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The Union Effect in California #3: A Voice for Workers in Public Policy

By Jenifer MacGillvary and Ken Jacobs

This brief is the third in a three-part series on [The Union Effect in California](#).

SUMMARY: Perhaps the most important effect of a strong labor movement is the countervailing force it poses to the corporate sector in the political and public policy arenas. This effect is clearly visible in California. With the support and backing of labor, California has passed ambitious laws promoting the rights of workers—union and nonunion alike—as well as policies advancing the common good broadly. This paper reviews major laws in California passed since 2011 that were initiated or backed by labor in the areas of minimum wage, worker benefits, workplace safety, wage theft, employment-based sexual harassment, whistleblower protections, education, immigration, consumer protections, infrastructure and housing, climate policy, and criminal justice.

Research has consistently found that, both in the United States and internationally, levels of income inequality are inversely correlated with rates of unionization.¹ Unionization can affect income distribution in several ways. Union workers earn wages higher than those of nonunion workers, even when accounting for variables such as age and education. In industries with high union density, both union and nonunion workers benefit from the higher wage standards set by the unions.² Communities with high union density have greater levels of intergenerational economic mobility, even for children of nonunion workers.³

However, political scientists Jacob Hacker and Paul Pierson argue that the most significant role of a strong labor movement is to create within our political system “some organized countervailing pressure” to the formidable corporate sector.⁴ In their influential 2010 book

Winner-Take-All-Politics, Hacker and Pierson argue that unions' largest mitigating effect on inequality comes not from negotiations between employers and workers, but instead through the labor movement's influence on public policy.

Hacker and Pierson see politics as "organized combat," where the relative power of different interests determines policy outcomes. In this formulation, "the political consequences of union power are difficult to exaggerate."⁵ Research has found—repeatedly, and both in the United States and cross-nationally—that where unions are strong there are more robust social policies, more redistributive economic policies, and ultimately lower levels of inequality.⁶

Unions' largest mitigating effect on inequality comes not from negotiations between employers and workers, but instead through the labor movement's influence on public policy.

Importantly, the policies fought for by labor reflect the interests not only of union members but instead those of large swaths of the public. Political scientists Martin Gilens and Benjamin Page researched the extent to which different interest groups represented the preferences of average citizens.⁷ Most interest groups were found to have positions on such a small number of salient issues that there was essentially no correlation with mass preference. However, several of the most powerful groups studied—the U.S. Chamber of Commerce, oil companies, and several other business groups—pushed for a range of policies that the average American actually opposed. Of the 40 interest groups included in the study, only eight were found to support the interests of the middle class; all five of the unions included in the study were among those eight.⁸

In addition to the unions, other groups in the study reflected the interests of average citizens, such as the AARP and university advocacy groups, but they worked on a narrower range of issues. Labor effectively engages in a broad array of policies, representing well the interests of the poor as well as the median-income American.⁹ Hacker and Pierson state, "In the American context, unions represent by far the most significant organization interest with a sustained stake in the material circumstances of those with modest means."¹⁰

California's Unions and Public Policy

Recent California history appears to support the notion that unions can serve as a countervailing force to corporations in the public policy realm. California does not have the highest union density of all states, but it has some of the most innovative unions,¹¹ and the labor influence in the state is indisputable. While business interests spend more on elections and lobbying, labor has the power of a large and engaged membership.¹²

Labor has backed policies that improve wages, benefits, and workplace protections for all working people, regardless of union status, and promoted the broad common good in areas including immigration, the environment, education, and criminal justice. Below we review some of the most important policy developments since Jerry Brown took office as governor in 2011. All were initiated or backed by unions.

Wages and Benefits

Minimum Wage

In 2016, California became the first state in the country to pass a \$15 minimum wage (SB 3). When it is fully implemented in 2023, together with local minimum wage increases, the law will improve incomes for 6.4 million low-wage workers, representing 38 percent of the state's workforce.¹³ This will increase affected workers' earnings by \$23 billion a year.¹⁴ For perspective, this represents more than the total federal and state spending in California on food stamps, the earned income tax credit, and temporary aid to needy families cash assistance combined. It is also more than California workers' estimated \$18.5 billion in increased earnings resulting from collective bargaining each year.¹⁵

Minimum wage laws in California will increase affected workers' earnings by \$23 billion a year.

