



# **Measuring Public-Sector Union Membership After *Janus***

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## EXECUTIVE SUMMARY

In the year since the U.S. Supreme Court held in *Janus v. AFSCME* that public employees cannot be required to financially support a union as a condition of employment, various efforts have been made to estimate and quantify the resulting changes in public-sector union membership.

In order to better inform this ongoing discussion, this paper analyzes the strengths and limitations of the three primary data sources available to evaluate changes in public-sector union membership since *Janus*.

1. Survey data from the Bureau of Labor Statistics (BLS)
2. Union financial reports filed annually with the Office of Labor Management Standards (OLMS)
3. Government employer payroll data

Union membership information published by BLS is based on survey results and released annually. While it provides estimates of national union membership in the public and private sectors, it offers only a total union membership estimate for each state undifferentiated by sector. The survey questions are also somewhat confusing. Nevertheless, because it is a government source and because it is the only comprehensive estimate of union membership nationwide, BLS information is usually seen as authoritative. Nationally, BLS data show only a slight decline in public-sector union membership in 2018.

UnionStats.com, a project of two university economists, breaks down BLS data by state *and* sector. It is the only resource attempting to measure union membership at this level. Unfortunately, weaknesses in the underlying survey data, combined with small sample sizes at this level, can make the estimates unreliable.

Overall, while helpful in measuring broad, nationwide trends, BLS data is of limited utility in evaluating how public-sector union membership has changed since *Janus*.

Annual reports filed by certain unions with OLMS provide more detailed information, including total membership and revenue. However, the reports do not include the total number of employees represented by the union, making it impossible to determine the percentage of represented employees who are members.

Additionally, unions only file with OLMS if they represent at least some private-sector employees. Not only do purely public-sector unions not file such reports, but the reports mixed-membership unions file do not distinguish between public and private-sector membership. Lastly, in some cases, information unions self-report is simply not accurate.

Nevertheless, the national affiliates of the largest public-sector unions all file such disclosures with OLMS.

- As of August 2018, just two months after *Janus*, the National Education Association reported it lost the 88,000 nonmember agency fee-payers it had the prior year. This decline was partially offset by a slight increase in formal members. Overall, 2.4 percent fewer people financially supported the NEA in August 2018 than did in August 2017.
- The American Federation of Teachers reported that, as of June 2018, its financial supporters had increased by 4.6 percent over the prior year. However, because its reporting period ended the same time *Janus* was decided, its most recent report does not reflect any changes resulting from the decision. However, union spokespeople indicate the union lost nearly all 85,000 agency fee-payers it had at the time of the decision.

- The American Federation of State, County and Municipal Employees indicated in its 2018 report that it lost 110,000 agency fee-payers and gained about 28,000 new members. Overall, 5.8 percent fewer employees financially supported the union in December 2018 than did in December 2017.
- As of December 2018, the Service Employees International Union reported 99,000 fewer agency fee-payers and 1,000 fewer members than it had in December 2017. All told, 4.9 percent fewer people financially supported the union in 2018 than did the year prior.
- Lastly, the International Brotherhood of Teamsters reported a modest, 1,000-person decline in agency fee-payers and a massive, 110,000-person increase in membership, amounting to a net increase of 8.3 percent. While it's possible these numbers are accurate, there are reasons to be skeptical.
- Counting the five unions listed above and assuming other unions with smaller public-sector memberships also lost some agency fee-payers, a reasonable estimate is that public-sector unions represented around 400,000 agency fee-payers at the time *Janus* was decided.

In some areas, however, certain local unions have filed LM-2 reports showing far steeper membership declines. For instance, the most recent LM-2 filed by SEIU 503 in Oregon reported over 20 percent fewer dues and fee-payers just three months after *Janus*.

The most accurate information about public-sector union membership comes from government employers' payroll data. In almost all states that permit public employee collective bargaining, employers deduct union dues from employees' wages and transmit the funds to the appropriate union. Consequently, it is possible to determine a union's membership rate by dividing the number of public employees having dues withheld from their wages by the total number of union-represented employees in a given workplace. Payroll data indicate at least some unions have experienced significant and ongoing declines in membership since *Janus*. For example, the Washington Federation of State Employees has seen one-quarter of state agency employees stop paying dues or fees.

While precise, such data is not generally published and must be requested from public employers under state freedom of information laws. Consequently, the information's dispersal among thousands of government employers makes it less useful for trying to measure public-sector union membership by state or nationwide. It is also difficult to compile into larger time-series datasets that can be used for tracing longer trends.

Additionally, it is important to bear in mind that *Janus* did not automatically open the doors for all public employees to leave their union. Some public employees like their unions and want to be members. But for those who don't like their union or are unsure about it, internal union policies and changes made to state laws by union-sympathetic lawmakers have made it difficult for many employees to learn of their rights and successfully cancel the deduction of dues from their wages. On the other hand, some organizations are attempting to compensate for unions' *Janus* countermeasures by conducting proactive educational campaigns to help employees understand their rights and by providing legal assistance to employees facing roadblocks.



## INTRODUCTION

In June 2018, the U.S. Supreme Court ruled in *Janus v. AFSCME* that charging “agency fees” to public employees who did not agree to be union members was a form of compelled speech that violated their First Amendment rights.

Supporters of organized labor predicted the court’s ruling would lead to membership declines that could “destroy” public-sector unions. The prediction that membership losses would reduce union revenues even further than the loss of the agency fees was the cornerstone of Justice Elena Kagan’s dissent in the case. Some scholars held that government union membership declines would have political implications in some states.<sup>1</sup>

On the other side, critics of public-sector unions hoped their predicted membership losses would come to pass and that, without the support of public dollars passing from public employee paychecks to union coffers, union political influence might wane.<sup>2</sup>

In short, not only do unions have a big stake in what happens to their organizations, but their future also has implications for the political arena.

