

The Right to Strike and State Law

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The charge for this workshop is to examine the quality of subnational democracy in the U.S. states. In my contribution, I want to focus attention on workers’ right to strike, making the case for the centrality of that right, especially in the public sector, for the future of the American labor movement and for the health of U.S. democracy. The immediate implication of my memo for this project is that bans on public sector strikes represent an impediment to full democratic participation. The broader lesson is that lifting strike bans is widely supported by the public and Democratic state legislators and could expand the bargaining power of public-sector employees while also helping more workers to learn about the labor movement and what unions could offer to them.

Why do strikes—and the right to strike—matter? At a fundamental level, scholars have argued for the primacy of strike rights for citizens in a capitalist democracy. For instance, Elizabeth Anderson and Alex Gourevitch have both contended that the near-total economic, social, and political control that American employers have over workers (especially but not exclusively in the private sector) can only be checked by collective organization by workers, which in turn depends on workers’ threat to withhold their labor from managers and owners.¹ Without that threat, managers have few incentives to concede to workers’ demands—and workers thus lose any hope of full inclusion and participation in society.²

More practically, there is strong evidence that strikes have led to compensation gains for workers—and the demise of strikes since the 1970s has meant that private-sector workers are less likely to see growth in their wages.³ Strikes have also been important tools for public-sector employees to gain union rights and buttress demands for higher wages, better working conditions, and better conditions for the clients and constituents they serve, as evidenced most recently by the large-scale teacher strikes and walkouts.⁴ Consider the deal struck between the Los Angeles teachers union and the city’s school board, which included not only a salary increase for teachers but also guarantees of a nurse in every school every day, a teacher librarian in every secondary school, guaranteed ratios of school counselors to students, psychologists and social workers in select schools, binding caps on classroom size, and

¹ Anderson 2017; Gourevitch 2018.

² See also Burns 2011.

³ Rosenfeld 2006, 2014.

⁴ Shelton 2017.

reductions in standardized testing.⁵ Those are benefits that accrue to all families using public schools, but disproportionately minority and low-income children given the composition of students enrolled in the Los Angeles public schools. Public sector strikes thus provide a backstop to ensure that government agencies continue to provide high quality services to beneficiaries, especially low-income and otherwise disadvantaged residents.

There is another, underappreciated benefit to strikes as well: in an era when union membership is at record lows (10% overall; 6% in the private sector), large-scale strikes are one of the few ways that non-unionized workers can learn about the labor movement—and what unions can do for them. While there are a variety of obstacles to greater unionization in the United States, including intense political and employer opposition, ossified labor laws, competition with low-wage competitors, and automation, an equally important obstacle is the fact that many Americans no longer have first-hand experience with the labor movement and what unions do. This informational function of strikes is thus just as important as the practical concessions that striking workers extract from their employers.

That is not to say that the American public is unfavorable toward unions; in fact, according to Gallup’s long-running tracking polls labor union support is at a 15-year high, with 62% of Americans approving of unions and only 30% disapproving of them. That is roughly the same level of net approval that unions commanded in 1941, shortly after the passage of the landmark Wagner Act. Yet in an indication of how unfamiliar workers are with the mechanics of what unions do and how they work, only 11% of American workers in a 2018 survey I conducted with William Kimball and Thomas Kochan reported that they would know how to form a union at their job.⁶ Remarkably, that share does not change much—at only 14%—if we look just at workers who said that they had an interest in joining a union (representing 35% of employed workers). Without greater knowledge of, and experience with, the labor movement, it seems unlikely that workers will commit themselves to the sort of costly collective action that is necessary to boost unionization rates and labor power, like launching an organizing drive or coordinating walkouts (see especially Micah Uetricht and Barry Eidlin’s argument about the need for a “militant minority” to drive labor gains).⁷

As I argue in ongoing work with Adam Reich and Suresh Naidu, strikes, especially large-scale strikes that draw on broad community support, can be an important way that workers gain precisely that first-hand experience with unions and recognize the potential for collective action themselves.⁸ Studying the 2018 teacher walkouts, we found that workers in the six affected states (AZ, CO, KY, NC, OK, and WV) who came into the closest contact with the strikes

⁵ See: https://www.utla.net/news/members-pass-ta?fbclid=IwAR3hZN_x32lxmiZ5ZWgQnQcEgylgIGYvydf8NMReOHt4XP9rwO3xbX9uu5l.

⁶ Alexander Hertel-Fernandez, William Kimball, and Thomas Kochan. 2019. “How U.S. Workers Think About Workplace Democracy.” Unpublished working paper.

⁷ Uetricht and Eidlin 2019.

⁸ For a summary, see: https://scholar.harvard.edu/files/ahertel/files/results_memo_public.pdf

were substantially more likely to voice positive attitudes towards the labor movement *and* to express greater interest in joining a union and going on strike themselves.

