

How do judicial decisions impact the ability of unions to organize and collectively bargain?

To know why judicial decisions matter so much to a union we must first understand what role a union fulfills for its individual members and more importantly for society as a whole. The primary function of a union is to create and support the best, safest and most profitable working conditions and environment for the members. A strong and effective union has much greater influence, political voice and instrument of change than any one worker ever can. To fully comprehend the role of unions we must look at our history through the laws that were created to protect workers and how these individual laws and court decisions have affected the unions and the workforce in general.

The first major legislative decision that affected unions was the Sherman Anti-Trust Act of 1890. This act allowed the federal government to dismantle any business that threatened or prohibited business competition. This law essentially forbids any practice that would hinder trade or commerce. Examples of practices that created obstacles to fair trade were price fixing, the refusal to deal and bid

rigging which can take many forms but essentially is when competitors agree in advance who would win the bid. Another practice deemed illegal was market division or customer allocation where businesses agreed not to compete in essence saying if you stay out of my territory, I will stay out of your territory. The important part of this law for unions is that the courts eventually ruled that union strikes and boycotts were covered by this law and were deemed legal. This had a profound effect on the ability of the voice of the union to be heard and contributed to the unions shaping our current work related laws.

The Industrial Revolution ushered in an era of unseen growth. With that growth came fortunes for company owners who often took advantage of its workers and built that fortune without respect or consideration for their workers or their individual families. The unions we know today arose because of the conditions created by these respective companies. Unions fought for (and often won) better and safer working conditions, increased wages and reasonable working hours. Perhaps the most important piece of legislation that affected unions was the National Labor Relations Act, also known as the Wagner Act of 1935. This act guarantees the right of workers to organize and to form and join labor unions. This act allows unions to collectively bargain for better work conditions, higher wages and the best terms for its members. This act effectively

encouraged collective bargaining, the ability to strike if necessary and helped to stop practices that harm individual workers. It also established a framework for unions to organize and to collectively bargain that did not exist before. The law established the National Labor Relations Board, which is a federal agency that enforces labor laws and protects and safeguards the rights of private sector employees.

There have been a number of laws and judicial decisions that have impacted individual workers over the years since the enactment of the NLRA. These initiatives were influenced, created and promoted by individual unions. These laws include but are not limited to the Social Security Act, Civil Rights Act, Equal Pay Act, Occupational Safety and Health Act, Americans with Disabilities Act, Family and Medical Leave Act, Affordable Care Act (aka Obamacare) and the Lilly Ledbetter Act. Each of these laws helped to establish greater rights for workers and their individual families. Some laws helped to establish better working conditions, equal and at times higher pay and often established frameworks for taking care of the more vulnerable members of our society. These laws which were promoted by unions helped not only the union members individually and their respective families but have benefitted society as a whole.

This brings us to the Taft Hartley Act of 1947 which required that employee agreements that were collectively bargained by the unions to also benefit those employees that were not members of the union. In effect, it was ok that non-union members reap the same benefits of the union members without any cost. To compensate for this the Taft Hartley Act required that these non-members who could not be forced to join unions would be required to pay dues for this equal representation. These dues were called agency fees as they are monies received by non-member employees for services received. This brings us to our present day situation and climate of who should benefit and who should have to pay for those benefits that are received. It should be noted that not all laws or judicial decisions help unions. The most important and recent judicial decisions have come around what is called “right to work laws”. Right to work laws have nothing to do with the right to work but rather state that workers in unionized business can benefit from the union contract without paying union dues, better known as agency fees. To date there are currently 28 states that have right to work laws. The other states are termed fair share states and required that non-union members pay their “fair share” to the union for benefits or services received. These right to work laws are direct methods by republican controlled state legislatures to curb union influence and power.

Right to work laws have seen an upsurge since the republican Tea Party came into existence in 2010. Judicial decisions against unions have seen an uptick since that date as republicans have seen a majority not only on the state level but on the federal level as well. The most important Supreme Court judicial decision to impact unions in recent times is the Janus vs. AFSCME decision in July 2018. This decision ruled on the legality of unions to accept agency fees from the non-union members. The decision overturned 41 years of precedent that was set by a judicial case in 1977 that was called Abood vs the Detroit Board of Education. The Janus decision ruled that agency fees (or union dues from non-members) violated the First Amendment. In the original decision from Abood it was found that if the agency fees were used only for collective bargaining, administration costs and grievances then it did not violate the First Amendment. Janus claimed that he should not have to pay agency fees that went to political speech with which he disagreed. This court decision in this new era of attempted union busting and trying to curtail the influence and power of unions dealt a decisive blow to the unions and a victory to the republicans in charge. These non-union members are quite simply freeloaders.

The Janus decision had profound effects on not only the public sector unions, included the American Federation of Teachers, but on unions as a whole. The impact of this decision could have profound effects on how unions currently operate and could reduce membership, result in lower revenues received by the union and therefore could impact the influence of unions and reduce their power and ability to help workers as a whole. To counteract what could be devastating to unions, the leadership must enact and take steps to further strengthen and boost up the membership. To do this the union must organize more effectively and efficiently in this republican right to work environment. Over the past several years the climate and culture has not benefitted the union. To say it simply, elections have consequences. With the election of President Trump the NLRB now has 3 current members out of 5 that were appointed by him along with general counsel. In addition the President has appointed not only Supreme Court justices but federal justices that render judicial decisions that are not pro-union and often side with corporations.

While the current national climate does not favor unions, things may be starting to look brighter again. With the election of a new democratic congress, the unions have a strong ally in the fight for individual workers' rights. The Janus decision attempted to bring the union to its knees and to be so bold it attempted

to effectively end the teachers union. In doing this it may have only invigorated the union, the leaders and the membership. In some states new state laws have been enacted after the Janus decision which give unions control over union dues, how they are deducted and how they are managed.

The reality in today's world is, what the working people already know, and that is that the rich keep getting richer. CEOs pay have skyrocketed and the tax laws favor the wealthy. Often times, the workers are held accountable but the executives walk free when wrong doing occurs. All of this is not unnoticed by workers. Workers, union and non-union alike, face stagnant wages, sky-rocketing health care costs and exorbitant student loan debt that must be addressed. Workers not only have to take care of themselves but have families, children and sometimes parents that they support on wages that have not increased. Unions must face these issues head on. Unions must continue to fight for fair wages, safe working conditions, a better standard of living for all workers in addition to increased benefits for their members and families. Unions traditionally offer benefits to their members that non-union employees do not get and they must be reminded of that. Unions must adapt to the current environment by using technology and social media to reach the workers to remind them of the valuable

service they provide. The union is the workers advocate and it must adapt to this new culture to fight for every member.

The current judicial decisions that have impacted the unions is a great reminder to all union members that elections make a difference. Who we elect is proportional to which judges are appointed to courts that will make decisions on our behalf. Even in today's environment unions can survive and thrive as all members need a voice, especially today. The recent decisions have brought unions back to the basics of bargaining effectively and organizing efficiently. Every single worker has a voice. By itself that voice is soft and small. The voice of the union, together with all its members, is strong and loud. I have been witness to this voice and its effect on my own family through my father's membership and leadership. I hope one day to be part of that voice in the American Federation of Teachers.