have built power, I have conducted interviews with Joe DeManuelle-Hall, a journalist at Labor Notes who covers municipal and state workers and has been an organizer himself; Stacia Scott, the organizing director at Service Employees International Union (SEIU) Local 73, which covers more than 30,000 mostly public-sector workers in and around Chicago; and Andrew Frangoes, who was a participant in the 2019 United Teachers of Los Angeles strike that had to respond to the *Janus* decision as they prepared to strike. It is important to note that these interviews are useful case studies meant to inform and illustrate my quantitative research and analysis, and are not intended to provide a full analysis of how public-sector workers and unions experienced or responded to *Janus*, which would require carrying out interviews on a scale many magnitudes larger than I was able to.

I asked DeManuelle-Hall about whether it is true that *Janus* was an impetus to public-sector unions to reinvest in on-the-ground organizing, and what else was at play in unions maintaining the bulk of their membership despite the threat posed by the *Janus* decision. He made it clear that he is not a researcher or a historian, but someone who pays careful attention to the labor movement. We also talked more broadly about how the *Janus* decision fits into the history of the American labor movement and attacks that have been leveraged against it, and how the American labor movement has stalled in recent decades. I also asked about how the lessons from *Janus* can be applied broadly, and about where comparisons from *Janus* can be made outside of the public sector and in right-to-work states. This conversation was incredibly useful to my thesis, and DeManuelle-Hall provided both useful context and incredibly insightful analysis into my research question.

Scott is the organizing director of SEIU Local 73, which represents more than 30 thousand public-sector workers in and around Chicago. This union jumped out to me in the BLS work stoppage data, where I identified a 17 day stoppage in June and July 2021 during their contract negotiations with Cook County hospitals. The BLS reports that 2,000 workers were idle for 2,200 cumulative days.⁴⁷ SEIU Local 73 have only run two other stoppages since 1993, all of them since *Janus*, which suggests that their methods have changed in the time since the decision. I asked Scott about the reaction to *Janus*, what actions SEIU Local 73 took, how those changes have held up, and how the lessons about organizing from *Janus* can be applied broadly.

Frangos was the teacher's assistant in a course I took last year and mentioned that he was a teacher in the Los Angeles United Schools District (LAUSD) and a member of the United Teachers of Los Angeles (UTLA) during the radical rebuilding of the UTLA beginning in 2014, which culminated in a 2019 strike that took place in the wake of *Janus*.⁴⁸ I asked him about the “All-In” campaign, where UTLA leadership asked every teacher to sign new union membership cards in anticipation of the ruling in *Janus*. This action was successful, and is a potent example of what Steven Greenhouse describes in *Beaten Down, Worked Up*—where public sector unions took the threats posed by *Janus* as an opportunity to up their organizing, recruiting, and activism efforts.^{49, 50} I also asked about his general experience in the union and during the campaign and eventual strike. By the time *Janus* took effect, a strong activist coalition had been rebuilding the UTLA for a few years, and unions and their allies had achieved important wins in both state and local elections. Still, did members feel their union was at risk? Or, like some observers suggest they might have, did they view *Janus* as an opportunity for increased militancy?

⁴⁷ “Major Work Stoppages.”

⁴⁸ McAlevey, *A Collective Bargain*, chap. 6: “How to Rebuild a Union: L.A.’s Teachers”.

⁴⁹ Greenhouse, *Beaten down, Worked Up*, 196.

⁵⁰ Kerrssey and MacLean, *Labor in the Time of Trump*, 217-222.

Limitations and Further Research

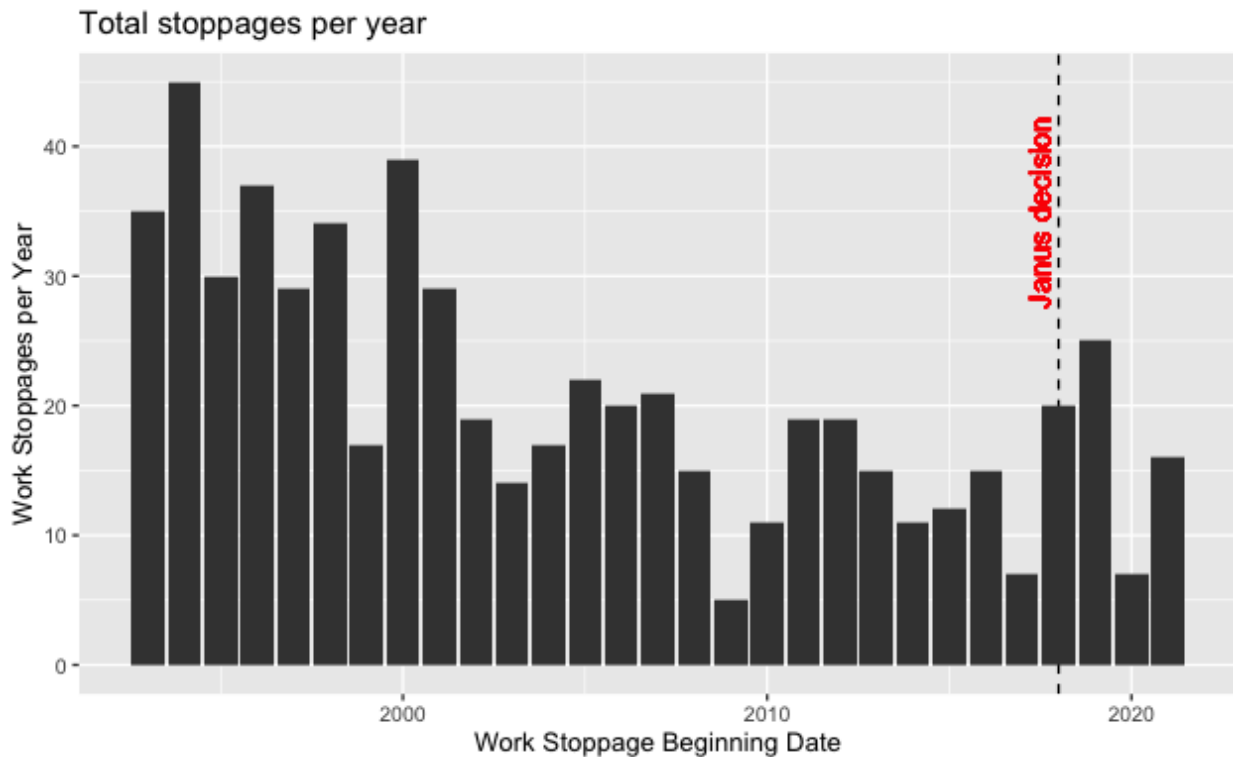
While I am confident that my mixed-methods approach has allowed me to make a strong assessment of how the strategies of public-sector unions have changed to withstand attacks on organized labor like the *Janus* decision, there are some limitations and further research that would be worthwhile. First, there are a limited number of public-sector stoppages in the publicly available data, making it difficult to assess trends in the number of stoppages once I break them down by state. Often, I am dealing with very small changes in the number of stoppages per month in a given state. These small changes certainly have big repercussions for union outcomes and power building, but many of the statistics generated in my findings and analysis do not reflect this at first glance.