Therefore, in the year since the court handed down its decision in *Janus*, journalists, unions and policy organizations have tried to assess its effects on public-sector union membership.

To date, attempts to quantify union membership losses stemming from the decision have yielded wildly varying results. Misinformation and misunderstanding are common and conflicting claims abound. The problem, as this report shows, is there is no agreed-upon source of membership data on public-sector unions. Instead, there are several such sources, each with their own advantages and disadvantages.

To help journalists, policy organizations and engaged citizens evaluate and understand claims about changing public-sector union membership, this report provides a comprehensive evaluation of the existing sources of data on public-sector unions.

Understanding the capabilities and limitations of available data, as well as some of the significant factors affecting union membership, will hopefully lead to better-informed and more accurate commentary on the issue in the future.

### U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS

The Current Population Survey (CPS) is a joint project of the U.S. Census Bureau and the Bureau of Labor Statistics (BLS) within the U.S. Department of Labor. The monthly survey of 60,000 households is conducted by Census Bureau staff and published by the BLS. The survey is conducted both in person and over the phone.<sup>3</sup>

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<sup>1</sup> James Feigenbaum, Alexander Hertel-Fernandez, and Vanessa Williamson. “From the Bargaining Table to the Ballot Box: Political Effects of Right to Work Laws.” NBER Working Paper No. 24259, Issued in January 2018, Revised in February 2019.

<sup>2</sup> Grover Norquist. “Why Republicans (and Trump) May Still Win Big in 2020 — Despite ‘Everything’.” OZY.com. May 28, 2017. <https://www.ozy.com/politics-and-power/how-trump-is-winning-over-democrats-losing-republicans/86009>

<sup>3</sup> U.S. Census Bureau. “Current Population Survey: Methodology.” <https://www.census.gov/programs-surveys/cps/technical-documentation/methodology.html>

Two questions in the CPS relate to union participation:

- “On this job, are you a member of a labor union or of an employee association similar to a union?”
- “On this job, are you covered by a union or employee association contract?”<sup>4</sup>

If a survey participant answers “yes” to the first question, they are asked the second.<sup>5</sup>

These questions are asked of only one-quarter of the 60,000 survey participants, for a national sample size of 15,000.<sup>6</sup> Because of the small sample size, “[T]hese estimates are averaged over 3 months to improve their reliability” with a single average released annually.<sup>7</sup>

The annual estimates released by the BLS include the total number of (1) federal, (2) state and (3) local government workers nationwide who report being (1) members of a union or (2) represented by a union. The annual estimates include the total number of employees by state who report being (1) members of a union or (2) represented by a union, undifferentiated by sector.<sup>8</sup>

The BLS does not provide estimates of the number of public employees by state who are union members or are union represented, presumably because the survey sample size by state is too small to be consistently reliable.

The only source of such estimates is UnionStats.com, which breaks down CPS results by state *and* sector.<sup>9</sup> While an important resource, estimates can be unreliable at this level.

For instance, UnionStats.com calculations suggest the number of union-represented public employees in Washington state declined 9 percent from 2013 to 2014, from 268,000 to 244,000, while public-sector union membership fell a whopping 15 percent, from 261,000 to 221,000.

UnionStats.com numbers also indicate the number of union-represented public employees in Washington subsequently shot up by 22 percent from 241,398 in 2015 to 295,502 in 2016, while union membership in the public sector skyrocketed 24 percent, from 225,949 to 279,836.

But there is no indication such wild swings in union representation and membership actually occurred. Public employees in Washington operated under mandatory agency fee requirements during these years, making significant changes in union membership rates unlikely. The workforce of public employees increased gradually and steadily, making noteworthy changes in union representation unlikely. No significant union de-certifications occurred and no major groups of public employees were newly organized. Other data sources showed relatively stable public-sector union membership over this period.

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<sup>4</sup> U.S. Census Bureau. “Basic CPS Items Booklet: Labor Force Items.” <https://www2.census.gov/programs-surveys/cps/techdocs/questionnaires/Labor%20Force.pdf>

<sup>5</sup> U.S. Bureau of Labor Statistics. “Union Membership (Annual) News Release.” January 18, 2019. <https://www.bls.gov/news.release/union2.htm>

<sup>6</sup> Ibid.

<sup>7</sup> U.S. Bureau of Labor Statistics and Census Bureau. “Design and Methodology: Current Population Survey.” Technical Paper 66. October 2006. <https://www.census.gov/prod/2006pubs/tp-66.pdf>

<sup>8</sup> U.S. Bureau of Labor Statistics. “Union Membership (Annual) News Release.” January 18, 2019. <https://www.bls.gov/news.release/union2.htm>

<sup>9</sup> UnionStats.com is a project of professors Barry Hirsch of Georgia State University and David Macpherson of Trinity University. Barry T. Hirsch and David A. Macpherson, “Union Membership and Coverage Database from the Current Population Survey: Note,” *Industrial and Labor Relations Review*, Vol. 56, No. 2, January 2003, pp. 349-54.



In short, the CPS survey data as applied at the state level by UnionStats.com simply did not reflect the reality on the ground. Part of this likely has to do with the small sample size used when broken down by state and sector. Additionally, CPS survey data have inherent limitations. Many employees are simply unsure of their formal union membership status and, in some cases, are even unaware of whether they are union represented at all.

A final issue with the UnionStats.com data is that it includes federal employees and people who work for government part-time. By including such workers, union membership appears lower than it is in reality.