Drawing from a 4,468 person online survey of the six walkout states, Table 1 summarizes the differences in union interest between respondents who had firsthand exposure to the walkouts and those who did not. Workers in the 2018 walkout states who saw teacher mobilizations in their local community schools were about 9 percentage points more likely to say that they were interested in joining a union at their own job, and also about 9 percentage points more likely to say that they would consider going on strike or walking out of their own jobs. The differences we identify hold up after controlling for a range of individual-level characteristics, as well as when we leverage plausibly exogenous exposure to the walkouts among parents who had children just old enough to attend school versus parents with children too young to attend school. Together, these findings indicate how strikes increase worker interest in unions and individual (and costly) labor action.

Table 1: Exposure to 2018 Teacher Walkouts and Interest in the Labor Movement

	Interest in joining a union at own job (employed, non-union respondents)	Interest in going on strike at own job (employed respondents)
Did not have firsthand exposure to teacher walkouts	27% (1,021)	10% (1,051)
Had firsthand exposure to teacher walkouts	36% (1,150)	19% (1,277)

Notes: 2019 survey of 2018 teacher walkout states (4,468 respondents). Raked survey weights applied. Total number of respondents shown in parentheses. Question wording: “If an election were held *today* to decide whether employees like you should be represented by a union at your job, would you vote for the union or against the union?” and “How likely or unlikely are you personally to participate in a strike or a walkout at your place of work in the next year?” Firsthand exposure means that respondent reported having strikes in their local community schools or their children’s schools.

Strikes, then, are an essential way that Americans can learn about the labor movement and unions. But existing state law stands as a significant obstacle to this democratic right. Continuing the example of teachers, state law bars educators from going on strike—often with hefty fines and even the risk of union decertification or loss of teaching licenses—in 36 states (12 states have legalized teacher strikes and two states do not have laws governing striking teachers). While state law has not always stopped teachers from large-scale labor action (notably strikes were illegal in five of the six walkout states from 2018), it remains a significant impediment to many unions. At least two statewide education associations I have interviewed reported that while they had some members pushing for participation in the 2018 strike wave,

their leadership tried to suppress any strike activity because of the high potential cost to teachers and unions.⁹

Strike policy does not reflect mass opinion, however. Overall, according to an EdNext poll from 2018, over half of Americans support teachers' right to strike, including 55% of parents. Only 32% of respondents reported opposing teacher strike rights.¹⁰ Approval of teacher strike rights was even higher in the six 2018 walkout states, suggesting that far from diminishing support for teachers unions, the labor actions may have even *strengthened* union support. According to the survey I fielded with Suresh Naidu and Adam Reich, 65% of respondents in the walkout states said that they supported the right of teachers to strike, even though walkouts were illegal in all of those states except for Colorado.

Legalizing strikes by public sector employees, including teachers, would thus not only help to broaden access to the labor movement but would also bring public policy closer to the preferences of majorities of American citizens. Perhaps surprisingly, it is also a change that is broadly supported by many state politicians as well. In a survey of sitting state legislators and legislative staffers I conducted with Matto Mildeberger and Leah Stokes in the fall of 2017, I found strong support for teachers' right to strike among Democrats regardless of existing state law. Slightly over 80% of Democratic politicians in states that barred teacher strikes said that they would support legalization, indicating the possibility for reversing these limits where Democrats have full control of state government. (By comparison, only about a quarter of Republican state politicians supported teacher strike rights, and there was no difference by current state law.)

What lessons can we draw from this memo for our understanding of democracy in the U.S. states? First, we should think about strikes, and the right to strike, as being central to democratic participation in a capitalist economy. And second, strikes matter not only for the gains they can produce for participating workers but increasingly for the broader public as well: both as government employee unions bargain over a broader range of benefits for the communities they serve as well as for the knowledge they impart to workers about the labor movement. If unions are to have any hope of revival in the coming years, it will likely be because of the role of strikes and large-scale labor mobilizations—and the fifty states have considerable power to encourage or stymie such action.

Works Cited

- Anderson, Elizabeth. 2017. *Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It)*. Princeton, NJ: Princeton University Press.
- Burns, Joe. 2011. *Reviving the Strike: How Working People Can Regain Power and Transform America*: Ig Publishing.

⁹ For one example in Iowa, see Ryan 2018.

¹⁰ See: <https://www.educationnext.org/2018-ednext-poll-interactive/>

- Gourevitch, Alex. 2018. "The Right to Strike: A Radical View." *American Political Science Review* 112 (4):905-17.
- Rosenfeld, Jake. 2006. "Desperate Measures: Strikes and Wages in Post-Accord America." *Social Forces* 85 (1):235-65.
- . 2014. *What Unions No Longer Do*. Cambridge, MA: Harvard University Press.
- Ryan, Mackenzie. 2018. "Could a teacher strike happen in Iowa? Not without 'harsh' penalties." *Des Moines Register*, April 4.
- Shelton, Jon. 2017. *Teacher Strike! Public Education and the Making of a New American Political Order*. Urbana, IL: University of Illinois Press.
- Uetrict, Micah, and Barry Eidlin. 2019. "U.S. Union Revitalization and the Missing "Militant Minority"." *Labor Studies Journal* 44 (1):36-59.