There are plenty of opportunities to use similar methods to look at how changes in worker action have correlated with union membership and wages at the local, state, and national level. It would be interesting to explore how wages and action are correlated for workers in the private sector in right-to-work states. It would also be useful to more carefully look at purchasing power, instead of wages across states, to see how workers in the public sector are faring and how that correlates with how active organized labor is where they live. I wished I had a chance to talk to more people who were not part of their union's leadership but, since *Janus*, have gone out on strike, about their experiences on the picket line. Finally, *Janus* is but one of many policies that changes the organizing situation for workers across the labor market. It would be interesting to see how organized labor has responded to other types of policy levers—both direct, like state laws around who can collectively bargain changing as they recently have in Virginia, and indirect, like housing and healthcare policy that change the conditions workers face.

Findings

Work Stoppage Data

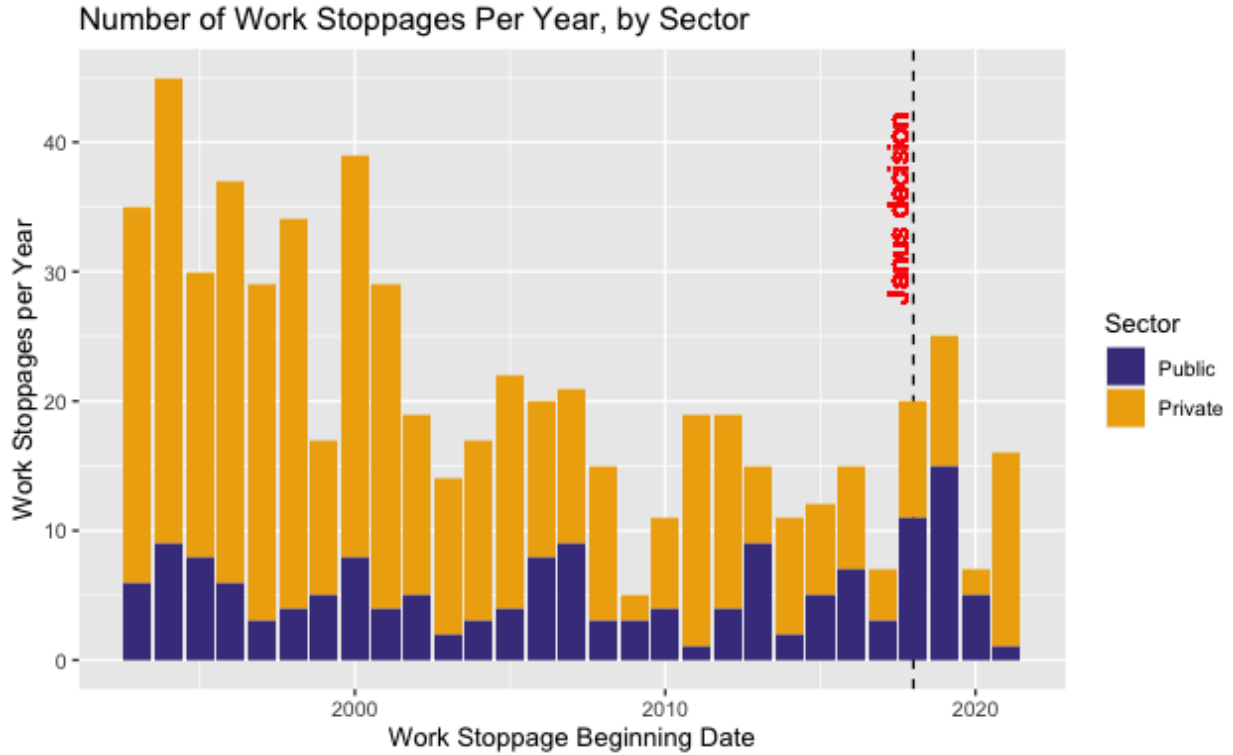
Though there is much more variation, the frequency of work stoppages over the last 30 years, up until the 2018 *Janus* decision, largely mirrors the decline in union membership over the same period, as shown in the graph below.⁵¹



However, once we break down the stoppages by sector, other patterns become clear.

The number of public-sector stoppages is relatively constant from the early 1990s to 2015, but then both the number of public-sector stoppages and the proportion of total stoppages that are in the public sector take a sharp rise.

⁵¹ An abbreviated version of the state-by-state data is in Appendix A



This observation is confirmed by more quantitative analysis of the change in the number of stoppages per month in each sector:

	Stoppages per month	
	private sector	public sector
before <i>Janus</i>	1.354	0.436
after <i>Janus</i>	0.814	0.558
change	- 0.540	0.122
percent change	- 40%	+ 28%

In the public sector, after *Janus* the number of stoppages went up 28% while it fell 40% in the private sector. This is a stark difference, and while we cannot conclude that *Janus* directly led to the increased organizing activity in the public sector and decreased activity in the private sector, it is clear that the two sectors have used different methods in the post-*Janus* era.

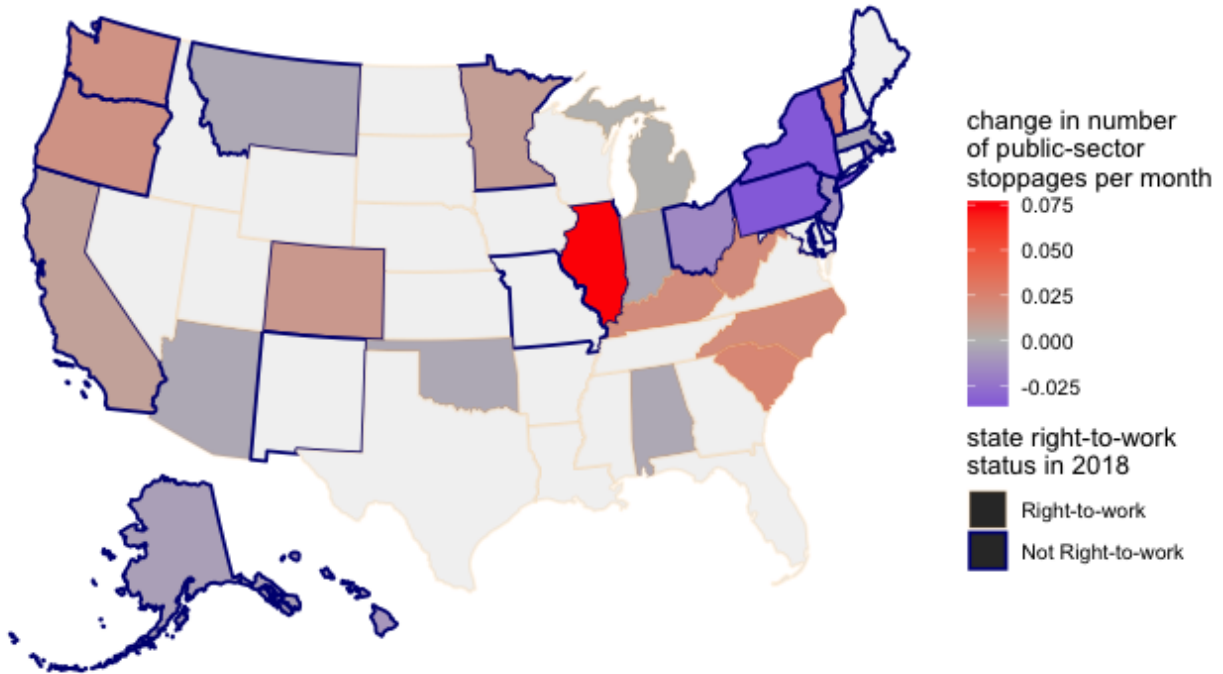
The findings in this section of my stoppage data analysis confirmed the mechanism that increased organizing activity in the public sector in response to *Janus* is what has maintained union density and power in most areas of that sector. However, when I began to analyze the stoppages in more detail, I was surprised to discover that even in states that were already right-to-work prior to the *Janus* decision—where I initially assumed that public-sector workers would not be impacted by the ruling due to the already restrictive labor laws—there were actually significant increases in the number of stoppages. As the table below shows, the total number of stoppages per month in states that had right-to-work laws in 2018 went up by more than 150%, while in states that did not have right-to-work legislation at the time, the increase was a mere 8%.