Despite its limitations, CPS survey data as reported by the BLS is often cited as authoritative by journalists and other observers simply because no other comprehensive source of similar information is readily available and it does have some value in exploring longer-term trends.<sup>10</sup>

One newspaper in February reported, “Nationally, labor unions in state and local government lost 54,000 members in 2018 — a decline of less than 1 percent, according to the Bureau of Labor Statistics,” implying *Janus* had little effect on union membership.<sup>11</sup> Another noted that “[p]ublic union membership was threatened by the Supreme Court’s recent decision in *Janus v. AFSCME*” but that “nationwide Bureau of Labor Statistics data only showed a modest decline in union membership among public workers in 2018.”<sup>12</sup>

Even assuming perfect accuracy in the CPS data, however, the numbers released by the BLS could not possibly provide a full picture of the effect of *Janus* on government unions because the decision was not issued until June 27, 2018, while CPS data is averaged over the course of the entire calendar year. At best, it could provide a rough estimate.

Cherry-picking data is also common. Labor unions tend to trumpet BLS estimates in years in which they suggest increases in union membership and ignore them when they indicate declines. This continues to be true as unions attempt to downplay the effect of *Janus* on union membership.<sup>13</sup>

California makes an interesting case study. CPS survey data released by BLS showed an 86,000-person decline in union membership in California, from 2,491,000 in 2017 to 2,405,000 in 2018.<sup>14</sup> Some organizations trumpeted the decline<sup>15</sup> while other observers mourned and pondered whether California’s unions were “dying.”<sup>16</sup> All attributed the decline at least in part to *Janus*.

However, BLS estimates provide only a single statewide union membership total including union members in both public and private-sector employment, while *Janus* only applied to public employees. In other words, since the BLS numbers do not differentiate between membership levels in the public and private-sectors, it’s possible the reported decline in union membership occurred entirely among private-

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<sup>10</sup> Michael Sauter. “States with the highest percentage of labor union members in the workforce.” *The Coloradoan*. March 23, 2019. <https://www.coloradoan.com/story/money/business/2019/03/23/union-workers-states-highest-percentage-us/39195655/>

<sup>11</sup> Christian Wade. “Democrats seek state protections for organized labor.” *The Daily News of Newburyport*. February 22, 2019. [https://www.newburyportnews.com/news/regional\\_news/democrats-seek-state-protections-for-organized-labor/article\\_3170013b-4607-5cbb-a5d4-d8c68dd39610.html](https://www.newburyportnews.com/news/regional_news/democrats-seek-state-protections-for-organized-labor/article_3170013b-4607-5cbb-a5d4-d8c68dd39610.html)

<sup>12</sup> Phillip Reese. “See how far union membership has declined in California.” *San Luis Obispo Tribune*. January 29, 2019. <https://www.sanluisobispo.com/news/state/california/article225087150.html>

<sup>13</sup> Washington State Labor Council. “Unions in Washington state post big membership gains.” January 18, 2019. <http://www.thestand.org/2019/01/states-unions-post-big-membership-gains/>

<sup>14</sup> U.S. Bureau of Labor Statistics. “Union Membership (Annual) News Release.” January 18, 2019. <https://www.bls.gov/news.release/union2.htm>

<sup>15</sup> California Policy Center. “Membership in California’s government unions plummeted in 2018, federal report shows.” February 11, 2019. <https://californiapolicycenter.org/membership-in-californias-government-unions-plummeted-in-2018-federal-report-shows/>

<sup>16</sup> Jonathan Lansner. “Are California’s unions dying? Membership falls to 14-year low.” *Orange County Register*. February 12, 2019. <https://www.ocregister.com/2019/02/12/californias-union-membership-falls-to-14-year-low/>

sector employees unaffected by *Janus*. That’s unlikely, but the data do not allow the possibility to be ruled out.

Additionally, the BLS estimates also show a 121,000-person decline in the total number of union-represented employees in California, from 2,708,000 in 2017 to 2,587,000 in 2018.<sup>17</sup> In other words, the entire decline in union *membership* in California could be explained by the decline in the number of *union-represented* employees in the state, at least according to the BLS data. Since *Janus* only allowed public employees to resign union membership and had no effect on the number of union-represented public employees, it cannot be said to have caused the decline in union representation reported by BLS.

That’s not to say public employees in California are not resigning their union membership post-*Janus*. It simply means BLS estimates shed little light on the extent to which this is occurring.

In sum, using the nationwide CPS union membership survey results as reported by the BLS or as applied at the state level by UnionStats.com is not the most effective way to measure the effect of *Janus*, union organizing efforts or subsequent outreach campaigns to inform public employees of their newfound rights.

## U.S. DEPARTMENT OF LABOR, OFFICE OF LABOR MANAGEMENT STANDARDS

The Labor Management Reporting and Disclosure Act of 1959 (LMRDA) requires unions representing any private-sector employees to annually file certain financial disclosures with the Office of Labor Management Standards (OLMS) within the U.S. Department of Labor.<sup>18</sup> Among other things, filing unions must disclose the number of members and agency fee-payers they represent on Schedule 13 of these forms LM-2.<sup>19</sup>

The national affiliates of all major public-sector unions — such as the Service Employees International Union, the American Federation of State, County and Municipal Employees, Teamsters, the National Education Association and the American Federation of Teachers — file annual LM-2 reports indicating their nationwide membership totals.

Forms LM-2 must be filed within 90 days of the end of the union’s accounting year. Most unions file on the basis of calendar years, meaning the forms LM-2 for the prior year are generally available by early April.

LM-2 data suffer from some limitations. First, the information is only as trustworthy as the union reporting it. Some unions file obviously inaccurate reports that use rounded or approximated membership numbers. Others indicate no change in union membership for several consecutive years.<sup>20</sup>

Second, state or local union affiliates representing only public employees do not have to file forms LM-2, which can make finding accurate union membership numbers for specific unions or states difficult.<sup>21</sup> Third, when unions do file forms LM-2, it means, by definition, that some private-sector employees are included in its membership totals, which can make it difficult to isolate and identify changes in the union’s public-sector membership rate.

