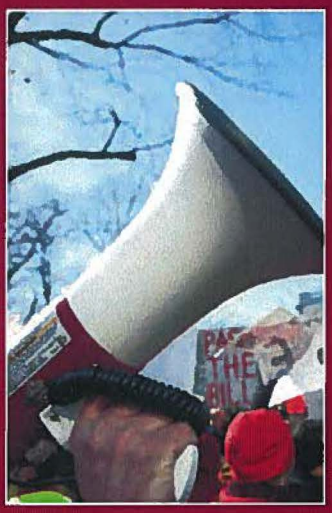
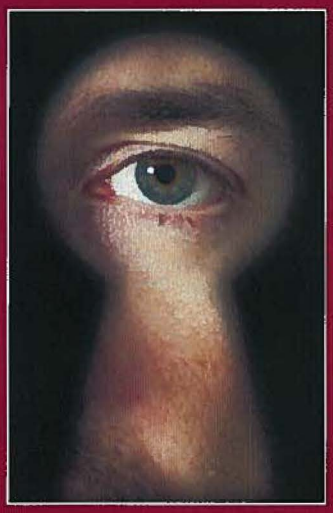
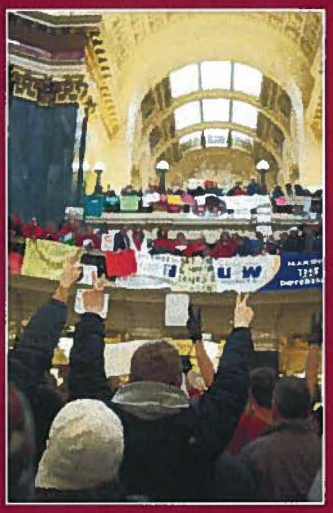
SABOTAGE, STALKING & STEALTH EXEMPTIONS:

SPECIAL STATE LAWS FOR LABOR UNIONS







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INTRODUCTION

For more than a century, labor law in the United States has been the source of numerous and often passionate debates about the role of unions in the workforce. Over the years, this has resulted in several significant changes in federal policy. The National Labor Relations Act of 1935, the Taft-Hartley act of 1947, and the Labor-Management Reporting and Disclosure Act of 1959 represent significant federal legislation that has shaped the landscape for interactions among workers, employers, and unions.

Some of these state laws carve out a "labor" exemption from laws regulating conduct that would otherwise be considered criminal activity.

While the federal government plays the leading role in the relationships among the three aforementioned groups, state governments also have the power to establish certain ground rules. This is particularly true for public employees, but state governments can also set labor policies in the private sector as long as they do not interfere with the scheme established by federal laws and regulations. One of the most obvious examples is the ability of the states to pass right-to-work laws, which 23 states now have done.

However, many state laws with regard to unions are not as well known or publicized as a right-to-work statute. Some of these state laws carve out a "labor" exemption from laws regulating conduct that would otherwise be considered criminal activity. For example, invading the home of a university professor would normally be considered trespassing, but remarkably, such behavior is not a crime in California if the trespasser is involved in union activities.

State carve outs from the criminal code are likely an outgrowth of a United States Supreme Court decision from 1973 [*United States v. Enmons*, 410 U.S. 396], in which the court ruled that violence in pursuit of union demands cannot be prosecuted under federal law. In the Enmons case, workers on strike

at Gulf States Utilities Company were charged with "firing high powered rifles at three Company transformers, draining the oil from a Company transformer, and blowing up a transformer substation owned by the Company."[1] Incredibly, the Supreme Court found that these activities were not "wrongful," an element needed to convict in a federal extortion case. Federal legislation has repeatedly been introduced to reverse the effects of this ruling, but it has never been passed.[2] Thus, the result remains that prosecution for violent actions is left up to the states based on their individual laws, and some of these state laws seem overly protective of unions.

Other state laws seem to provide express favoritism towards unions. For example, in some states, officials have attempted to give unions a clear path to organizing particular categories of workers, such as child care and personal care providers. In other states, the government has passed laws that seem designed solely to protect unions from policies that apply to every other citizen but might negatively impact union members. While few lawmakers or members of the public are generally aware of these special provisions, they seem clearly intended to tilt the playing field in favor of unions—with potentially significant impacts on workers, employers, individual citizens, and the overall economic and political climate in a state.

This study looks at union-friendly laws on the books in several states, focusing on those with the largest union density. It is by no means a comprehensive analysis of every provision of state law that could be construed as favoring unions, but it highlights certain provisions that seem glaringly at odds with common sense. Some are simply perplexing. Others would seem to excuse malfeasance, or worse, violence.