2018 RTW status	Stoppages per month	
	Right-to-Work	Not Right-to-Work
before <i>Janus</i>	0.046	0.387
after <i>Janus</i>	0.116	0.419
change	0.070	0.032
percent change	+ 153.3%	+ 8.2%

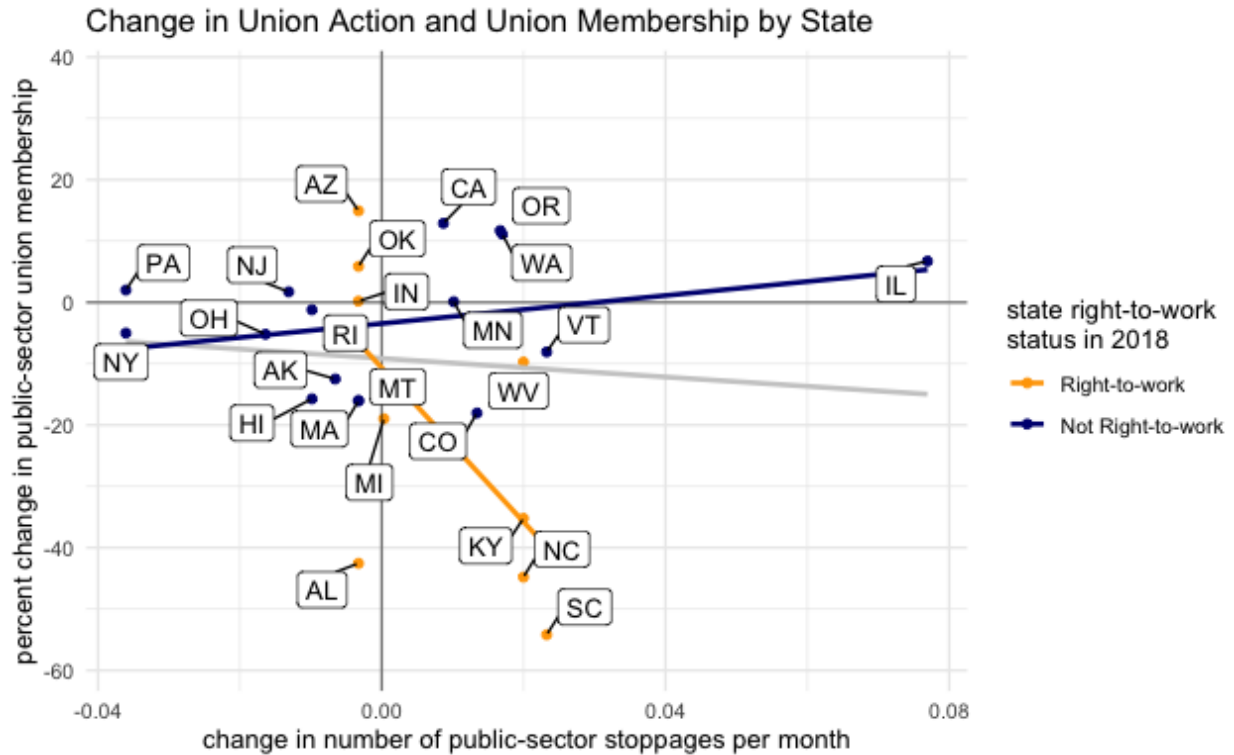
That finding is reflected in the map below, which shows the change in the number of public-sector stoppages per month, with states that did not have right-to-work laws in 2018 highlighted. States that did not have any public-sector stoppages in this dataset are gray. This highlights the change in number in stoppages, not the percent change, for each state, because South Carolina and Washington did not have any stoppages before *Janus* in the dataset. It is worth noting that there are a number of states with seemingly large increases in the number of stoppages a month, but only because there were so few stoppages before *Janus*. This is also true for the percent change in right-to-work states, which shows a massive increase from the 14 total

stoppages in the 305 months before *Janus* and five after in 43 months. Still, Kentucky, Michigan, North Carolina, South Carolina, and West Virginia had increases in the number of stoppages per month despite not technically being affected by *Janus*, and in all of those states but Michigan, the number of stoppages per month increased by more than six times.

Change in Number of Public-Sector Stoppages per Month, by State



Though changes in the number or work stoppages vary substantially regardless of states' 2018 right-to-work status, the effect of the change in organizing was felt very differently between the two groups of states. The scatterplot below shows the relationship between the change in public-sector union membership and the change in stoppages per month.



For all of the states with any public-sector stoppages in this time period, an increase in the number of stoppages per month is associated with a very small drop in union membership. But among the states that did not have right-to-work laws when *Janus* was decided, there is a positive correlation between an increase in union action and gains in union membership. The opposite is true in right-to-work states, where there is a steep decline in public-sector union membership as the change in number of stoppages a month increases. Again, this observation comes from the states with very few public-sector stoppages at all, so the increase in the number of stoppages per month does not actually represent a large change from the pre-*Janus* status quo.

To get a better sense of how the scale of the number of stoppages interacts with union membership, it is helpful to look just at the number of public-sector stoppages that have taken place in each state since *Janus*.⁵² The disparate trends between right-to-work and non-right-to-work states remain, but the overall association switches from negative to positive.