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<sup>17</sup> U.S. Bureau of Labor Statistics. “Union Membership (Annual) News Release.” January 18, 2019.

<https://www.bls.gov/news.release/union2.htm>

<sup>18</sup> U.S. Office of Labor Management Standards. “Labor Management Reporting and Disclosure Act Fact Sheet.” November 29, 2017.

<https://www.dol.gov/olms/regs/compliance/lmrda-factsheet.htm>

<sup>19</sup> U.S. Office of Labor Management Standards. “Instructions for Form LM-2 Labor Organization Annual Report.” November 2010.

<https://www.dol.gov/olms/regs/compliance/efs/lm-2instructionsefs.pdf>

<sup>20</sup> SEIU 1199NE in Connecticut (OLMS file number 513-846) is a good example. In both 2013 and 2014 it reported having exactly 18,000 members. It reported having 19,000 in 2015.

<sup>21</sup> U.S. Office of Labor Management Standards. “Frequently Asked Questions About Union Member Rights Under the LMRDA and CSRA.” October 29, 2014. <https://www.dol.gov/olms/regs/compliance/LMRDAQandA.htm#quest4>



Fourth, the LM-2 forms do not indicate how many employees the union represents, just the number who are members or agency fee-payers. Consequently, it is impossible to use forms LM-2 to determine how many nonmembers a union represents or what percentage of employees a union represents are formally members.

Nevertheless, LM-2 filings can be of some use in measuring trends in union membership in the wake of *Janus*. Consider the following.

## NATIONAL EDUCATION ASSOCIATION

The largest teacher’s union in the country is the National Education Association (NEA). Because its fiscal year runs September through August, its 2018 LM-2 reflects the union’s membership numbers only two months after the *Janus* decision, enough to reveal the loss of agency fee-payers but not much else.<sup>22</sup>

National Education Association - Schedule 13/Membership Status				
Membership Category	2017	2018	Change	
Active Professional	2,118,016	2,124,054	6,038	0.3%
Active Education Support Professional	460,559	467,548	6,989	1.5%
Active Life	39,326	38,581	-745	-1.9%
Retired	316,060	318,403	2,343	0.7%
Student	45,350	46,601	1,251	2.8%
Staff	1,486	1,469	-17	-1.1%
Substitute	2,839	2,426	-413	-14.5%
Reserve	3,441	3,434	-7	-0.2%
Agency fee-payers	87,764	0	-87,764	-100.0%
<b>Total</b>	<b>3,074,841</b>	<b>3,002,516</b>	<b>-72,325</b>	<b>-2.4%</b>

While the union lost all its agency fee-payers as a result of *Janus*, the loss was partially offset by a small increase in formal members. The increase in membership could be attributed to former agency fee-payers converting to full membership, newly organized members or simply a growth in public education employment. According to BLS’ Current Employment Statistics, state and local government education employment increased 0.8 percent from August 2017 to August 2018.<sup>23</sup>

All told, however, 2.4 percent (72,000) fewer public employees financially supported the NEA at the end of August 2018 than did in August 2017.

## AMERICAN FEDERATION OF TEACHERS

Data for the other major teacher’s union, the American Federation of Teachers (AFT), are too preliminary to be useful. Its fiscal year runs from July through June. Because *Janus* was decided on June 27, 2018 — the very end of the union’s fiscal year — AFT’s 2018 LM-2 continued to reflect agency fee-payers and is of no use in measuring *Janus*’ effects.<sup>24</sup>

<sup>22</sup> OLMS file number 000-342. <https://olms.dol-esa.gov/query/getOrgQry.do>

<sup>23</sup> U.S. Bureau of Labor Statistics. Current Employment Statistics. Series ID: CES9092161101 and CES9093161101. <https://www.bls.gov/ces/>

<sup>24</sup> OLMS file number 000-012. <https://olms.dol-esa.gov/query/getOrgQry.do>

American Federation of Teachers - Schedule 13/Membership Status				
Category	2017	2018	Change	
Full Per Capita Tax Payers	710,865	724,109	13,244	1.9%
One Half Per Capita Tax Payers	205,991	234,593	28,602	13.9%
One Quarter Per Capita Tax Payers	81,191	81,970	779	1.0%
One Eighth Per Capita Tax Payers	24,160	25,858	1,698	7.0%
Laid Off Members and Unpaid Leave Members	1,382	1,288	-94	-6.8%
Associate Members	42,510	51,059	8,549	20.1%
Merged Local and State Members	158,225	165,116	6,891	4.4%
Retiree Members	367,587	393,782	26,195	7.1%
Agency Fee-payers	93,844	85,788	-8,056	-8.6%
<b>Total</b>	<b>1,685,755</b>	<b>1,763,563</b>	<b>77,808</b>	<b>4.6%</b>

From June 2017 to June 2018 — the period captured by AFT’s 2018 LM-2 — state and local government education employment increased by 0.4 percent, according to BLS’ Current Employment Statistics.<sup>25</sup>

Nonetheless, it is likely the number of AFT-represented agency fee-payers changed little from June 2017 to June 2018 and that most, if not all, agency fee-payers are public employees affected by *Janus*, meaning AFT probably lost over 80,000 agency fee-payers after *Janus*.

An AFT spokesman confirmed as much in April 2019, telling *Bloomberg Law* that the union “lost 84,600 agency fee-payers” after *Janus*.<sup>26</sup> The spokesman also claimed AFT added 100,000 members from February 2018 to February 2019, but it will be impossible to verify these claims until AFT submits its next LM-2.

### AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

Outside of public education, the American Federation of State, County and Municipal Employees (AFSCME) is one of the largest public employees’ unions in the country. It was also the respondent in *Janus*, making the changes in its membership particularly interesting. Thankfully, for simplicity’s sake, AFSCME’s fiscal year is based on the calendar year.

