

Union Viability for the Third Decade of the Twenty-First Century and Beyond

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The June 27, 2018 decision of the Janus v. American Federation of State, Country, and Municipal Employees (AFSCME), Council 31 case has become one of the most discussed Supreme Court rulings in years. With this one decision the Court has seemed to issue of severe blow to the existence of unions in the American economy. Although this decision applies specifically to public sector unions, it does have real consequences for all types of American unions, both public and private. This is an analysis of what this decision means to unions as they go forward into the future.

Keywords: Fair share and administrative fees, public employee unions, collective bargaining, agency agreements, Janus ruling, AFSCME

INTRODUCTION

The recent Supreme Court ruling from its spring term where public sector unions are no longer permitted to collect fair share fees from nonmembers obviously begs the question as to how well public, as well as private sector unions will survive this. The *Janus v. American Federation of State, Country, and Municipal Employees (AFSCME), Council 31* decision is a case in point as to how unions go forward in terms of power, viability and possibly even the need for further existence. It has been obvious now for at least forty years that unions have been struggling to maintain their standing in our economy, let alone trying to achieve growth and to maintain their relevance. The real significance of the Janus ruling hits at the one area where American unions have been relatively successful in recent decades. Since 1978, it has been the public sector unions that have consistently represented about a third of the employees in government up to the current level of about 36 percent (Noe, et al., 2017).

As can be imagined there are predictions that cover the full range of possibilities for the future of American unions. While some see this as a dose of tough love that will not significantly change the current status of unions, others fear a sudden drop in active participation in public sector unions which will signal the end of any kind of substantial union activity in our economy for decades to come. Whatever the outcome, the fact remains that many still believe unions, whether public or private, do have a place in our economy. Because there are elements in our economy that seem to diminish the role and power of workers in our economy, there is still a felt need for unions to play a crucial part in balancing the relative power between employees and employers. The working middle-class feel anxiety in the slow growth of wages and perceived loss of opportunities for them and their children in an economy being shifted to favor employers related to technology, globalization and the growth of the gig economy

(Summers, 2017). In addition, workers as consumers see their purchasing power being eroded and businesses working to consolidate more concentrated power through corporate mergers and takeovers in all sectors of the economy.

TOUGH LOVE AND REDEMPTION

Out of a seemingly harsh blow to American unionism comes the view that the Janus ruling is a nonevent that will not have a significant lasting impact in the long-run as we go forward into the future. In fact, some see the Janus ruling as a call for unions to work harder in the recruitment and representation of their members (Gallagher, 2018). This phenomenon has recently been seen in Michigan with the growth of the United Auto Workers union (UAW) after the state passed its right-to-work law in 2012. For those who are more positive about the impact of the Janus decision, it is believed to have little effect as shown in Michigan. The Janus decision in some ways does provide for some interesting possibilities in going forward. As a result, one opportunity for union leaders is to hit the reset button and to really focus more intensely on current events and issues around them. Going forward union leaders need to more specifically prioritize their use of resources in their efforts of organizing and representation knowing that they may be without the consistent previous revenue stream of fees that now will be reduced (Franko, 2018). To some, the good news for the future is that active grassroots campaigns have been recently springing up all over the country as seen in the West Virginia, Oklahoma and Arizona teacher protests that show that the union members are actually leading the leaders into action and getting real results (Kamenetz, 2018). Some are convinced that the labor movement is stronger than it appears. While you can't minimize the overall challenges and problems faced by labor, there is strong evidence of good organizing efforts being carried out. Solid bargaining gains are being achieved and the reality is that there are areas of the country such as New England and around the Great Lakes where union density shows that labor is a potent force in terms of representation and influence (Compa, 2018). In addition, since the Janus decision, union membership for state employees in Pennsylvania has gone up over 2% and in Oregon new union members have outnumbered union dropouts by a ratio of three to two (Barrett and Greene, 2018). Several blue states such as New Jersey, New York, California and Washington have taken steps to limit union losses through efforts such as instituting extremely limited exit periods, a blanket refusal to release union members' personal data to anti-union groups, the withholding of employment benefits and refusing representation during grievance proceedings (DiSalvo, 2019).

For the labor movement to survive and maybe even thrive it appears that a significant paradigm shift has been occurring in the union mindset. Over the years a change to emphasize rank-and-file mobilization in areas of labor gains in organizing and grassroots politics has been consistently achieved through a transition from business to social movement unionism (Hurd et al., 2003). In recent years a well thought out strategy in pursuing "micro-campaigns" which focus on specific issues in various organizing campaigns has paid some promising dividends for those in service professions such in individual hospital units and janitors (Roundtable, 2018). The reality seems to be that significant gains in labor that were achieved through collective bargaining may now be done through a strategy focused on specific issues such as the recent demands for \$15.00 per hour wages as achieved by David Rolf with the Service Employees International Union (SEIU) in Seattle (Meyerson, 2014).

Based on the fundamental concepts of social movements and activism, collective bargaining may be supported or even supplanted by collective action. The various initiatives being pursued in recent years include workplace partnerships with management beyond co-determination, transnational and community campaigns, support for member skill development participation in community economic development, green transition and reaching out more aggressively to women and younger workers (Murray, 2017). In fact, attention needs to be paid to younger workers and this most likely will come in the form of internet-based social media to appeal to the generation of digital natives. The AFL-CIO's Working American campaign was extremely successful in enrolling over 3 million members to join a community coalition to represent workers outside of collective bargaining (Freeman and Hilbrich, 2013). Studies done in the United States and Europe show considerable evidence that an urgency placed on young worker

engagement has not only energized the labor movement by empowering young workers to increase union membership and participation, it also wins over a generation poised to be active leaders for a labor union renaissance (Tapia & Turner, 2018).