⁵² For a graph of this, see Appendix A

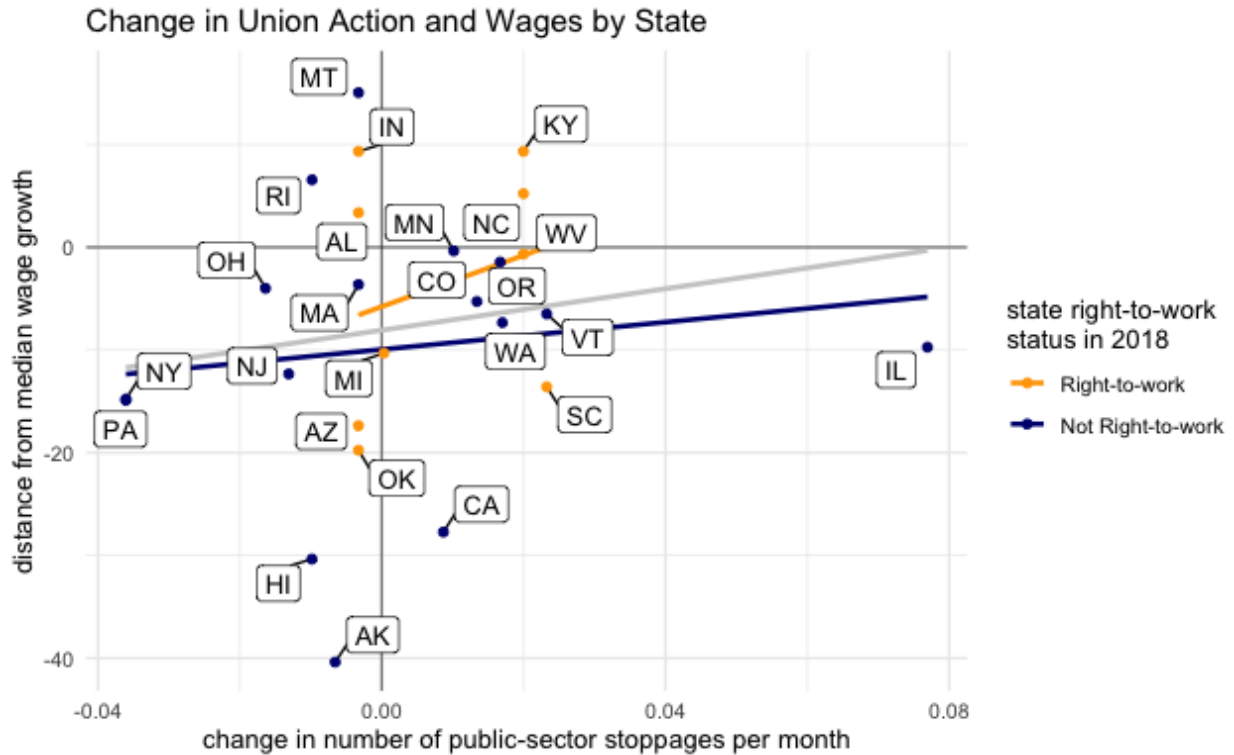
As the number of stoppages since *Janus* increases, states are more likely to have maintained or increased their public sector union membership. Of the 25 states with no public-sector stoppages over this period, 12 had a drop in public-sector union membership of more than 25%, including two states where membership fell by more than half. All 12 had right-to-work laws in 2018.

And, while wages are not the only way to measure the quality of work or jobs, and not even necessarily the most important measure, they are a useful way to see how the changes in union membership and action are felt in the lives of public-sector workers. As most studies show, there is a positive association between increased union membership and greater wage growth.^{53, 54} But the interaction between the change in the number of public-sector stoppages per month and wage growth for public employees is much more striking. I took the percent change in the median public-sector adjusted hourly wage in each state from 1993 to 2021 and compared it to the percent change in median wage for the census data at large.⁵⁵ Across all states, even those with no public-sector stoppages, wages increased more as the change in number of stoppages got greater. The positive correlation between mass labor action and wage growth suggests that as unions make their power felt, outcomes for workers are better, regardless of union membership.

⁵³ Keefe, “Public-Sector Workers Are Paid Less than Their Private-Sector Counterparts—and the Penalty Is Larger in Right-to-Work States.”

⁵⁴ This is especially true in states that were not right-to-work in 2018, where there are likely more favorable attitudes toward organized labor in general. This might make it difficult to extend the positive policy responses to militancy to right-to-work states, where policy makers tend to be more hostile to unions and to the groups who are more likely to hold public-sector employment, including women and people of color.

⁵⁵ “Wage: Hourly Wage (Adjusted) - EPI Microdata Extracts.”



The positive association between union action and wage growth is even stronger in states that were right-to-work in 2018. Even though it might not be related to *Janus*, it suggests that power-building is *even more crucial* in states with laws that are hostile to workers and designed to weaken organized labor. Though the relative changes in wage growth are scattered, non-right-to-work states all tend to have higher hourly wages than their right-to-work counterparts.⁵⁶ This can be partially explained by the disparate cost of living for some states in this dataset, which tends to be higher in non-right-to-work states, which are also more likely to have more of their population concentrated in and around urban areas. Still, the higher wages suggest that non-right-to-work states are already more favorable to public-sector workers, and *short-term* changes to the amount of union action have a smaller effect there—though still a positive effect.

⁵⁶ A dot-plot of this spread is in the Supplemental Graphs section of Appendix A, and the full listing of each state's wage is in the Abbreviated State-by-State Data in the same section.

Median wage growth for the whole labor market outpaces median public-sector wage growth in 35 states, indicating that the public-sector wage gap still exists and may even be widening. The positive association between increased union action and wage growth, for both right-to-work and non-right-to-work states, though, indicates that building union strength is a viable way to improve outcomes for public-sector workers. On a state level, this might have to do with worker voice throughout the policy making process, not just at the workplace level. In communities, cities, and states where unions are more active, they likely wield more political power, whether formal or informal. It would be interesting to see whether public-sector wages also rise with increasing union action from the private sector, or whether benefits are isolated.

Interviews

When I described my research question to DeManuelle-Hall when we spoke on the phone, he recalled that “the writing at the time was really ‘the sky is falling, this is gonna kill the public sector labor movement.’ That might be overstating it, but many were worried it was going to significantly diminish the power of the public sector labor movement.”^{57, 58} He agreed that “the combined disaster scenarios that people were worried about just didn’t come to pass” and that “members did not drop their membership in the numbers that were feared or expected or hoped for, depending who you’re talking to.” To explain that, he cited two factors: first, that, “unions threw down on internal organizing and saw ‘oh, we’re really going to have to fight to keep people’ so unions set up structures to get out and sign up members,” and, second, that “people weren’t as eager to drop their union membership as the right thought they were going to be.”⁵⁹

⁵⁷ DeManuelle-Hall, interview.

⁵⁸ For two fuller quotes from my interview with DeManuelle-Hall, see Appendix B

⁵⁹ DeManuelle-Hall, interview.