AFSCME - Schedule 13/Membership Status				
Category	2017	2018	Change	
Full time member	1,015,121	1,023,603	8,482	0.8%
Part time member	88,705	90,182	1,477	1.7%
Half time member	40,302	39,440	-862	-2.1%
Retiree member	155,516	174,154	18,638	12.0%
Agency Fee-payers	112,233	2,215	-110,018	-98.0%
<b>Total</b>	<b>1,411,877</b>	<b>1,329,594</b>	<b>-82,283</b>	<b>-5.8%</b>

AFSCME’s 2018 form LM-2 indicates that, as of the end of 2018, 5.8 percent (82,000) fewer people financially supported the union than at the end of 2017.<sup>27</sup>

<sup>25</sup> U.S. Bureau of Labor Statistics. Current Employment Statistics. Series ID: CES9092161101 and CES9093161101. <https://www.bls.gov/ces/>

<sup>26</sup> Robert Iafolla. “Mass Exodus of Public Union Fee-payers After High Court Ruling.” *Bloomberg Law*. April 5, 2019. <https://news.bloomberglaw.com/daily-labor-report/mass-exodus-of-public-union-fee-payers-after-high-court-ruling>

<sup>27</sup> OLMS file number 000-289. <https://olms.dol-esa.gov/query/getOrgQry.do>



The decline was driven primarily by the union’s loss of agency fee-payers. This decline was partially offset by a small increase in formal membership and a noteworthy increase in AFSCME membership among retired public employees who are no longer represented by the union and were unaffected by *Janus*.

In a press release issued the day its LM-2 was filed, AFSCME claimed the report showed it “retained 94 percent of workers it represents.”<sup>28</sup> This is simply incorrect. LM-2 forms do not disclose the number of employees a union *represents*, but the number that are *members*. There is simply no way to know from AFSCME’s LM-2 filing how many employees are covered by collective bargaining agreements negotiated by its affiliates, much less what percentage are AFSCME members.

All that can be concluded from the LM-2 is that 5.8 percent fewer public employees financially supported AFSCME sixth months after *Janus* than did so six months before. Meanwhile, from December 2017 to December 2018, employment in non-education state and local government increased by 0.6 percent, according to BLS Current Employment Statistics.<sup>29</sup>

### SERVICE EMPLOYEES INTERNATIONAL UNION

Like AFSCME, the Service Employees International Union (SEIU) is one of the largest public-sector unions, though it also represents a sizeable number of private-sector employees.

SEIU - Schedule 13/Membership Status				
Category	2017	2018	Change	
Regular Members	1,886,485	1,882,028	-4,457	-0.2%
Retired Members	32,873	36,164	3,291	10.0%
Agency Fee-payers	104,501	5,812	-98,689	-94.4%
<b>Total</b>	<b>2,023,859</b>	<b>1,924,004</b>	<b>-99,855</b>	<b>-4.9%</b>

In a year in which non-education public-sector employment rose 0.6 percent,<sup>30</sup> SEIU’s rank-and-file membership dipped slightly, though this decline was almost offset by an increase in the union’s membership among retirees, a cohort not affected by *Janus*.<sup>31</sup> With *Janus* looming, apparently both AFSCME and SEIU thought it prudent to market membership more aggressively to retirees to help offset losses among regular members.

However, the number of agency fee-payers supporting SEIU plummeted by 94 percent. Presumably the remaining fee-payers are private-sector employees in non-right-to-work states who can still be legally obligated to pay as a condition of employment.

All told, 4.9 percent fewer employees financially supported SEIU at the end of 2018 than did so at the end of 2017.

<sup>28</sup> Omar Tewfik. “Workers chose to stick with their union’: AFSCME Posts Strong Membership Numbers in New Filing with Department of Labor.” American Federation of State, County and Municipal Employees. March 27, 2019. <https://www.afscme.org/news/press-room/press-releases/2019/workers-chose-to-stick-with-their-union>

<sup>29</sup> U.S. Bureau of Labor Statistics. Current Employment Statistics. Series ID: CES9092200001 and CES9093200001. <https://www.bls.gov/ces/>

<sup>30</sup> U.S. Bureau of Labor Statistics. Current Employment Statistics. Series ID: CES9092200001 and CES9093200001. <https://www.bls.gov/ces/>

<sup>31</sup> OLMS file number 000-137. <https://olms.dol-esa.gov/query/getOrgQry.do>

## INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Like SEIU, the Teamsters is a large national union with mixed membership in both the public and private sectors and reports on the basis of the calendar year. However, its federal LM-2 filing for 2018 does not indicate a decline in membership since *Janus*.<sup>32</sup>

Teamsters - Schedule 13/Membership Status				
Category	2017	2018	Change	
Active Members	1,279,752	1,389,454	109,702	8.6%
Agency Fee-payers	37,179	36,127	-1,052	-2.8%
<b>Total</b>	<b>1,316,931</b>	<b>1,425,581</b>	<b>108,650</b>	<b>8.3%</b>

Unlike other large unions, Teamsters’ 2.8 percent decline in agency fee-payers after *Janus* was minimal and more than offset by an 8.6 percent increase in “active members.” That so many agency fee-payers remained in 2018 suggests most of Teamsters’ membership is in the private sector or that public employees represented by Teamsters were unlikely to be agency fee-payers to begin with.

Overall, though, the Teamsters’ membership numbers are incredibly good – perhaps too good to be accurate. A review of prior LM-2 filings going back to 2005 shows the Teamsters reported 8.3 percent increase in total membership in one year is unprecedented in recent history.