Paid Sick Leave

Prior to implementation of California's Healthy Workplaces, Healthy Families Act of 2014 (AB 1522), almost 40 percent of workers in the state had no paid sick leave at their job.¹⁶ Most are now guaranteed three paid sick days per year. California was just the second state in the country, after Connecticut, to pass such a law. Workers are allowed to use the leave time to care for themselves or a family member, broadly defined to include grandparents, grandchildren, in-laws, and siblings.¹⁷ Victims of domestic violence, sexual assault, or stalking may use their sick leave to receive related legal or other services.¹⁸

Retirement

Fifty-five percent of private-sector workers in California do not have access to a workplace retirement plan,¹⁹ and three California senior citizens out of ten have incomes too low to meet their basic needs.²⁰ In 2012, California passed SB 1234 establishing the Secure Choice Retirement Savings Program, to begin tackling the ever-growing retirement savings crisis, and in 2016 authorized its implementation. Private-sector workers without access to a workplace retirement plan will be auto-enrolled in a payroll-deduction IRA sponsored by the state, unless they choose to opt out. Employers will simply forward enrollment information and employee contributions to the program. Enrollment in Secure Choice, now called CalSavers, will begin early next year, with participation mandatory for the largest eligible firms within one year, and the smallest eligible firms within three years. Studies indicate that about 70 percent of those eligible will choose to participate.²¹

The UC Berkeley Labor Center's Nari Rhee estimates that the combination of Secure Choice and the state's minimum wage law could increase retirement income by up to 50 percent for many young low-wage workers.²²

Workplace Safety

Following a rash of heat-related illnesses and injuries in the mid-2000s, California passed and implemented a mandatory outdoor heat exposure regulation. California is the only state to have established a formal standard.²³ In 2016, the state passed SB 1167, directing Cal-OSHA to create a heat standard for indoor workplaces as well. Indoor heat creates more than just an unpleasant work environment; a 2014 report by the Centers for Disease Control and Prevention found that seven of twenty cases of workplace heat illness involved indoor heat; two of these cases were fatalities.²⁴

In the Inland Empire of California there are 85,000 warehouse workers working in shipping containers that can reach 110 degrees or more.²⁵ In addition to warehouse workers, laundry workers and restaurant workers will be among those protected by the new standards, which are still being written.

Other recently passed laws promoting workplace safety include AB 1634, a 2014 law requiring that when an employer is cited for a serious safety violation, they must remedy it during the appeals period. Prior, they had been able to wait to abate the violation until completion of the appeals process, which could last months and sometimes even years. This law was precipitated in part by the deaths of two BART employees doing track work under a policy that had been cited for safety concerns and was in the process of being litigated.²⁶

Also in 2014, California passed AB 1340, authorizing and funding a pilot project for enhanced treatment of patients at high risk of violent behavior in state hospitals. The Department of State Hospitals had reported 4,283 aggressive incidents between patients, and 3,050 incidents targeting staff members in 2012.²⁷

Worker Protections

Employment law has historically assumed clear-cut "employer/employee" relationships. This assumption is becoming less and less accurate as the workplace becomes increasingly "fissured." Coined by David Weil, a former Obama Department of Labor administrator, in the "fissured workplace" companies increasingly rely on contracting and outsourcing for the labor needed to run their businesses. The fissure becomes deeper as the subcontractors in turn contract out to other companies. What started with the outsourcing of functions such as payroll and accounting—specialized tasks not central to the business—now includes the outsourcing of jobs at the very core of a business, such as cooks in restaurants, warehouse workers at distribution centers, and housekeepers at hotels.²⁸

When an employer is cited for a serious safety violation, they must remedy it during the appeals period, due to passage of AB 1634.

Two primary problems result from the fissured workplace. First, profit margins get slimmer with each additional level of outsourcing, resulting in lower wages, corners being cut, and increased labor violations; and second, it becomes more difficult to determine who is responsible for protecting workers' rights and interests, including for safety and adherence to wage and hours laws.²⁹ New laws in California are addressing both problems.