Scott had similar thoughts when I had the chance to interview her at “Teamster City,” an office building that houses SEIU Local 73 and a few other union offices on the west side of Chicago. She also tied the change in methods to a concurrent shift in leadership at Local 73, saying

this local in particular used to very much be a service oriented union, and so it was incredibly transactional with the members it was seen as a grievance focus, right? Our philosophy under our leadership at this local now is that organizing and fighting is really the key to building a strong organization and that militancy breeds membership—or not ‘breeds’ but leads to—higher membership overall. People want to be a part of fighting for better wages and working conditions. So, it was a shift in philosophy. *Janus* happened right at the time when the local leadership structure also changed, so our organization went through a leadership shift, and so you can’t really separate out *Janus*, because when the leadership changed the philosophy and the direction of the organization changed, and so those sort of went hand in hand.

She connected this shift to the shift in the public-sector labor movement, proposing that the conditions of the post-*Janus* era have “forced unions to not just rest on the fact that they have guaranteed membership, [forcing them] to be more strategic in how you approach the actual work and how you approach the membership.”⁶⁰

Scott talked about why it is important for unions to build power through the rank-and-file membership, saying that “it’s a lot of work to strike, and to build it and it is tedious dedication to build the kind of field and support that is needed to get to those places, but we should never decide for people what they are willing to do for their own wellbeing.” She summed up this view by saying “the more active and engaged your people are, the more likely they are going to want to be part of a union.” She followed up with me after to note the success of these tactics, saying

1. Our union membership density is higher now than it ever was pre-*Janus*. Meaning we have more workers who are signed up to be full members than ever before. 2. Three separate strikes in 3 years, almost 2/3 of our organization walked off during their contract fights, led to massive strike votes and contract ratification votes. These aspects of education and democratic engagement contribute to increased member sign ups.⁶¹

⁶⁰ Scott, interview.

⁶¹ Scott, “Interview Follow-Up,” April 4, 2023.

Like Scott and DeManuelle-Hall, Frangos connected increased union militancy with the threat posed by *Janus* when I talked to him about his experience as a rank-and-file leader in the 2019 UTLA strike. He said that the All-In card signing campaign was a direct response to *Janus*, and that their messaging around it highlighted the threat, asking members ““They're trying to dismantle our power. Why would we want that?””^{62, 63}

DeManuelle-Hall and Scott also both talked to me about how *Janus* was intended as an attack on public-sector unions and what it means to attack workers in the public sector.

DeManuelle-Hall made it especially clear, saying “the case was filed in order to try and undermine the power of the public sector labor movement, and to continue the right-to-work project.”⁶⁴ Scott also referred to *Janus* as a calculated attack, and said

especially in the public sector, I don't think that you can separate out the fact that for most working people in the public sector, they are predominantly Black and Brown workers, and 1 in 5 African Americans in the US holds a public sector job, and so the attack on the public sector really is an attack against working people but an attack against Black and Brown people and trying to limit labor's power.⁶⁵

Though he was clear about the *Janus*' intentions, DeManuelle-Hall was hesitant about how much attacks on the labor movement can be faulted for the declining power of organized labor. He also drew out two distinct processes, saying that “for four decades now the US labor movement has been declining in power at the same time as institutions of the right are gaining power, and these things are not unrelated. Attacks to union rights are not the only reason that the US labor movement has declined, there are many reasons of its own making, but they're certainly connected.”⁶⁶

⁶² Frangos, interview.

⁶³ For a fuller description of Frangos' experience in the UTLA, see Appendix B

⁶⁴ DeManuelle-Hall, interview.

⁶⁵ Scott, interview.

⁶⁶ DeManuelle-Hall, interview.

Since *Janus*, opponents of unions have also tried to capitalize on the new open shop. These “right-wing efforts to get public sector workers to drop their union membership” are common and insidious, often disguising themselves as websites purporting to reveal the “truth” about public unions.⁶⁷ Frangos and Scott also talked about these efforts, but it wasn’t clear if they have been successful in their goal of driving down union membership.⁶⁸

Frangos and Scott expanded on attacks on public sector unionism when we talked about one of the central questions of public-sector unionism more broadly. Critics often argue that by fighting for their own well-being, workers are foregoing their role as public servants. Public-sector workers respond that they can not look out for the public good unless they have the resources necessary to do their jobs well, a sentiment echoed by Scott and Frangos in my interview with them. Frangos called this “bargaining for the common good.” He said it was a powerful model because it “counters that narrative of public servants being selfish, and a lot of the signs we were holding said things like ‘on strike for our students,’ and when we were demanding things like immigration services—not for our teachers but for our students—it was really clear whose interests we had in mind.”



⁶⁷ DeManuelle-Hall, interview.

⁶⁸ For more about this see Fang, June 30 2018, and A.m, “Right-Wing, Business-Funded Groups Are Preparing to Use the Janus Decision to Bleed Unions, Internal Documents Show.”

⁶⁹ Koritz, “Los Angeles Teachers Strike for an End to Privatization.” Photo from 2019 UTLA strike.

Policy Implications and Recommendations

Implications for Union Members and Organizers

My analysis of work stoppage and census data at the state level, alongside interviews with experts, union leaders, and union members, carries important implications for workers in any sector. In my data, increases in union action and membership since *Janus* are not limited to states that did not have right-to-work laws in 2018, as I thought they might be. And, while this muddies the picture for the specific effects of and responses to *Janus*, it makes one thing very clear. Successful organizing is not limited to the places with the most favorable policies. Workers who fight anywhere can win, and the increases in union action, membership, and wages in the last five years in states that have often been thought of as unwinnable drives that point home.

Even though, at the state level, I could not conclude that an increase in stoppages can guarantee unions maintain or grow their membership, my conversations with DeManuelle-Hall, Scott, and Frangos confirmed that it can be done in the workplace, even under open shop conditions. According to Scott and Frangos—both of whom have been involved in winning campaigns with public-sector unions that had previously resigned themselves to the servicing model—the recipe for success is as simple as McAlevee and Labor Notes say it is. Unions who build power through the rank-and-file and fight for issues that go beyond the workplace can win, and win big. Doing so shows union members that their union is ready and willing to fight for them—on the job, yes, but also at home, at their children’s schools, in healthcare and transportation and electoral policy making. And, by and large, union members who see that *want to be part of their unions*.

Organizers should also take Frangos' discussion of "organizing for the common good" to heart. Public-sector workers still face the accusation that they are neglecting their role as public servants when they fight to improve their working conditions, even in cities with powerful and respected public-sector unions.⁷⁰ By bringing the whole community that benefits from public services into the fight to improve public-sector work, unions can harness the full power of strikes and other actions. Strikes, which are meant to disrupt the flow of everyday life and business, can also serve as a valuable bit of political education for those who take part in them and who witness them. And, as teachers often demonstrate, campaigns by organized labor can be waged to secure crucial benefits for students, families, and communities, not just the bargaining unit that is directly involved.