In 2006 and 2007, Teamsters’ membership grew less than 2 percent each year. The change in economic fortunes brought by the 2008 financial crisis turned this modest growth trend into a modest decline, with Teamsters losing between 1 and 2 percent of its membership each year from 2008-2011. However, Teamsters’ 2012 LM-2 reported a stunning decline of nearly 6 percent, an outlier with no obvious explanation. After that, modest growth resumed in 2013-15 followed by stagnation in 2016-17 and a meteoric 8.3 percent increase in 2018 amid cries portending the end of the labor movement wrought by *Janus*.



Also curious is the fact that Teamsters’ total revenue increased merely 2.8 percent, from \$199.3 million in 2017 to \$204.9 million in 2018, according to the same LM-2 forms. If the union did increase its “active membership” by 8.6 percent in 2018, there is little financial evidence of it.

<sup>32</sup> OLMS file number 000-093. <https://olms.dol-esa.gov/query/getOrgQry.do>



It's possible the information reported by Teamsters on its LM-2 is inaccurate. It's also possible the union changed the definition of "active members" in such a way as to count retired or affiliated membership not previously included. Perhaps a similar change in methodology could explain the precipitous membership decline the union reportedly experienced in 2012. Or perhaps 2018 was simply the year the Teamsters alone discovered how to revive the labor movement. The LM-2 data does not provide a definitive explanation.

## LOCAL UNIONS

While the 2018 forms LM-2 for the national public-sector unions do not reveal significant changes in membership after *Janus*, the same cannot be said for all their state and local affiliates, some of which have experienced precipitous membership declines.

For instance, SEIU 503 is currently the largest labor union in Oregon. It represents healthcare, non-faculty higher education workers, as well as state and local employees throughout the state. Its accounting is based on a fiscal year running October through September.

SEIU 503 - Schedule 13/Membership Status				
Category	2017	2018	Change	
Members	49,583	43,837	-5,746	-11.6%
Associates	1,033	1,104	71	6.9%
Retirees	640	131	-509	-79.5%
Staff	35	34	-1	-2.9%
Agency fee-payers	7,093	635	-6,458	-91.0%
<b>Total</b>	<b>58,384</b>	<b>45,741</b>	<b>-12,643</b>	<b>-21.7%</b>

SEIU 503 reported losing nine-tenths of its agency fee-payers after *Janus*. Presumably, the remainder are in private-sector jobs where agency fee payment can still be required in Oregon. But these fee-payers were not converted into dues paying full members. In fact, SEIU 503 lost almost as many formal members as it did agency fee-payers.<sup>33</sup>

Overall, the loss of agency fee-payers coupled with the decline in membership means the total number of employees financially supporting SEIU 503 dropped by 21.7 percent (12,643 workers), from 58,384 in September 2017 to 45,741 in September 2018.<sup>34</sup>

## GOVERNMENT EMPLOYER PAYROLL DATA

Perhaps the most reliable source of information on public-sector union membership comes from payroll records of government employers showing the number of union-represented employees having dues deducted from their wages. However, such information is not generally published and must be obtained through requests submitted to appropriate government agencies under public records or freedom of information laws.

Unlike LM-2 data, which does not differentiate between public and private-sector membership, relying on government payroll data allows for the measurement of union membership among public employees only.

<sup>33</sup> OLMS file number 519-355. <https://olms.dol-esa.gov/query/getOrgQry.do>

<sup>34</sup> Boaz Dillon. "SEIU's Sinking Ship." Freedom Foundation. January 23, 2019. <https://www.freedomfoundation.com/labor/seiu-sinking-ship/>

It also provides the ability to measure the union membership rate among groups of public employees instead of just the raw membership numbers as provided by the LM-2 forms.

For example, after *Janus*, the Freedom Foundation began submitting monthly requests for payroll data on union dues payment by union-represented state employees in Washington. The requests are for: (1) the total number of state employees represented by specific unions; (2) the number of represented employees who had union dues withheld from their wages; and, (3) the total amount of the dues withheld by the state.

State payroll data indicate the Washington Federation of State Employees (WFSE) — the largest union of state workers in Washington — was financially supported by 27,251 members and 4,288 agency fee-payers in May 2018, the month before *Janus*. As of February 2019, the union was supported by only 24,883 members. All told, 25 percent of WFSE-represented state agency workers no longer financially support the union.<sup>35</sup>

The only drawback to using government payroll data is that it must be obtained by request from specific government employers; no comprehensive source for the information exists. So, while it is useful for measuring union membership among specific groups, it is less helpful for measuring public-sector union membership statewide or nationally. It is also too hard and time-consuming to compile into large time-series data sets that could be used for analysis of larger trends.

## FACTORS AFFECTING UNION MEMBERSHIP

### INTERNAL ORGANIZING

Unions had plenty of time to prepare for an anticipated loss in *Janus*, in part because of the reprieve granted by the U.S. Supreme Court's deadlock in *Friedrichs v. California Teachers Association* in 2016.<sup>36</sup> Even though the tie vote in *Friedrichs* left agency fees intact, it signaled to unions that half the court opposed forcing public employees to financially support unions. With Justice Neil Gorsuch confirmed to replace the late Justice Antonin Scalia and another case challenging agency fees working its way towards the Supreme Court, unions prepared for the worst.

In late 2017, while speaking at WFSE's annual convention, AFSCME president Lee Saunders admitted there was a "very good chance" his union would lose *Janus*. He touted, however, the union's "AFSCME Strong" plan for dealing with *Janus*.<sup>37</sup>

Publicly, the union described "AFSCME Strong" as "a major culture shift, prioritizing one-on-one conversations and member-to-member engagement, modernized communications, a state-of-the-art data infrastructure, and political engagement,"<sup>38</sup> implying the effort was about persuading public employees of the union's value such that they choose not to resign their membership.