This study does not attempt to trace the legislative history of how the highlighted provisions found their way onto the books. Nor does it attempt to assign blame for their existence. Rather, the intent is simply to educate the public about a number of unusual union-related legal regimes that until now have remained out of the spotlight.

THE "LABOR UNION EXEMPTION" FOR COMMITTING CRIMES

The most glaring examples of union favoritism under state laws tend to occur in criminal statutes and allow individuals who engage in truly objectionable behavior to avoid prosecution solely because they are participating in some form of labor activity. These exemptions exist in laws covering simply obnoxious behavior as well as those that regulate potentially serious threats to the safety of the public.

Union representatives often engage in unsavory behavior aimed purely at harassing individuals with whom they disagree. These types of activities, like stalking, are unsettling to just about anybody who experiences them, but surprisingly, unions often defend these tactics as just part of their right to air grievances. Incredibly, unions also enjoy exemptions from criminal laws involving violence and intimidation. These exemptions can give license to bad actors to harass others or commit actions that in any other circumstance would be grounds for jail time.

Stalking

Every state in America has declared stalking to be a crime. And for good reason. Few things are more unsettling than being followed or maliciously harassed, threatened or intimidated. Many states have classified the crime as a felony and impose significant penalties, with even more severe penalties for repeat offenses. In some states, those convicted of stalking can be ordered to undergo mental health evaluations. Yet, despite the frightening effect that stalking can have on its victims—and indeed that frightening effect is often the very purpose for the perpetrator's actions—several states have carved out an exemption from the crime when it is committed by someone engaged in labor organizing activities.

For example, the state of Pennsylvania defines stalking as engaging in a course of conduct or repeatedly committing acts toward another under circumstances that demonstrate intent to cause substantial emotional distress to the person. But Pennsylvania, and other states with a significant union presence (e.g., California and Nevada), carve out an exemption from the crime of stalking, in the case of Pennsylvania by noting the prohibition on stalking "shall not apply to conduct by a party to a labor dispute."[3] Illinois has created an even arguably

broader exception to stalking when the action is related to "any controversy concerning wages, salaries, hours, working conditions or benefits . . . the making or maintaining of collective bargaining agreements, and the terms to be included in those agreements."[4] Ironically, the very existence of these exemptions calls attention to the fact that the tactics employed by unions in their organizing activities can inflict the same level of emotional distress and intimidation caused by a stalker.

Harassment of opponents is often part of a union's effort to confront adversaries and pressure them to give in to its demands, and stalking is one aspect of this behavior. Unions have been known to employ this tactic even against other unions. For example, in 2008, the California Nurses' Association (CNA) obtained a temporary restraining order against the Service Employees International Union (SEIU) because the SEIU repeatedly sent activists to the homes of CNA board members during a long, acrimonious dispute between the two rival unions.[5]

Sometimes, though, the harassment goes even further and crosses into the truly scary. The owner of a non-union electrical services business in Ohio, for example, was the repeated victim of stalking and other acts of violence against him during a bitter union organizing effort. In addition to having rocks thrown through the windows at his place of business, his car's tires punctured multiple times, and an assault on one of his employees, this business owner was actually shot in the arm by an intruder he confronted in his front yard after he discovered the person vandalizing his car.[6]

Other owners and employees of open shop contracting companies have complained that stalking and other intimidation tactics are commonplace and that they frequently feel threatened by the presence of union representatives who follow them constantly and sit outside their homes in their cars. Following the Ohio shooting, the Associated Builders and Contractors of the Pacific Northwest called on unions to end this type of harassment against its members. Amazingly, unions responded by saying their "monitoring" tactics are completely legal.[7]

Trespassing

The right of a property owner to exclude others from that property is a legal principle that has existed as long as there has been private ownership of property. Private ownership of property is a foundational element of capitalism and a free market economy, and virtually everyone is familiar with the ubiquitous "no trespassing" sign that warns against the entry onto another's land without permission. The legal principle is an important one that helps ensure land owners can maintain their property for their own use and enjoyment. But union interests around the country evidently see private property rights as a hindrance to their labor organizing objectives and have secured a number of exemptions from crimes relating to trespassing. California, in particular, provides several relevant examples in its Penal Code.

> Incredibly, while prohibiting everyone else from interfering with a business, California has given labor unions *carte blanche* under state law to obstruct or intimidate businesses and their customers.