Wage Theft

Wage theft can take the form of failure to pay overtime, failure to provide mandated rest breaks, failure to pay minimum wage, forcing workers to work off-the-clock at the beginning or end of their shifts, or misclassifying workers so they are not eligible for overtime.³⁰ It is most prevalent in low-wage industries, particularly in the underground economy.³¹ In a 2008 study, more than two-thirds of low-wage workers sampled in Chicago, Los Angeles, and New York City reported having had at least one pay-related violation in the previous week.³² A follow-up study estimated that the Los Angeles workers lost more than \$26 million each week due to wage theft.³³ Even when proven, the process of recovering lost wages is riddled with obstacles: between 2008 and 2011 in California, only 17 percent of workers who won their wage claims before the state Division of Labor Standards Enforcement (DLSE) were able to recover any of their lost wages.³⁴

California's strong response to these reports of wage theft is now being held up as a model, and states and localities are being encouraged to look to California's wage-theft laws as a guide for reforming their own.³⁵ Specifically, California laws have provided government agencies with increased resources to enforce wage theft laws; have ensured access to the courts for victims of wage theft; and are preventing companies from being able to "insulate themselves from liability" through the use of outsourcing or employee misclassification.³⁶

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Two laws in particular provided strong boosts to California's ability to confront wage theft. Passed in 2014, AB 1897 directly addressed questions of responsibility and accountability for workers' rights in the fissured workplace. Under this law, "client employers"—the companies that use temp agencies or other labor contractors—are liable for the labor contractors' wage and hour violations or failure to obtain workers' compensation. The law also prohibits client employers from shifting workplace safety responsibilities to the labor contractor.³⁷

The second law, SB 588, passed in 2015, greatly expanded the power of the labor commissioner to enforce unpaid final judgments against employers it determines owe unpaid wages. The law

gave the labor commissioner the authority to place liens on businesses that do not pay workers wages they are owed. In addition, any business with an unpaid judgment is now required to purchase a “wage bond” up to \$150,000 in order to continue to do business. The law also allows the labor commissioner to hold individual business owners liable for unpaid wages, thereby preventing them from simply closing their business and starting a new one to avoid paying their debts. Finally, it created joint liability in two highly fissured sectors—property services and long-term care—so that the “client employer” of the contractor committing wage theft is also held responsible.³⁸

Other important laws concerning wage theft include SB 459, passed in 2011, which created significant new penalties for misclassifying workers as independent contractors. Research had found that 10 to 30 percent of employers misclassify workers as independent contractors, depriving them of labor protections including unemployment insurance and workers’ compensation.³⁹ Misclassification also costs states substantial tax revenue, and creates an unfair playing field for employers who follow the law. AB 469 (2011) and AB 1744 (2012) had the simple goal of ensuring workers have access to accurate information about what their pay rate is, who their employer is, and how to contact the employer.⁴⁰ And AB 1701, passed in 2017, provides for liability of general contractors for nonpayment of wages by their subcontractors.⁴¹

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Sexual Harassment

The PBS Frontline documentary *Rape on the Night Shift*,⁴² along with academic research out of UC Berkeley,⁴³ brought the issue of sexual harassment and assault in the janitorial industry to the public’s attention. The isolated nature of the work, performed at night by often immigrant women who fear losing their jobs or being deported if they complain, created a “perfect storm” for rampant abuse in the industry.⁴⁴

AB 1978, the Property Services Workers Protection Act, passed in 2016, was California’s first legislative response. It provides that janitorial workers and employers receive in-person training, developed by the California Department of Industrial Relations, on prevention of sexual harassment and abuse on the job. It also requires that janitorial service companies register with the state annually, and in order to do so must provide information intended to prove they are not operating in the underground economy. Further, companies that contract with unregistered janitorial services will face fines of up to \$25,000.⁴⁵ The new contractor registry will also combat wage theft in the janitorial industry.⁴⁶

Revelations from the #MeToo movement of unchecked workplace sexual harassment that had been hidden by mandatory arbitration, often combined with non-disclosure requirements, have brought about demands for reform. The current legislative session is considering a landmark bill, AB 3080, that would prohibit the use of mandatory arbitration agreements as a condition of employment. These agreements force workers to give up their right to take their employer to court, to file a complaint with an administrative agency, or even to disclose labor violations.⁴⁷ In California, more than two-thirds of private-sector employers require mandatory arbitration of their nonunion workers.⁴⁸ Employers would also be prohibited from requiring non-disclosure of sexual harassment either witnessed or endured.⁴⁹

If passed, AB 3080 will prohibit both the use of mandatory arbitration agreements as a condition of employment and any non-disclosure of sexual harassment requirements.