While the hearts and minds of some on-the-fence employees were probably won over by AFSCME's overtures, evidence suggests the main goal of "AFSCME Strong" was to get as many AFSCME-represented

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<sup>35</sup> Maxford Nelsen. "WFSE membership down 20% since Janus." Freedom Foundation. October 29, 2018. <https://www.freedomfoundation.com/labor/wfse-membership-down-20-since-janus/>

<sup>36</sup> Adam Liptak. "Victory for Unions as Supreme Court, Scalia Gone, Ties 4-4." *New York Times*. March 29, 2016. <https://www.nytimes.com/2016/03/30/us/politics/friedrichs-v-california-teachers-association-union-fees-supreme-court-ruling.html>

<sup>37</sup> Maxford Nelsen. "Union trying to undermine supreme court ruling." Freedom Foundation. December 19, 2017. <https://www.freedomfoundation.com/labor/union-trying-to-undermine-supreme-court-ruling/>

<sup>38</sup> Omar Tewfik. "Workers chose to stick with their union': AFSCME Posts Strong Membership Numbers in New Filing with Department of Labor." American Federation of State, County and Municipal Employees. March 27, 2019. <https://www.afscme.org/news/press-room/press-releases/2019/workers-chose-to-stick-with-their-union>



employees as possible to sign revised membership agreements making it very difficult to cancel the deduction of dues from their wages.

WFSE's "new 100% Union card," for example, authorizes the employer to withhold dues from the signer's wages and stipulates the deductions are "irrevocable for a period of one year" and can thereafter only be cancelled between 10 and 20 days prior to the anniversary of the card's signing.<sup>39</sup>

Most public-sector unions have inserted similar provisions into their membership agreements and dues deduction authorizations. As public employees begin to learn of their rights under *Janus* and attempt to cancel the deduction of dues from their wages, many are having their requests denied on the basis of "irrevocable" forms they signed.

Multiple legal challenges to these restrictions have already been brought by public employees in federal court.<sup>40</sup> But for the time being, these and similar internal union restrictions are succeeding in slowing the flow of resignations.

## LEGISLATION

In 2018, lawmakers in some states took preemptive action to undermine an anticipated loss for unions in *Janus*, passing legislation to make it easier for unions to sign public employees up for dues deductions and harder for public employees to cancel dues deductions.

For example, New Jersey legislators passed A3686, the "Workplace Democracy Enhancement Act."<sup>41</sup> Among other things, the law requires public employers to provide unions with between 30 and 120 minutes with new hires as part of their paid orientation to solicit union membership.

The law also requires employers to turn over employees' personal contact info to the union, including their "home address, work telephone numbers, and any home and personal cellular telephone numbers on file with the public employer, date of hire, and work email address and any personal email address on file with the public employer." At the same time, A3686 exempts employees' work and personal contact information from disclosure to anyone not a union.

Lastly, public employers are prohibited from sharing information with employees about their constitutional right to resign from the union, and employees are only permitted to cancel dues deductions from their wages during a 10-day annual period.

Maryland and Washington passed similar legislation giving unions access to newly hired public employees in captive-audience settings.<sup>42</sup> Similar arrangements were put in place in Washington for certain employees before it was required by statute, with the state's experience showing the tendency for such meetings to be highly coercive.<sup>43</sup>

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<sup>39</sup> A copy of WFSE's current dues deduction form is available online at:  
[https://afscmeatwork.org/system/files/mod\\_12617\\_distributed\\_0.pdf](https://afscmeatwork.org/system/files/mod_12617_distributed_0.pdf)

<sup>40</sup> Kaitlyn Schallhorn. "Janus Ruling Fallout: Washington state employees sue to 'escape' union." *Fox News*. August 3, 2018.  
<https://www.foxnews.com/politics/janus-ruling-fallout-washington-state-employees-sue-to-escape-union>

<sup>41</sup> A3686 (2018). New Jersey State Legislature. [https://www.njleg.state.nj.us/2018/Bills/PL18/15\\_.HTM](https://www.njleg.state.nj.us/2018/Bills/PL18/15_.HTM)

<sup>42</sup> HB 811 (2018). Maryland General Assembly. [http://mgaleg.maryland.gov/2018RS/chapters\\_noln/Ch\\_22\\_hb0811T.pdf](http://mgaleg.maryland.gov/2018RS/chapters_noln/Ch_22_hb0811T.pdf)  
SB 6229 (2018). Washington State Legislature. <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6229.SL.pdf>

<sup>43</sup> Maxford Nelsen. "Guide explains how unions indoctrinate employees into joining." Freedom Foundation. May 31, 2018.  
<https://www.freedomfoundation.com/labor/guide-explains-how-unions-indoctrinate-employees-into-joining/>

Hostile legislative responses to *Janus* have continued in 2019, with lawmakers in Washington state passing HB 1575.<sup>44</sup> The bill allows unions to sign public employees up for dues deductions via written, electronic or recorded voice authorization, but only permits employees to cancel such deductions in writing. In addition, HB 1575 requires employee dues cancellation requests to be submitted to unions, not employers, allowing unions to enforce arbitrary restrictions on resignations.<sup>45</sup>

Lastly, the bill paves the way for future union organizing by making it easier for unions to use the “cross-check” process instead of having public employees vote on whether to unionize in a state-administered secret-ballot election. Under cross-check, union organizers collect “votes” from employees one-on-one. If a union collects cards from a majority of the employees it seeks to organize, it turns the signatures in and is certified by the state without an election.<sup>46</sup>

Additional legislation designed to maximize public-sector union membership remains under consideration by state legislatures around the country.<sup>47</sup> Though such measures may stem or slow declines in public-sector union membership, it does not mean employees are freely choosing to retain their union membership.

## EDUCATIONAL CAMPAIGNS

In the wake of the *Janus* decision, some nonprofit organizations began efforts to educate public employees about their right to cancel union dues deductions from their wages and to assist them in navigating union roadblocks.<sup>48</sup> The presence or absence of such efforts in various states can have a significant effect on unions’ membership rates, as evidenced by unions’ efforts to pass legislation blocking the disclosure of public employees’ names or contact information to any organization not a labor union.