In an effort to enable property owners to protect their land from unwanted intruders, California has adopted in the "Malicious Mischief" title of the Penal Code an extensive description of the various acts that constitute the crime of trespass. These acts include the refusal to leave property belonging to another that is not open to the public after being requested to leave by the owner, the owner's agent, or a peace officer. Significantly, however, California explicitly excludes persons engaged in labor union activities from being subject to the crime of trespassing for refusing to leave someone else's property.[8]

The state also has a separate trespassing provision focused on agriculture, declaring that any person who willfully enters lands under cultivation or enclosed by a fence or who enters where signs forbidding trespass are displayed can be guilty of trespassing. But again, the state also exempts persons engaged in labor union activities.[9]

In addition to prohibiting entry onto land, California also prohibits anyone from willfully preventing, hindering, or obstructing another person from entering or leaving land in which that person has an interest and provides a fine of up to $500 for violators. But once again, the state also provides an exemption from this crime if the offender is engaged in labor union activities.[10]

California seems, at least at first blush, to recognize that businesses rely on the free flow of commerce and interaction with customers in order to succeed. After all, the state has declared that a person who intentionally interferes with any lawful business by obstructing or intimidating those attempting to carry on business, or their customers, is guilty of a misdemeanor punishable by a fine and imprisonment in the county jail for up to 90 days.[11] This appears to be just the type of law intended to help business owners protect themselves from harassment and interference with their ability to make a living. But just as it does with so many other trespass-related provisions, the state has created a special exemption so that this law is not applied against the one group where it presumably would frequently apply: labor unions.[12] Incredibly, while prohibiting everyone else from interfering with a business, the state has given labor unions *carte blanche* under state law to obstruct or intimidate businesses and their customers.

Among other specialty trespass laws, California even has created a specific violation for trespassing or loitering near industrial property.[13] Given the state's numerous other exemptions for labor unions, it is perhaps no surprise that the state also decided that any activities relating to union organizing efforts or the investigation of working conditions on behalf of a labor union are not covered by the prohibition against trespassing on industrial property.[14]

Protecting one's property from unwanted intrusion goes hand in hand with the concept of private property, as any homeowner would understand. Unfortunately for businesses, California's trespass exemptions for labor unions have turned this notion upside down, as the grocery chain Ralphs learned when it opened a store in Fresno that did not employ unionized workers.

Beginning in October 2008, representatives of the United Food and Commercial Workers Union (UFCW) Local 8 began to picket outside a Ralphs store on a sidewalk owned by Ralphs. According to court documents, these representatives carried placards and handed out leaflets, which is all standard fare at a picket line.[15] However, the picketers also provoked confrontations with store employees and harassed customers coming to shop, so store employees called the police. Unfortunately for Ralphs, the police refused to remove the protesters, even though the disruptive behavior and confrontations were occurring on the store's own property.

In response to this situation, Ralphs filed a lawsuit against the union seeking an injunction to end the union tactics. The trial court declined to issue the

injunction claiming that it was prevented from doing so because of another California state law prohibiting injunctions against unions. An appeals court, however, ruled in Ralphs' favor after finding the state law cited by the trial court was unconstitutional because it granted greater rights to unions than to others. As of July 2012, the case was pending appeal in the California Supreme Court.

Not surprisingly, the California legislature included a loophole for union interests to ensure that any person "engaged in labor union activities" could not be charged with a trespassing violation should they happen to invade an academic's house.

Overall, California gives unions numerous avenues to interfere with business owners' private property rights. Not only is this deprivation of property rights hard to justify intellectually, it makes doing business that much harder, which may be one reason states with such onerous laws and policies have seen businesses and individuals move elsewhere.[16]

Home is Where the Heart is

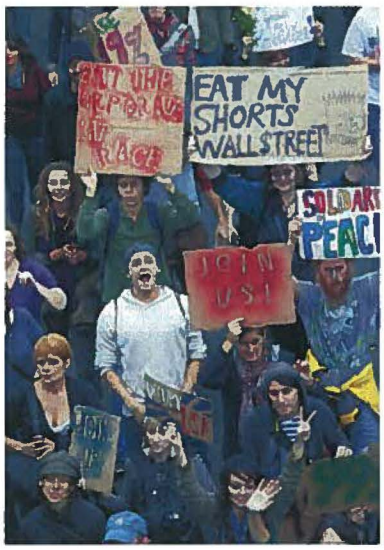
California also has some other peculiar and specific trespass-related laws. Recently, the state decided its general trespass law provided insufficient protection to the property interests of college students, teachers and employees. As a result, the state passed the "Researcher Protection Act" establishing a misdemeanor crime of trespass for any person entering the residence of an academic researcher with the intent to interfere with the researcher's academic freedom.[17] Not surprisingly, the state legislature included a loophole for union interests to ensure that any person "engaged in labor union activities" could not be charged with a trespassing violation should they happen to invade an academic's house.[18]