Also under current consideration is AB 3081, which provides new protections for workers who report sexual harassment by stipulating that any adverse employment action occurring within 90 days of such reporting would be presumed to be retaliatory.⁵⁰ AB 3082 and AB 2872, from the current legislative session, would expand protections against sexual harassment and require peer-to-peer training for in-home supportive services (IHSS) providers, and AB 2079 would require the development of a worker-led model of sexual harassment training in the janitorial industry.⁵¹

Retaliation

California's already strong whistleblower protections were further buttressed by two recent laws. AB 1509, passed in 2015, extended to family members of whistleblowers key anti-retaliatory protections provided by California law.⁵² SB 306, passed in 2017, provides workers who believe they were fired in retaliation for whistleblowing the right to file an injunction to be reinstated while their retaliation claim is being investigated, based on "reasonable cause" evidence that the adverse employment action was in fact retaliatory.⁵³ SB 306 protects individual whistleblowers' rights, but also attenuates the "chilling effect" on others who witness retaliation against their co-worker that can remain unremedied for years while a claim is investigated.⁵⁴

Education

In February 2018, teachers in West Virginia walked off the job, demanding better pay and increased funding for public education. They were soon followed by teachers in Oklahoma, Kentucky, Arizona, Colorado, and most recently North Carolina, all with similar demands. The Great Recession precipitated dramatic budget crises and deep spending cuts in states throughout the country, and funding for schools hasn't been fully restored in more than half the states.⁵⁵ Arizona's per pupil funding remains 36 percent lower than its 2008 level,

Oklahoma's is 15 percent lower, and North Carolina's is 12 percent lower; yet each of these three states has cut business and income taxes in recent years.⁵⁶

California took a different approach to its recessionary funding crisis. In 2012, after years of underfunding its public school system, California faced the grim prospect of an additional \$6 billion in education cuts. California passed Proposition 30, which funded public education by imposing higher income taxes on the state's wealthiest residents and modestly increasing the state sales tax.⁵⁷ Prop 30 "halted the downward defunding spiral"⁵⁸ and staved off drastic measures including possibly shortening the school year by three weeks.

In 2016, voters passed Proposition 55, extending until 2030 tax increases on high-income taxpayers, which had been scheduled to expire in 2018. The funds continue to be used for public education, with some being applied to Medi-Cal as well.⁵⁹

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Immigration

Protections at Work

With just a few exceptions, undocumented immigrants are protected by all the same workplace rights as any other worker,⁶⁰ but are frequently reluctant to exercise those rights due to fears or actual threats of employer retaliation that can lead to job loss or deportation. Subsequently, undocumented immigrants, who work primarily in low-wage industries, often in the underground economy where labor violations are most rampant, are more likely than other workers to be victims of wage theft and other labor violations. In the 2009 study of low-wage workers in Chicago, New York, and Los Angeles, discussed above, 37.1 percent of undocumented immigrants had experienced minimum wage violations in just the previous week, compared with 21.3 percent of authorized immigrants, and 15.6 percent of U.S.-born workers.⁶¹ Being female and unauthorized renders a worker particularly vulnerable; among the sample of workers in Los Angeles, over half of the undocumented women workers had had a minimum wage violation in the previous week.⁶²

In 2013 and 2014, California passed a series of laws intended to address the problem of employers using immigration status as a "tool" to prevent undocumented workers from exercising their rights. AB 236 prohibits a range of "unfair immigration-related practices" targeting a worker, or family member of a worker, who has reported a labor violation. The prohibited retaliatory practices include requesting additional documentation pertaining to immigration status or threatening to call immigration authorities. Within 90 days of a worker exercising a labor right, use of any of the prohibited practices will be presumed to be retaliatory. Employers are subject to suspension of their business license and penalties up to \$10,000. The law was strengthened by SB 666, which increased the penalty to possible

revocation of a business license, and added penalties—including suspension and disbarment—for attorneys who participate in retaliation on behalf of an employer. AB 524 made explicit that retaliatory threats concerning immigration status may constitute criminal extortion. And finally, AB 2571 improved and clarified provisions of AB 263, including that the \$10,000 penalty for retaliation goes to the worker.⁶³