The relative success of public-sector unions since *Janus* reinforces the points raised by McAlevey that unions must take an aggressive organizing approach rather than resigning themselves to mobilizing or to only dealing with grievances. In the states affected by *Janus*, public-sector unions have been able to maintain membership and even fee revenue since 2018 primarily by reinvigorating their organizing efforts. By bringing in new members and continuing to fight hard in contract negotiations, public-sector unions have built precisely the kind of rank-and-file power that is necessary to win, and win big, no matter the political conditions. This serves as a lesson for all workers, especially private-sector workers in so-called right-to-work states, who face even tougher conditions when it comes to collective bargaining.

⁷⁰ "Paul Vallas and Brandon Johnson Clash over Race, Taxes, CTU, Violence: 'Don't Shake Your Head' – Chicago Tribune."

Implications for Policy Makers

While the *Janus* decision marked a monumental change in policy, the sweeping intentions of its proponents have largely been unrealized. Things would certainly be better for workers if it had not happened, as the people I spoke with stressed. But *Janus* represents the resiliency of the labor movement in the face of unfavorable policy and hostile governments at every level. Policy makers can certainly gut the legal and formal protections for workers and their unions, as Wisconsin and *Janus* have both proven. But unions have organized through worse situations, and every legal protection that they now rely on is something they gained, often through strikes that were technically illegal or not formally protected in labor law.

That is not to say there are no formal policy levers that could improve worker voice and outcomes. Scott and DeManuelle-Hall were both enthusiastic about the concept of the Protecting the Right to Organize Act, which is now in the House Committee on Education and the Workforce, though they were realistic that it is very unlikely to pass in this Congress.⁷¹ It would improve the set of conditions that organizers and union members face in a number of ways, but most notably, perhaps, would lift the Taft-Hartley ban on secondary activity, restoring a central tool for class solidarity that goes past isolated workplaces.

Some states are starting to make policy around this, but there is more that could be done. Michigan's repeal of right-to-work is groundbreaking, but public-sector workers will still face an open shop there, and everywhere, as long as *Janus* stands. In 2020, Virginia passed a law allowing counties to form collective bargaining for public-sector workers for the first time since a 1977 state supreme court decision that banned it.⁷² Since then, counties have begun allowing collective bargaining one by one, but state employees are still not covered.⁷³ Excluding state

⁷¹ Rep. Scott, "H.R.20 - 118th Congress (2023-2024)."

⁷² "LIS > Bill Tracking > HB 582 > 2020 Session."

⁷³ "Collective Bargaining Talks with Public Employees Begin in Virginia - The Washington Post."

employees while creating pathways for county and municipal employees to form unions might lead to fissuring, where workers who share a workplace operate under different privileges and sanctions from each other. This is a tool that has been used to weaken organized labor in the private sector, and it is disappointing to see it come up at what is otherwise a moment for unions to grow.⁷⁴ And while any collective bargaining is an improvement on none, county and local employees have been left to sort out a confusing patchwork of county laws around their own rights.⁷⁵ If more states follow suit and expand or create avenues for collective bargaining, they should learn from Virginia’s overly complex system and ensure that there is a uniform, comprehensive law that protects government workers’ right to collective bargaining.

Conclusion

Workers in the public sector play a vital role in our communities as caretakers, educators, and those who maintain our infrastructure, safety, and health. And public-sector work has been a similarly important piece of the American economic and social fabric, creating some of the first pathways for Black families and women to formal employment and upward mobility. Those who work as public servants face a heavy wage penalty, and many have successfully turned to unionism, joining together to begin to narrow that gap and improve their conditions at the workplace and beyond it.

But public-sector unions came under attack in the 2018 Supreme Court decision *Janus v. AFSCME*, when the Court overturned precedent that had been settled for 40 years in *Abood v. Detroit Board of Education* that public-sector unions could negotiate agency fees. These fees covered the cost of collective bargaining but could not be used for political activity. *Janus* was

⁷⁴ McAlevey, 136.

⁷⁵ Overman, January 16, and 2023, “In Virginia, ‘patchwork’ of Ordinances Makes Public-Sector Organizing a Maze.”

intended as a blow to the power of public-sector unions, who had enjoyed relatively constant membership while membership in the private sector fell precipitously after the early-1970s. Onlookers from across the political spectrum feared (or hoped) that *Janus* would lead to a “mass exodus” from public unions, and the conservative and corporate interests who brought the case did everything they could to seize upon their moment. In the five years since *Janus*, however, that threat has largely been fulfilled. The percentage of public-sector workers covered by a union contract has only fallen from 37.9% in 2017 to 36.8% in 2022. That is worth noting, to be sure, but is nowhere close to the 30% drop that some anticipated at the time of the decision.

In this paper, I take a mixed-methods approach to try to explain how public-sector unions have been able to maintain the bulk of their membership despite the unfavorable open shop conditions created by *Janus*. I explore two models for unions—organizing and servicing—and suggest that government workers took *Janus* as an impetus to return to an organizing model that had largely been left behind. In doing so, they have been able to build power throughout their rank-and-file members, giving them a reason not just to belong to the union, but to be engaged members who know they are part of a fighting union.

Using BLS work stoppage data and census microdata made available by the EPI, I show that the number and frequency of stoppages increased after *Janus* in the public sector at the same time it fell in the private sector. However, that increase in action did not just happen in places that were not right-to-work in 2018, where I suspected the effects of *Janus* would be felt most immediately. Instead public-sector workers in a variety of states have had more stoppages per month since *Janus* than they did in the 25 years before it. States that were not right-to-work in 2018 and where public-sector workers have increased their organizing activity have seen increases in public-sector union membership compared to the non-right-to-work states where

public-sector unions have remained stagnant. The opposite trend has been true for states that were right-to-work, suggesting that general attitudes towards organized labor have a bearing on how union action interacts with membership at the state level. That was not true for wages though: public-sector workers in right-to-work states where unions increased their activity had much higher wage growth than their counterparts in states with less active unions. And across the board, there was a positive association between increased union activity and faster growing wages.

The interviews I conducted reinforced the mechanism by which increased action improves outcomes for workers who face unfavorable policy. DeManuelle-Hall, a reporter who covers state and local workers for Labor Notes, highlighted that since *Janus*, public-sector unions have taken up organizing with renewed vigor. Scott, the organizing director at a union that represents more than 30 thousand public-sector workers, shared a similar sentiment, telling me about how her local reorganized at the time of *Janus* to become an organizing union rather than a grievance one, and how doing so has led their membership to be higher than it was before the decision.

These findings led me to recommend that organizers follow suit, taking up the simple but difficult work of organizing new members, worksites, contracts, and actions. And, as Frangos told me about in his experience with the 2019 UTLA strike, public-sector unions should be involved in fighting “for the common good.” Doing so will make them more likely to win individual campaigns, but will also build power and solidarity across workplaces, sectors, and borders, as we are forced to realize that our fates are intertwined. My findings also demonstrate to policy makers that while policy has lots of capacity to improve both working and organizing conditions, it is not the end all be all for the labor movement. *Janus* posed a very real threat, and

unions have responded by returning to their tried and true organizing methods, building power from the ground up that is capable of withstanding attacks from conservative interests and hostile governments.