Unfortunately, history shows that unions target private homes for disruptive protests in order to intimidate their targets. Take, for example, the case of the deputy general counsel of Bank of America, who became the target of the SEIU in 2010. While this father was out with one of his kids at a Little League game, approximately 500 SEIU protestors—14 school buses' worth—showed up outside of his house to protest Bank of America's policies.[19] Though the gentleman was not at home, his young teenage son was inside by himself, petrified by the throngs of protestors who surrounded the house and came up onto the front porch. Waiting until his father returned home, the young man barricaded himself in a

bathroom. When the father arrived, he was greeted with jeers and taunts by the unruly union mob as he tried to extricate his son from the scene while waiting for police to arrive.

This incident was reported by one of the victim's neighbors, a *Fortune* magazine reporter, who described the whole lamentable scene. She accurately termed this kind of protest outside one's home as the "politics of personal intimidation."[20]

On the Subway or Bus



The California legislature's efforts to exempt labor union personnel from being charged with crimes applicable to everyone else even extends to public transportation. In the "Miscellaneous Crimes" title of the Penal Code, the state has declared that "willfully blocking the free movement of another person" in a public transit system facility or vehicle is punishable by a fine of up to $400 and 90 days imprisonment in the county jail.[21] That is, unless the offender's actions can be said to be related to collective bargaining. In that case, the state legislature has created an exemption from the crime, and so long as the offender is pursuing union objectives, it is permissible to block the free movement of commuters in the transit system, people who are invariably just trying to get to work or an appointment on time.[22]

A state's adoption of a variety of prohibitions against trespassing is hardly remarkable, and it reflects the common sentiment that a private landowner should be able to control access to his property. What is remarkable, however, is that California in particular has created multiple union exemptions from these trespassing-related crimes. These exemptions exclusively for unions are even more surprising considering that the state's trespassing laws have been broadly interpreted by the Attorney General to enable even apartment complex owners and homeowner associations to prohibit political candidates from distributing campaign materials.[23] A short visit by a political candidate distributing literature could hardly be said to be as disruptive to homeowners' rights as hundreds of union organizers occupying the premises, but the state nonetheless gives more protection to heavy-handed union tactics than to politicians running for office.

Sabotage

When setting state policy with regard to treason and disloyal acts, the Wisconsin legislature, not surprisingly, declared sabotage to be a felony.[24] Anyone in Wisconsin who intentionally damages, interferes with, or tampers with property believing that their action will hinder, delay, or interfere with the prosecution of military action or the preparation for defense by the United States or its allies is guilty of the crime of sabotage.

The Wisconsin legislature found it necessary to explicitly provide that the crime of sabotage cannot be construed in any way that would impair or curtail any labor organizing activities.

What is surprising is that in the same statutory provision, the Wisconsin legislature found it necessary to explicitly provide that the crime of sabotage cannot be construed in any way that would impair or curtail any labor organizing activities. Presumably, the chances are slim that someone intent on disrupting a military action could successfully mount an "I was just trying to improve our position in union contract negotiations" defense. Nonetheless, the fact that such an exemption even exists indicates the extreme lengths the union movement will go to in order to shield their members from accountability for their actions—and the extent to which legislators in some states have accommodated such efforts.

In addition, Wisconsin statutes also specify the efforts property owners and public utilities can take to guard against sabotage, including the ability to exclude others from their property.[25] The state has a statute that specifically describes the power of security guards and peace officers to stop, interrogate, and arrest those suspected of violating a property owner's right to exclude others. But again, the statute includes a significant exemption from the law for those engaged in labor organizing activities. In effect, the law exempts anyone involved in labor relations activity from the crime of unlawfully entering property.

While Wisconsin's statutes deal with sabotage in the rare context of military action, incidents of sabotage in labor disputes are, regrettably, a sad reality in many other situations. There certainly was no shortage of anger during the contentious debate over union reforms in Wisconsin in 2011, and regrettably, union members were alleged to have sabotaged equipment belonging to supporters of Gov. Scott Walker.[26]

Beyond Wisconsin, unions have engaged in outrageous acts of sabotage in their fights against employers. In 2011, Verizon was locked in a bitter dispute with the Communications Workers of America (CWA) and the United Brotherhood of Electrical Workers (IBEW). Verizon outlined at least a dozen acts of sabotage against its facilities, including severed fiber optic lines, stolen equipment, and tampering with a heating system at an office building.[27]

Similarly, in Washington State in 2011, the International Longshore and Warehouse Union (ILWU) staged a lengthy protest against an employer for hiring workers who belonged to a different union. Members of the ILWU allegedly dumped grain on railroad tracks and vandalized other property belonging to the employer, even after a federal judge ordered them to stop their destructive behavior.[28]

Venting frustration in a dispute by picketing or chanting is widely recognized as an appropriate means of expression, but acts of sabotage under any circumstances should not be considered legally permissible simply because the motivation is union-related.