States with the largest numbers of unionized public employees affected by *Janus* tend to be run by elected officials with close ties to organized labor. Many specifically denounced the *Janus* decision and have worked with unions to undermine it.<sup>49</sup>

In states like these, public employees seeking information about how to exercise their First Amendment rights will not receive assistance from their union or their employer, leaving it up to third-party organizations to provide them with information about their rights.

On the West Coast, the Freedom Foundation has made educating public employees about *Janus* a central focus. Nearly a year in, membership in some public-sector unions in the Pacific Northwest has declined significantly since *Janus*.

Despite claiming otherwise to the press, the largest state employees’ union in Washington, WFSE, has seen the number of state agency employees paying dues decline to under 75 percent. The decline was hastened by pre-*Janus* Freedom Foundation outreach to state workers that dramatically boosted the

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<sup>44</sup> HB 1575 (2019). Washington State Legislature. <https://app.leg.wa.gov/billsummary?BillNumber=1575&Year=2019&Initiative=false>

<sup>45</sup> Maxford Nelsen. “Policy Analysis of SB 5623 and HB 1575: Undermining Public Employees’ Constitutional Rights.” Freedom Foundation. March 8, 2019. <https://www.freedomfoundation.com/labor/policy-analysis-of-sb-5623-and-hb-1575-undermining-public-employees-constitutional-rights/>

<sup>46</sup> Ibid.

<sup>47</sup> Ballotpedia. “Public-sector union policy in the United States.” [https://ballotpedia.org/Public-sector\\_union\\_policy\\_in\\_the\\_United\\_States](https://ballotpedia.org/Public-sector_union_policy_in_the_United_States)

<sup>48</sup> Mitchell Hartman. “After Janus, a battle for union members’ wallets.” *Marketplace*. September 13, 2018. <https://www.marketplace.org/2018/09/13/business/after-janus-battle-union-members-wallets>

<sup>49</sup> New York Office of the Governor. “In Response to Janus Decision, Governor Cuomo Signs Executive Order to Protect Union Members from Harassment and Intimidation.” June 27, 2018. <https://www.governor.ny.gov/news/response-janus-decision-governor-cuomo-signs-executive-order-protect-union-members-harassment>

Washington State Office of the Attorney General. “Ferguson, Inslee issue joint statement on Supreme Court’s Janus ruling.” June 27, 2018. <https://www.atg.wa.gov/news/news-releases/ferguson-inslee-issue-joint-statement-supreme-courts-janus-ruling>



number of agency fee-payers in the year prior to the decision. All of these employees had their deductions automatically stopped after *Janus*.<sup>50</sup>

Similarly, SEIU 503, the largest union in Oregon, told reporters “membership is up,”<sup>51</sup> while the union’s LM-2 and state payroll data show the number of employees supporting the union has declined by about a quarter since *Janus*.<sup>52</sup> All told, the Freedom Foundation believes it has assisted 50,000 public employees, predominately on the West Coast, in cancelling unwanted union dues deductions from their wages.<sup>53</sup>

Beyond the West Coast, additional efforts by various organizations are under way.<sup>54</sup> The presence, persistence, scope and effectiveness of such outreach campaigns is another factor to take into consideration when evaluating changes in public-sector union membership.

## CONCLUSION

By itself, *Janus* was neither the catastrophe unions predicted it would be prior to the decision nor the non-event they have alleged since.

Time will tell whether public-sector unions can develop a strategy, whether based on the strength of their value proposition or the success of coercive countermeasures, that will allow them to retain levels of membership and dues collection comparable to what they enjoyed under the old agency fee regime. It is important to recall that public-sector unions were starting from a position of strength. They were already organized and entrenched in the states that permitted agency fees. Retaining members is likely to be easier than recruiting them without union security provisions.

At this point, the best available early data suggests that, nationwide, public-sector unions experienced modest declines in the number of people financially supporting them in the months after *Janus*. Some specific local unions on the West Coast have already seen sizeable declines in membership, however, suggesting continued membership losses may be in the future as more public employees learn about their rights and as the validity of union countermeasures get tested in court.

Public-sector labor relations is likely to remain a controversial and politically charged topic. In an effort to encourage a more open and honest debate about trends in public-sector union membership, it is important that those engaged in it know the pros and cons of the data sources they necessarily rely upon.

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<sup>50</sup> Maxford Nelsen. “WFSE membership down 20% since Janus.” Freedom Foundation. October 29, 2018.

<https://www.freedomfoundation.com/labor/wfse-membership-down-20-since-janus/>

<sup>51</sup> Mitchell Hartman. “After Janus, a battle for union members’ wallets.” *Marketplace*. September 13, 2018.

<https://www.marketplace.org/2018/09/13/business/after-janus-battle-union-members-wallets>

<sup>52</sup> Boaz Dillon. “SEIU 503’s Sinking Ship Might Be Sinking Faster Than We Thought.” Freedom Foundation. February 13, 2019.

<https://www.freedomfoundation.com/labor/seiu-503s-sinking-ship-might-be-sinking-faster-than-we-thought/>

<sup>53</sup> Aaron Withe and Ashley Varner. “Loads of American workers are dropping out of unions – Now liberals have a new plan to save left’s cash cow.” *Fox News*. January 25, 2019. <https://www.foxnews.com/opinion/loads-of-american-workers-are-dropping-out-of-unions-now-liberals-have-a-new-plan-to-save-lefts-cash-cow>

<sup>54</sup> Chris Brooks. “How Corporations Plan To Use Janus To Turn Workers Against Their Own Unions.” *In These Times*. July 2, 2018.

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