As they often have when under threat, unions have found success, and can continue to do so, by heeding the advice that has guided the labor movement for more than a hundred years: “don’t mourn, organize!”

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Appendices

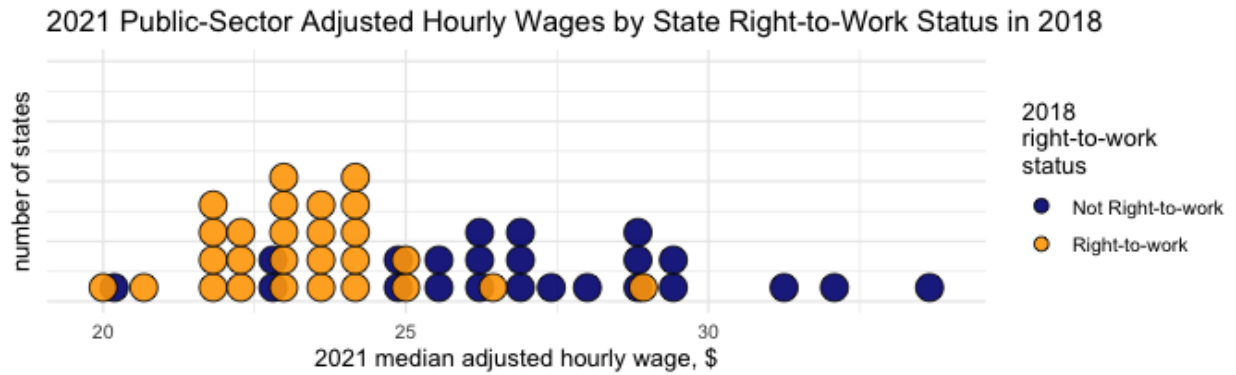
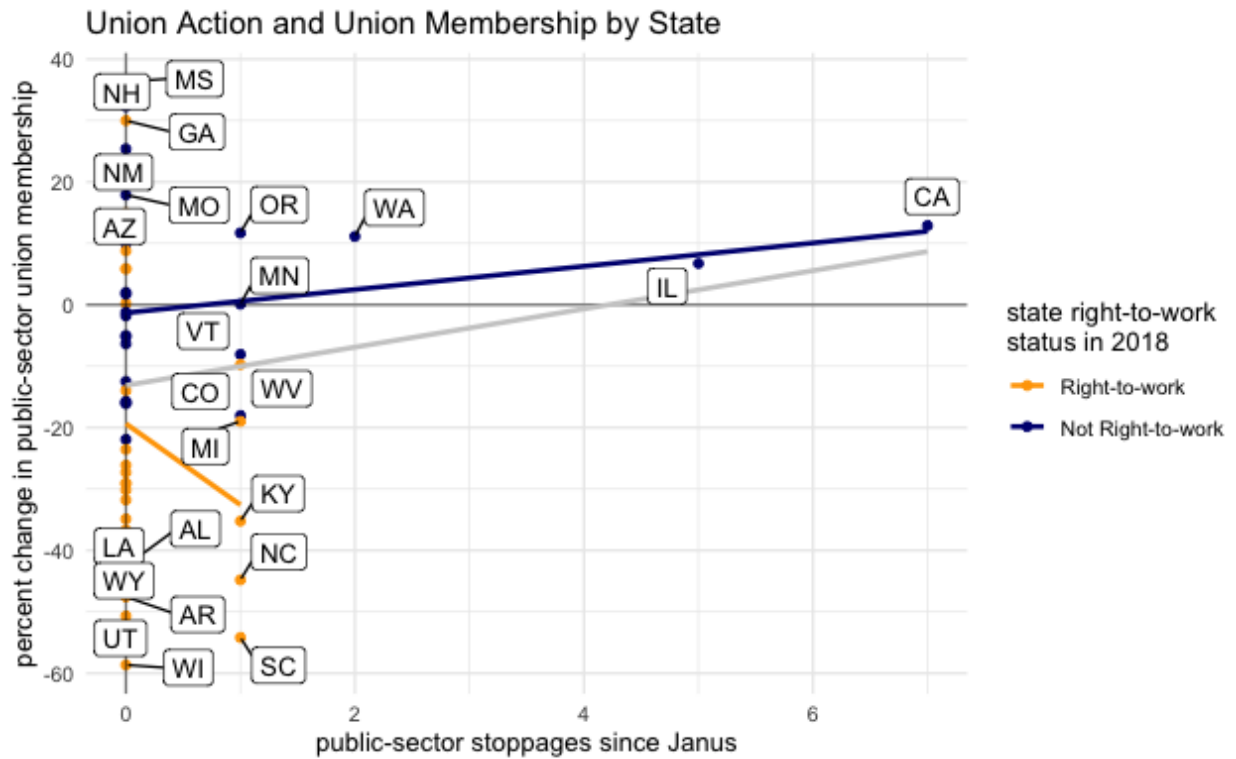
Appendix A: Abbreviated State Data and Supplemental Graphs

Abbreviated State-by-State Data

State	2018 RTW Status	2021 Union Membership	1993 Union Membership	Union Membership % Change	Total Work Stoppages Pre-Janus	Total Work Stoppages Post-Janus	Change in Stoppages per Month	2021 Hourly Wage	1993 Hourly Wage	Wage % Change
AL	rtw	16%	28%	-43	1	0	-0.003	\$ 23.08	\$ 10.30	124
AK	not_rtw	39%	45%	-12	2	0	-0.007	\$ 28.85	\$ 16.00	80
AZ	rtw	21%	18%	15	1	0	-0.003	\$ 24.33	\$ 11.97	103
AR	rtw	7%	13%	-48	0	0		\$ 21.88	\$ 10.00	119
CA	not_rtw	55%	48%	13	47	7	0.009	\$ 28.85	\$ 14.95	93
CO	not_rtw	19%	23%	-18	3	1	0.013	\$ 26.92	\$ 12.50	115
CT	not_rtw	68%	62%	10	0	0		\$ 32.08	\$ 15.00	114
DE	not_rtw	29%	37%	-22	0	0		\$ 23.00	\$ 12.50	84
FL	rtw	23%	26%	-14	0	0		\$ 24.04	\$ 11.88	102
GA	rtw	15%	11%	30	0	0		\$ 24.04	\$ 10.50	129
HI	not_rtw	48%	57%	-16	3	0	-0.01	\$ 25.38	\$ 13.33	90
ID	rtw	15%	21%	-29	0	0		\$ 21.63	\$ 10.00	116
IL	not_rtw	49%	46%	7	12	5	0.077	\$ 27.00	\$ 12.80	111
IN	rtw	27%	27%	0	1	0	-0.003	\$ 23.00	\$ 10.00	130
IA	rtw	21%	31%	-32	0	0		\$ 23.53	\$ 10.28	129
KS	rtw	21%	20%	6	0	0		\$ 22.45	\$ 10.42	116
KY	rtw	12%	19%	-35	1	1	0.02	\$ 23.00	\$ 10.00	130
LA	rtw	13%	21%	-37	0	0		\$ 21.63	\$ 10.00	116
ME	not_rtw	45%	48%	-6	0	0		\$ 22.61	\$ 11.50	97
MD	not_rtw	29%	29%	-2	0	0		\$ 33.65	\$ 14.43	133
MA	not_rtw	51%	61%	-16	1	0	-0.003	\$ 29.30	\$ 13.50	117
MI	rtw	45%	56%	-19	7	1		\$ 26.44	\$ 12.57	110
MN	not_rtw	54%	54%	0	4	1	0.01	\$ 26.79	\$ 12.16	120
MS	rtw	11%	8%	36	0	0		\$ 20.00	\$ 9.00	122
MO	not_rtw	23%	19%	18	0	0		\$ 20.18	\$ 10.50	92
MT	not_rtw	33%	39%	-16	1	0	-0.003	\$ 24.75	\$ 10.50	136
NE	rtw	23%	30%	-26	0	0		\$ 23.70	\$ 10.00	137