Threats of Bodily Injury

California state law establishes an offense punishable by imprisonment of up to one year and a fine of up to $2,000 for making a "credible threat to cause serious bodily injury" to another, and then within 30 days thereafter entering the residence or workplace of the target to carry out the threat.[29] The state evidently takes this crime seriously, considering the heightened penalty—up to a year in jail—that applies when compared with other trespassing-related offenses. But if the state is serious about punishing this crime, one wonders why California has also created a special exemption allowing a person engaged in labor union activities to get away with such behavior.[30]

Union activists sometimes turn a blind eye to violence in labor disputes, and some even defend such transgressions. As one leader put it with regard to a union's violent actions, "I'm saying if you strike a match and put your finger in, common sense tells you you're going to burn your finger."[31] The implication is simple: if you cross a union, you can expect to be subjected to exactly these kinds of threats and physical reprisals.

Stories about threats of violence and actual assaults abound and, indeed, they are so plentiful it is difficult to know which ones to highlight. One unfortunate example occurred in California, where a labor dispute between the Union of Needletrades, Industrial and Textile Employees (UNITE) Local 482 and Hollander Home Fashions resulted in a strike, during which UNITE representatives allegedly threatened and assaulted numerous individuals. During the strike, Hollander hired a personnel placement agency to find and escort workers to the location of Hollander's facility. The office manager and several other employees of the placement firm were on the receiving end of multiple threats against them for two months, according to a lawsuit the manager filed against the union (the manager himself received head wounds from an assault by several union militants).[32] The public may never know the outcome of that suit due to a non-disclosure agreement that apparently was part of a settlement, but suffice to say that being beaten during any dispute, even one related to unions, should not be tolerated.

Right to Violence?

West Virginia declares that all persons in the state "have the right to be free from any violence, or intimidation by threat of violence" committed against them or their property based on race, color, religion, ancestry, national origin, political affiliation or sex.[33] These broad protections for civil rights are commonly found at the state level and even exceed the protections afforded by federal law and the U.S. Constitution. What is unusual is that in the case of West Virginia, the legislature found it necessary to essentially allow someone to violate another's civil rights if the violation occurs in the course of conducting labor union activity. Remarkably, the state's civil rights protections provide an exemption that says the law cannot be construed in such a way as to "impede or to interfere with any person conducting labor union or labor union organizing activities."[34]

Remarkably, West Virginia's civil rights protections provide an exemption that says the law cannot be construed in such a way as to "impede or to interfere with any person conducting labor union or labor union organizing activities."

Anyone familiar with labor history in West Virginia knows that union violence in the Mountain State has a storied past indeed. For instance, in 1991, Steelworkers Local 5668 engaged in a widespread pattern of violence during a contentious labor dispute with Ravenswood Aluminum Corporation. Union members and representatives allegedly committed over 700 acts of violence and intimidation against replacement workers, including bombings, shootings, arson, and death

threats.[35] In 1993, another dispute involving the United Mine Workers resulted in a worker being shot in the head because he was a non-union contractor.[36]

Giving a legal carve out for labor unions to threaten and harass others leaves victims like these with limited options to protect their safety. All of which makes it hard to say justice is being served by these exemptions.

Systemic Favoritism

Legal favoritism towards organized labor does not stop with the universe of laws that permit unions to get away with threatening or disruptive behavior. Other laws on the books offer them different types of advantages or protections.

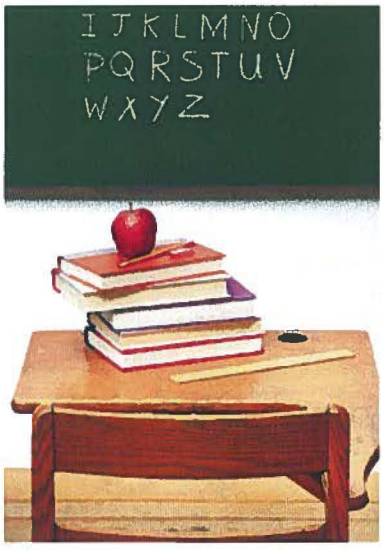
Hamstringing Courts

For more than 75 years, Pennsylvania has had some unusual provisions in state law protecting questionable behavior in the course of a labor dispute. The state's Labor Anti-Injunction Act, which was passed in 1937, imposes a number of restrictions on state courts and generally prevents them from issuing injunctions in a labor dispute. Notably, the Act strips from courts the power to issue an injunction in most cases, even when those participating in the labor dispute are engaged in an unlawful conspiracy. Moreover, it prevents judges from granting injunctions when illegal acts have been committed or threatened and when the ends sought in the labor dispute are illegal.[37]