The increased fear of workplace immigration raids starting in 2017 prompted the passage of AB 450, the Immigrant Worker Protection Act. Under this law, employers may not grant indiscriminate immigration enforcement in the workplace; they must be presented with a subpoena or warrant. In addition, employees must be informed when there is a review of employment records by immigration officials.⁶⁴ As pointed out by Labor Commissioner Julie Su, AB 450 reinforces the earlier efforts to protect undocumented immigrants from retaliation, insofar as it deters employers from calling ICE to their own workplaces—which some employers had been known to do in “extreme” efforts to prevent or punish whistleblowing.⁶⁵

Within 90 days of a worker exercising a labor right, an employer's use of an “unfair Immigration-related practice” will be presumed to be retaliatory, and the employer will be subject to business license suspension and \$10,000 in penalties.

Protections at School

Passed in the same climate of fear as AB 450, two 2017 laws aim to protect undocumented immigrants at schools. AB 699 is intended to promote the well-established right of all children in the United States to an education. It instructs the California Attorney General to create model policies for limiting or preventing immigration enforcement activities in schools, and requires schools to adopt these policies by July 1, 2018. Schools are prohibited from collecting information about the immigration status of students and their families, and must report to their local governing body any instance of law enforcement requesting immigration-related information or school access.⁶⁶ AB 21 pertains to secondary education and covers all colleges in the state—whether public or private—that receive state funding. It includes strict protocols for allowing immigration officials to obtain access to records or students; requires provision of free legal representation to any student facing deportation; and protects access to student financial aid for those who are detained or deported.⁶⁷

Consumer Protections

In a 2015 survey conducted by the Consumer Reports National Research Center, 30 percent of privately-insured respondents reported having received a “surprise medical bill,” where their health insurer paid less than the respondent had anticipated—and they were on the hook for the rest. Among those who had received hospital care, 37 percent had received surprise bills.⁶⁸ The survey also found that respondents seemed “largely confused when it comes to their rights to fight surprise bills.”⁶⁹

The following year, California passed AB 72, which protects HMO patients from receiving surprise out-of-network medical bills when their health care is obtained at an in-network facility. PPO patients must be given prior notice if service will be out-of-network, and must be provided with an estimate of the cost of care.⁷⁰

In 2017, California further promoted the rights of health care consumers with passage of SB 17, which requires pharmaceutical companies to provide advance notice and public justification for raising drug prices more than 16 percent over a two-year period.⁷¹ The bill, considered to be the “most comprehensive drug price transparency bill in the nation,” was vigorously opposed by the pharmaceutical industry, which spent \$16.8 million to lobby for its defeat.⁷²

Between 2007 and 2011, an average of 500 California families lost their homes every day, and in total over 1.5 million were served default notices.⁷³ Through the 2012 “California Homeowner Bill of Rights” (AB 278, SB 900), the state became the first in the nation to prevent foreclosure on a family in the process of seeking a loan modification. The laws promoted simplicity and transparency in foreclosure and loan modification processes, implemented new tools for mortgage fraud prosecution, and provided rights for tenants living in homes being sold through foreclosure.⁷⁴

California also leads all states in regulating for-profit colleges, many of which have been plagued in recent years by scandal and accusations of defrauding students—especially those with access to government education funds, such as veterans and foster youth—with specious promises of job placement and a reliable income post-graduation.⁷⁵

Climate Policy

2016 was the “biggest year for climate action” in California in a decade.⁷⁶ Two bills that had faced major opposition from the oil industry both ultimately passed. SB 32 extended the targets for lowering greenhouse gas emissions that had been set in 2006 via AB 32, the California Global Warming Solutions Act, to 40 percent below 1990 levels by 2030. It was paired with AB 197, designed to promote environmental and economic justice by ensuring the emissions reductions and job opportunities resulting from SB 32 would provide benefits to less advantaged neighborhoods.⁷⁷ The following year AB 398 passed, thereby extending and improving California’s cap-and-trade program, which is integral to the state’s plan for reaching its climate goals.⁷⁸