State	2018 RTW Status	2021 Union Membership	1993 Union Membership	Union Membership % Change	Total Work Stoppages Pre-Janus	Total Work Stoppages Post-Janus	Change in Stoppages per Month	2021 Hourly Wage	1993 Hourly Wage	Wage % Change
NV	rtw	40%	37%	9	0	0		\$ 25.00	\$ 12.50	100
NH	not_rtw	47%	35%	32	0	0		\$ 26.07	\$ 12.00	117
NJ	not_rtw	60%	59%	2	4	0	-0.013	\$ 31.25	\$ 15.00	108
NM	not_rtw	18%	14%	25	0	0		\$ 25.00	\$ 10.75	133
NY	not_rtw	67%	71%	-5	11	0	-0.036	\$ 28.83	\$ 14.00	106
NC	rtw	9%	16%	-45	1	1	0.02	\$ 24.00	\$ 10.63	126
ND	rtw	17%	25%	-30	0	0		\$ 23.00	\$ 10.00	130
OH	not_rtw	45%	47%	-5	5	0	-0.016	\$ 26.00	\$ 12.00	117
OK	rtw	19%	18%	6	1	0	-0.003	\$ 22.10	\$ 11.00	101
OR	not_rtw	58%	52%	12	2	1	0.017	\$ 27.40	\$ 12.50	119
PA	not_rtw	53%	52%	2	11	0	-0.036	\$ 25.72	\$ 12.50	106
RI	not_rtw	62%	63%	-1	3	0	-0.01	\$ 29.54	\$ 13.00	127
SC	rtw	5%	10%	-54	0	1	0.023	\$ 22.89	\$ 11.06	107
SD	rtw	12%	19%	-35	0	0		\$ 20.67	\$ 9.02	129
TN	rtw	18%	24%	-24	0	0		\$ 22.26	\$ 10.65	109
TX	rtw	13%	18%	-27	0	0		\$ 23.55	\$ 10.93	115
UT	rtw	13%	27%	-51	0	0		\$ 24.01	\$ 11.00	118
VT	not_rtw	40%	44%	-8	0	1	0.023	\$ 26.44	\$ 12.35	114
VA	rtw	12%	17%	-29	0	0		\$ 28.92	\$ 13.33	117
WA	not_rtw	53%	48%	11	9	2	0.017	\$ 28.00	\$ 13.13	113
WV	rtw	23%	26%	-10	1	1	0.02	\$ 22.00	\$ 10.00	120
WI	rtw	21%	52%	-59	0	0		\$ 25.00	\$ 11.63	115
WY	rtw	11%	20%	-46	0	0		\$ 23.50	\$ 10.00	135

Supplemental Graphs



Appendix B: Full Quotes from Two Interviews

Joe DeManuelle-Hall

- What we saw at the time, when it was coming down, was some real—people really thought it was going to be a crisis, as I'm sure you have come across. You know, the writing at the time was really "the sky is falling, this is gonna kill the public sector labor movement". That might be overstating it, but many were worried it was going to significantly diminish the power of the public sector labor movement, and, to be clear, that's what the case was trying to do. The case was filed in order to try and undermine the power of the public sector labor movement, and to continue the right-to-work project, there is a direct lineage from that. I think a couple things happened that had an effect, at least a couple things happened. The two things I think of are 1) unions threw down on internal organizing and saw "oh, we're really going to have to fight to keep people" so unions set up structures to get out and sign up members in a way that, in many places at least, they had not really had to worry about before. Membership was taken as a given, it wasn't hard, or if someone wanted to be an agency fee payer it was harder than just to be a member, and opting out of membership was not the most straightforward thing. And so it wasn't—you had a lot of parts of the public sector labor movement it's just not something that they were really doing that much, putting a lot of time or attention into reaching out to or talking to new members or potential members, so a lot of work then got thrown into that; unions threw a lot of staff into that, they thought a lot about how they could reach new members, they did all sorts of internal research about messaging around being a union member. So that was I think the first thing that happened. The second thing that happened is, people weren't as eager to drop their union membership as the right thought they were going to be. You know and, that's not to say that there aren't places where union membership dropped, or that people didn't drop their

membership or stop being agency fee payers, or whatever. But there was not this huge mass of people—a majority or even significant minority or large minority—that were eagerly awaiting the opportunity to drop their union membership. And so that I think was something that the right was counting on. And they have tried to make hay of it too. There are all of these right-wing efforts to get public sector workers to drop their union membership. . . . The combined disaster scenarios that people were worried about just didn't come to pass. And part of that was that unions put some time and effort into going out and signing people up to be members.

- For four decades now the US labor movement has been declining in power at the same time as institutions of the right are gaining power, and these things are not unrelated. Attacks to union rights are not the only reason that the US labor movement has declined, there are many reasons of its own making, but they're certainly connected, absolutely.

Andrew Frangos

- It was really exciting. I was co-union chapter chair the year of the strike with my colleague, and it was like after the *Janus* thing we were looking ahead to contract negotiations and knowing that they might not go the way we wanted them to, and we created these contract action teams, which were basically like phone trees. ... And we had a lot of meetings that year with our faculty just to get them onboard about the issues. And the our sort of like bargaining for the common good contract demands that we had, I think that they were really inclusive, and it made it really easy to advocate for the strike that we were going on because it was like, yeah, we were looking for a pay raise, but we were also looking for reduction in class sizes, which appeals to tons of parents, we were looking for increase in immigration services that the district provides, increase in mental health services that the district provides, solution to the understaffing of school nurses, and it was interesting because there were a lot of demands that motivated everyone, it felt. And

when we went on strike, there's a thing in public education and in certain fields, even when the longshoremen in Oakland go on strike, it's like the union is always framed as not having an interest in the common good, it's like “oh look at these irresponsible teachers shutting down our schools, they must not care about students how could they do this?” And those types of claims were not possible to gain traction during the time we were on strike. So that's really cool.