The Labor Anti-Injunction Act has been used to prevent companies from obtaining injunctions when union representatives disrupt business by, for example, coming into stores to distribute literature despite a company's stated No Solicitation/No Distribution policy.[38] Under normal circumstances those actions would constitute criminal trespassing, but the Pennsylvania Supreme Court has ruled that absent physical damage to a store or other gross misconduct, the courts were precluded from issuing injunctive relief to a property owner who simply does not want individuals trespassing on his or her property to hand out labor-related material.[39] Likewise, Pennsylvania courts have refused to intervene in labor disputes, even when union representatives blocked delivery trucks from entering a company's premises, tampered with locks, flattened tires, and followed people home from work during a strike.[40]

Reading, Writing, and...Unions?

Some states require that students be introduced to the concept of labor unions as part of the public school curriculum. For example, a Board of Education may include in the required course of study in high school a mandate that students be taught about unions as part of "social studies." Certainly there is a benefit to teaching students about various economic actors and the role different groups have played in the history of the United States. But at a time when there are concerns that children are not grasping the basics of reading, writing and arithmetic, some states seem to have placed an outsized emphasis on learning about unions in particular.



In Nevada, where labor unions have long been an important political constituency, the state had taken an unusually comprehensive approach to education about unions. Until recently, the officials who set educational policy in the Silver State seemed intent on ensuring the state's schoolchildren learned about the importance of labor unions from a very early age. The State Board of Education in Nevada mandated, as part of the required course of study, that children learn about the role of labor unions beginning in the second and third grade.[41] By fifth grade, in addition to knowing about the role of unions, students were expected to name

specific labor unions.[42] By eighth grade, children in Nevada had to describe the goals and accomplishments of labor unions in the state and in the U.S., as well as describe the services a union provides to its members.[43] Incidentally, in a recent education evaluation by the U.S. Department of Education, 42% of all fourth graders and 31% of eighth graders in Nevada scored "Below Basic" in reading, ranking it behind almost 40 other states/jurisdictions surveyed.[44]

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Wisconsin legislators have required by statute that the state's teachers "incorporate the history of organized labor and the collective bargaining process" into the teaching of social studies.[45] In Illinois, the legislature mandates that the teaching of history "shall include a study of the role of labor unions and their interaction with government in achieving the goals of a mixed free enterprise system."[46] The State Board of Education in Illinois has also included the statutory requirement in its regulations. Amazingly, neither the Illinois statute nor the Board regulations specifically require teaching anything about the American Revolution.[47]

Conscripting Child Care and Personal Care Providers

Child care and personal care providers who are in some way compensated through state funds are not typically thought of as "state employees." However, unions see them as a large pool of individuals from whom they can collect dues without having to do much, if anything, in return. Unfortunately, state governments have facilitated such dues collections in a glaring example of government taking the side of unions.

In recent years, several states have taken steps to facilitate unionization of child care and personal care providers. As of early 2012, fourteen states had authorized child care providers to unionize and bargain with the state, often in state-wide units, and nearly as many have done the same for personal care providers.[48] Almost every state that has taken this action has done so by an executive order utilizing virtually identical language, a practice that has been challenged in state and federal courts.[49]

The legal gymnastics required to unionize child care and personal care providers are substantial considering that most of these workers are self-employed and are not legally defined as "employees." Rather, they are primarily independent contractors who work on their own terms for individual clients, and, as such, are typically not eligible to unionize.[50]

> In Michigan, this type of policy covering home health care providers forced two parents with disabled children, along with thousands of other Michiganders providing similar services, into a union against their will.