California has led the country in formulating and implementing an ambitious climate mitigation program, and has done so with broad public support⁷⁹ and without harming its economy.⁸⁰

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Infrastructure and Housing

Infrastructure in California presents perennial challenges. The American Society of Civil Engineers estimates that California drivers pay an extra \$844 each year in vehicle repairs due to driving on damaged roads, and billions are needed to improve drinking water infrastructure over the next two decades.⁸¹

Legislators and voters have responded with approval of significant new funding for infrastructure projects. Voters passed Proposition 1 in 2014, ratifying a \$7.5 billion water bond that had been passed by the legislature, to be used on water infrastructure projects throughout the state.⁸² SB 1, passed in 2017, will raise \$52 billion for maintenance of streets and highways over the course of ten years.⁸³

Two important affordable housing laws passed the legislature by the required two-thirds vote in 2017. By establishing a fee of up to \$225 on some real estate transactions, SB 2 will create a permanent funding source for construction of affordable housing. When combined with matching funds, it is expected to generate \$5 billion over five years. SB 3, a \$4 billion affordable housing bond, also passed.⁸⁴

Criminal Justice

California's period of mass incarceration began in the 1970s, and hit its apex in 2006.⁸⁵ During this time, the state's incarceration rate increased nearly five-fold. As in states across the country, communities of color were most affected. In 2013, almost 30 percent of the state's prison population was comprised of African Americans, compared to around 6.5 percent of the population overall.⁸⁶

By both ballot initiative and the legislative process, California has begun meaningful reform of its criminal justice system in recent years.

Proposition 47 was passed by the voters in 2014 and changed the classification of some "non-serious, non-violent crimes" from felony to misdemeanor. This included various types of theft (shoplifting, grand theft, receiving stolen property, writing bad checks) when the value did not exceed \$950, and personal use of most illegal drugs.⁸⁷ As a result of Prop 47, inmate populations dropped across the state, allowing several counties to end the early release of offenders with more serious convictions, which had previously been necessitated by overcrowding.⁸⁸ A study commissioned by the District Attorney's Office in San Francisco found that Proposition 47 reduced the racial disparity in sentence length by half in that city.⁸⁹

As a result of Prop 47, inmate populations dropped across the state, allowing several counties to end the early release of offenders with more serious convictions, which had previously been necessitated by overcrowding.

Proposition 57, approved by voters in 2016, further reduced the prison population by increasing opportunities for parole for felons convicted of nonviolent crimes. It also gave juvenile court judges, rather than prosecutors, the authority to determine if a juvenile will be charged as an adult.⁹⁰

In addition to achieving court-mandated reductions in prison overcrowding, these reforms have begun to chip away at the gross racial disparities in California's incarceration rates. In 2010, 9.6 percent of the state's

African American adult males were incarcerated on any given day; by 2015, this had been significantly reduced to 7.4 percent. Nonetheless, comparisons to the white male population are jarring: 1.5 percent had been incarcerated on any given day in 2010, which was reduced to 1.3 percent by 2015.⁹¹

As California reduces its prison population, one of the resultant challenges is to find ways to "make sure those who are released from prison lead productive lives—and don't go back."⁹² Stable employment is critical for both preventing recidivism and allowing the formerly incarcerated to rebuild meaningful lives, and yet one of the biggest obstacles to finding a job is having a criminal record. The national "Ban the Box" campaign seeks to provide a more fair chance at employment by advocating that questions about criminal history be delayed until after initial qualifications of applicants have been assessed. California's ban the box law, first passed in 2013 and significantly strengthened in 2017, covers all employers in the state with five or more employees and prevents inquiries into an applicant's criminal history before a conditional offer of employment is made.⁹³

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Conclusion

Unions have a strong, measurable impact on raising wages and improving benefits for workers covered by a collective bargaining agreement.⁹⁴ California's unions have had an even larger impact on working families regardless of union status through their engagement in public policy. In recent years California passed a wide range of public policy measures that were initiated or backed by the state's unions. These measures raised wages, improved benefits, and created protections for working people across the state—union and nonunion alike. They also addressed areas of broader public concern, including education, the environment, and criminal justice. This report focuses only on policies passed at the state level. A similar list could be put together for local governments—cities, counties, and school boards—which would demonstrate an even larger effect.

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