THE DEMISE OF AMERICAN UNIONISM?

The *Janus v. AFSCME, Council 31* decision in some ways is a result of the efforts of the past forty years to weaken unions and diminish their role in the American economy. Along with globalization and the erosion of the industrial base in the United States in the 1970s, that significantly reduced the number of organized workers in those industries, President Reagan's refusal to bargain with the Air Traffic Controllers and their eventual decertification signaled the beginning of the end for a thriving American labor movement. In the decades since, other favorable Supreme Court rulings well before *Janus* and more aggressive management strategies following a more conservative viewpoint have reduced the overall participation rate in unions to less than 10 percent overall (BLS, 2018). Therefore, in some ways it seems logical for a ruling such as *Janus* to occur. Not long after the *Janus* ruling Pennsylvania Governor Tom Wolf called it a "decades-long effort" to destroy unions and President Trump called it a major loss of funding for the Democrats (DiSalvo, 2019). While over the past forty years union participation rates have declined, especially in the private sector, the public employee unions have actually gained members and maintained a membership rate of about four times greater than private sector unions. Public sector unions have relied on the Democrat party for moral and legislative support and in turn the unions have provided manpower to support political campaigns and voter support which appears to be weakening as seen in the 2016 election (Paarlberg, 2018).

Attempts to stem the political tide of diminishing the power of unions over the last few decades has proven to be fruitless. Ironically the election of Barack Obama in 2008 seemed to indicate a possible change in that trend that never really materialized. While the period had some positive outcomes in terms of organizing in the service sector of the economy, efforts to reinvigorate the labor movement was not realized because of the failure to pass the Card Check law that lost its momentum due to the Obama Administration's effort to pass a comprehensive health care law. The inability to pass the Card Check law along with continuous unsuccessful campaigns to raise the federal minimum wage has made labor leaders rethink their strategy. Many in today's labor movement have decided that if the legislative and collective bargaining routes have failed to achieve significant gains then maybe it comes down to regional protests and demonstrations to achieve desired results. However, it is the labor leaders themselves such as David Rolf of the SEIU and others who prefer to lead the protests instead of the recent grassroots efforts by the members themselves. Rolf and other labor leaders fear these movements of bottom-up democracy because in the short run they may only serve specific and existing members that may get in the way of long-term strategic initiatives of growth for the national unions (Meyerson, 2014). So in some ways a split may be occurring which may actually further weaken unions going into the future. Many believe that real union transformations will be more top-down versus bottom-up because of the nature and structure of unions themselves in terms of harnessing resources, strategic planning and member education to mobilize political will and to encourage cultural change (Murray, 2017).

If the future of American labor depends on top-down leadership the rifts that have existed for some time will need to be addressed. However, due to the nature of the disagreements and the longevity, any type of resolution seems unlikely. While some long for the days of John L. Lewis who ruled the United Mine Workers with an iron fist, who put union needs over democracy, it is quite clear that no one vision or view dominates the current state of American unions (Meyerson, 2014). In 2005, despite the work of the AFL-CIO to represent the needs of all workers, several national unions became disillusioned with the lack of effectiveness of the organization and decided to create a rival labor federation known as Change to Win (CtW). This departure of several well-known national unions such as the Teamsters, SEIU and the United Food and Commercial Workers signaled a significant split in union power and vision and it appears that such a split has only grown wider since 2005. After about a dozen years after the split the general consensus seems to be that the CtW has not delivered on its promises of achieving greater gains

than the AFL-CIO could have done. Some believe that the CtW is still forwarding old and dated twentieth century views that fail to promote experimenting with new ideas to create a voice for the unemployed, retirees, self-employed professionals or day laborers outside of traditional collective bargaining (Early, 2011; Chaison, 2007).

CONCLUSION

Ultimately the American labor movement will survive, but most likely not thrive into the future. The golden era seems to have passed for various reasons which may have more to do with issues, personalities and the circumstances of the time. The institutional elements that were the framework of American labor such as collective bargaining, worker rights, fair representation, organizing and economic issues seem now to be secondary and less important. They have been replaced by a shifting view of the labor market, globalization, significantly redefined jobs and the need by some to achieve gains through social means versus negotiated real results in working conditions, wages and recognized codified procedures (Osterman, 1999). However, to some it does appear to be a time for labor reform to be back on the national agenda. Initiatives to punish unfair employers and to benefit the working middle class with a sense of empowerment through employee stock ownership and shared governance may prove beneficial to the American economy along with encouraging unions to organize in nontraditional ways outside of collective bargaining (Summers, 2017). Some innovative ideas have been offered to reinvigorate public sector unions. Professor Benjamin Sachs of Harvard suggests that the government should directly fund public unions because in a sense the payment of agency fees out of employee paychecks was in effect a payment to the union for the cost of collective bargaining anyway (DiSalvo, 2019). In addition, some advocate that unions should retain exclusive bargaining rights for all employees because without these rights it could lead to discrimination against some groups of employees and the loss of the duty of fair representation which begs the question of whether unions should provide individualized services or just be a broad social movement as some believe (Geoghegan, 2016; Brooks, 2017).

There is a nagging doubt as to whether the American labor movement ever really was or is a social movement as some claim. The skepticism may stem from the lack of evidence of any real transformation in political labor ideology or lasting concrete results that actually has been overshadowed by workers' conservatism rather than social activism (Turner et al., 2001). While American labor will survive, any success it will have into the future may be based on the belief that victories will be small and limited in scope as determined by the times and the situation in which they are achieved.

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