Thus, in order to create an "employer" with which bargaining can be conducted, many of these states designate some sort of state agency or board as the employer of record for child care and personal care providers. Others seize on the fact that many child care and personal care providers serve low-income families that receive subsidies from the state, and, based on that funding stream, claim the workers are public employees. The state-provided subsidies also offer a convenient mechanism by which the state can deduct mandatory union dues and divert them to the union that purports to represent individual child care and personal care providers. Not surprisingly, these providers tend to be represented by a union that already represents government employees, and analysts estimate this forced unionization scheme has generated millions of dollars in annual union dues, which unions can then use to fund political and other activities.[51]

In Illinois, the now-infamous governor, Rod Blagojevich, became the poster child for this kind of scheme when he issued an executive order opening the door for 20,000 home health care providers to join a union in 2003, followed by a similar order covering 50,000 child care workers in 2005.[52] Amazingly, even the executive orders themselves explicitly state that these workers are not really state employees, saying these providers "are not State employees for purposes of eligibility to receive statutorily mandated benefits because the State does not hire, supervise or terminate" them.[53] Nevertheless, the SEIU ultimately garnered these new "members" after a heated battle with the American Federation of State, County, and Municipal Employees (AFSCME). Incidentally, the SEIU reportedly provided approximately $1.8 million to the disgraced governor's election campaigns.[54]

In Michigan, this type of policy covering home health care providers forced two parents with disabled children, along with thousands of other Michiganders providing similar services, into a union against their will. These parents spend many hours each day taking care of their two children, who are completely disabled by cerebral palsy. The State of Michigan provides them financial assistance through Medicaid to help cover the cost of providing the full-time care their children need. This arrangement actually saves taxpayers money because the payment for this home care is less than it would cost to put the children in a state-funded health care facility.[55]

Courtesy of a policy established under former Gov. Jennifer Granholm, however, that money came with a catch—these parents discovered in 2006 that they somehow belonged to the SEIU, which forced them to turn over $30 a month in union dues payments. Making matters worse, these payments were automatically deducted from their Medicaid check. As their "employers" are, in fact, their children, the family received no services of any kind in exchange for their forced dues. The SEIU's willing partners in state government had simply rigged the system as part of a scheme to bolster the union's dues revenues.

Thankfully, under a new governor and legislature, Michigan reversed this policy. In March of 2011, Michigan disbanded the government agency that had claimed to "employ" thousands of child care providers in the state, and in April 2012, the governor signed legislation to end the forced unionization of thousands of home health care providers. However, despite the will of the legislature and governor, the SEIU is still in line to collect millions more from unwilling union "members." In June 2012, a federal judge ordered the state of Michigan to continue its payments to the SEIU on behalf of home health care workers.[56]

Connecticut has also taken steps to unionize child care and personal care providers. In 2011, Governor Dannel Malloy signed a pair of executive orders that directed the state government to facilitate union elections among these workers—a mail-in ballot in which only a fraction of individuals voted (not surprisingly, for the SEIU).[57] Full collective bargaining, however, would only be established once the state legislature passed a law permitting it, which it did in May 2012. Courtesy of this action, thousands of workers will become union dues payers, whether they wish to or not.[58]

Conclusion

From exemptions to the crime of stalking to immunity from trespassing statutes, labor unions have successfully engineered a variety of state laws to serve their ends. As many workers and employers know all too well, aggressive corporate campaigns often rely on tactics such as trespassing, intimidation, and even stalking—actions that would be illegal under any other circumstances.

It goes without saying that, for most people, it is hard to condone hundreds of protestors terrorizing a child alone in his house, or to accept that stalking and property destruction are legitimate means toward any end. Likewise, it is hard to rationalize a state policy that would deduct union dues from Medicaid funds a family uses to take care of their disabled children. Yet these types of policies are enshrined in the legal regimes of numerous states.

Unions have played an important role in the history of the United States both politically and economically. At the same time, it is difficult to justify laws that place their concerns above all others.

ENDNOTES

[1] United States v. Enmons, 410 U.S. 396.

[2] See e.g., S. 3178, Freedom From Union Violence Act of 2012, 112th Cong. (2012).

[3] 18 Pa. Cons. Stat. § 2709.1.

[4] 720 Ill. Comp. Stat. 5/12-7.3.

[5] "Lisa Vorderbrueggen, "CNA wins restraining order," Contra Costa Times, April 16, 2008. http://www.ibabuzz.com/politics/2008/04/16/cna-wins-restraining-order/.

[6] "Reward is offered in shooting of businessman," Toledo Blade, August 23, 2011. http://www.toledoblade.com/Police-Fire/2011/08/23/Reward-is-offered-in-shooting-of-businessman.html

[7] Nick Bjork, "Open-shop contractors complain of union intimidation," Daily Journal of Commerce, August 24, 2011.

[8] Cal. Penal Code § 602(o).

[9] *Id.* § 602.8(a), (c).

[10] *Id.* § 420.1.

[11] *Id.* § 602.1(a), (c)(1).

[12] *Id.*

[13] *Id.* § 552.1.

[14] *Id.*

[15] Ralph's Grocery Co. v. United Food and Commercial Workers Union Local 8, 192 Cal. App. 4th 200 (2011).

[16] *See e.g.*, Jan Norman, "Report: 254 companies left California in 2011," *Orange County Register*, March 2, 2012; "Small Business Survival Index 2011: Ranking The Policy Environment For Entrepreneurship Across The Nation," Small Business & Entrepreneurship Council, November 2011. http://www.sbecouncil.org/uploads/SBSI2011%5B1%5D.pdf.

[17] Cal. Penal Code § 602.12(a), (c).

[18] *Id.*

[19] Ironically, the SEIU owed Bank of America nearly $80 million for a mortgage and line of credit in 2011 according to the union's 2011 Form LM-2 Labor Organization Annual Report filed with the U.S. Department of Labor. See www.unionreports.gov.

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[21] Cal. Penal Code § 640.

[22] *Id.*

[23] 81 Ops. Cal. Atty. Gen. 71.

[24] Wis. Stat. § 946.02.

[25] Wis. Stat. § 175.05.

[26] Jim Hoft, "Union Protester Arrested for Trying to Sabotage Madison Tea Party Sound System," *FoxNews.com*, February 20, 2011, http://nation.foxnews.com/justice/2011/02/20/union-protester-arrested-trying-sabotage-madison-tea-party-sound-system.

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[28] Bill Mongelluzzo, "ILWU Defies Court Order in Longview, Wash., Picketing," *The Journal of Commerce*; September 7, 2011; "National Labor Relations Board Investigates Longshoremen Union for Strike Gone Wrong," *FoxNews.com*; September 9, 2011. http://www.foxnews.com/politics/2011/09/09/nlrb-investigates-longshoremen-union-for-strike-gone-wrong/.

[29] Cal. Penal Code § 601.

[30] *Id.*

[31] John Powell, "He Just Said What?!," *Freedom@Work* blog, December 6, 2007. See http://www.nrtw.org/es/blog/he-just-said-what.

[32] "International Union Sued For Vicious Assault," *Foundation Action*, July/August 2002, http://www.nrtw.org/foundation-action/julaug02.pdf.

[33] W. Va. Code § 61-6-21.

[34] *Id.*

[35] Maria Mallory, "A Company Town Tormented and Torn," *Businessweek*; December 8, 1991.

[36] Matt Harvey, "Non-union Worker Shot to Death," *Spartanburg Herald-Journal*, July 24, 1993.

[37] 43 Pa. Cons. Stat. § 206g.

[38] *See* Phar-Mor, Inc. v. United Food and Commercial Workers Union Local 1776, 541 Pa. 49, 660 A.2d 583 (1995).

[39] *Id.*

[40] *See* Solvent Machinery v. Teamsters Local 115, 343 Pa. Super. 505, 495 A.2d 579 (1985).

[41] Nev. Admin. Code § 389.2437 and 389.254.

[42] Id. § 389.2942.

[43] Id. § 389.372.

[44] "The Nation's Report Card: Reading, 2011 State Snapshot Report," National Center for Education Statistics, 2011. http://nces.ed.gov/nationsreportcard/pdf/stt2011/2012454NV4.pdf and http://nces.ed.gov/nationsreportcard/pdf/stt2011/2012454NV8.pdf. *See also* "Leaders and Laggards: A State-by-State Report

Card on Educational Effectiveness," U.S. Chamber of Commerce, 2007. http://www.uschamber.com/reportcard/2007.

[45] Wis. Stat. § 115.28(55).

[46] 105 Ill. Comp. Stat. 5/27-21.

[47] Id.; 23 Ill. Admin. Code §1.420.

[48] Conn. Exec. Order No. 9 (2011); Minn. Exec. Order No. 11-31 (2011); Kan. Exec. Order No. 07-21 (2007); Pa. Exec. Order No. 2007-06 (2007); Md. Exec. Order No. 01.01.2007.14 (2007); N.Y. Exec. Order No. 12 (2007); Wis. Exec. Order No. 172 (2006); Iowa Exec. Order Nos. 45 and 46 (2006); Me. Rev. Stat tit. 22 § 8308; N.J. Exec. Order No. 23 (2006); N.M. Stat. § 50-4-33; Ohio Exec. Order 2008-02S (2008); Or. Exec. Order 06-04 (2006), Or. Rev. Stat. 657A.430; Wash. Rev. Code § 41.56.028; Ill. Exec. Order 2005-1 (2005).

[49] *See e.g.*, Harris v. Quinn, 656 F.3d 692 (7th Cir. 2011).

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[58] Conn. Pub. Acts No. 12-33.

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