

# PASS THE VERMONT PRO ACT



## Talking Points

### Collective Bargaining Rights for Agricultural & Domestic Workers

- The National Labor Relations Act (NLRA) of 1935, also known as the Wagner Act, is a key provision of U.S. labor law, guaranteeing workers in the private sector the right to join unions and collectively bargain through their representatives. The original bill, introduced by Senator Wagner, included agricultural and domestic workers. However, as with the Social Security and Fair Labor Standards Acts, which were passed during the same period, agricultural and domestic workers were excluded from the final bill.
- Because federal law excludes these categories, states have the ability to grant collective bargaining rights under public-sector labor law. Fourteen states currently guarantee collective bargaining rights for farm workers: Arizona, California, Colorado, Hawaii, Kansas, Kentucky, Louisiana, Massachusetts, Nebraska, New Jersey, New York, Oregon, Washington, and Wisconsin.<sup>1</sup>
- Two years after NY passed the 2019 Farm Laborers Fair Labor Practices Act, which grants agricultural workers the right to collectively bargain, workers at Pindar Vineyards organized with Local 338 RWDSU/UFCW. “My coworkers at Pindar and I joined Local 338 because we want dignity and respect,” Rodolfo M. said in a union press release. “We know that being a union member will help us get the recognition we deserve for all of our efforts.”<sup>2</sup>
- Among the stated reasons for excluding agricultural workers from the NLRA was the fact that, at that time, the overwhelming majority of farm work was performed by self-employed and family laborers, not the wage laborers the Act was designed to

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<sup>1</sup> “Collective Bargaining Rights for Farmworkers” *The National Agricultural Law Center*, 14 July, 2022, <https://nationalaglawcenter.org/collective-bargaining-rights-for-farmworkers/>

<sup>2</sup> Kelly, Kim. *Fight Like Hell: The Untold History of American Labor*. New York, Atria/One Signal Publishers, 2022.

protect. Since 1935, however, the proportion of the hired, wage-earning agricultural workforce has increased relative to self-employed and family laborers.<sup>3</sup>

- Many historians and legal scholars have argued that systemic racism was a key factor in the exclusion of agricultural and domestic workers from the protections of the NLRA. In the 1930s, Black workers were disproportionately employed in these sectors, especially in the South. Today, Latino and immigrant workers predominate in agriculture and domestic labor. Leon Keyserling, the principal drafter of the NLRA, noted at the time that the Senate disproportionately represented the interests of largely-white farm owners. Control of key committees by Southerner Senators made it almost impossible to include this heavily-exploited and predominantly-Black workforce.<sup>4</sup>
  - Thirty-five (35) countries have ratified the International Labor Convention (ILO) 189, which was adopted in 2011. These international standards provide protections for domestic workers, including the right to form a union.<sup>5</sup>
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### **Employee's Exercise of Constitutional Rights (Captive Audience Meetings)**

- Currently, Vermont employers can discipline workers for refusing to attend meetings for which the primary purpose is the expression of the employer's religious or political beliefs.
  - Connecticut recently passed an Act prohibiting employers from disciplining workers for not attending captive audience meetings.
  - During a union drive, employers can use these "captive audience" meetings to dissuade employees from exercising their right to form a union, usually through fear and misinformation. These meetings are typically mandatory and can take the form of group meetings or one-on-one meetings with supervisors or anti-union consultants.
  - According to a 2009 study from the Economic Policy Institute, "employers held captive audience meetings in 89% of union election campaigns between 1999 and 2003. Union win rate in elections in which captive audience meetings were not utilized was 73%, that figure dropped to 47% when management employed mandatory meetings."<sup>6</sup>
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<sup>3</sup> United States Department of Agriculture, Economic Research Service. Data on U.S. Farm Labor. <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#size>

<sup>4</sup> Perea, Juan F., The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act, 72 OHIO ST. L.J. 195 (2011).

<sup>5</sup> "Progress for Domestic Workers' Rights, but most of the world lags behind" *International Trade Union Confederation*, 16 June 2022, <https://www.ituc-csi.org/progress-for-domestic-workers>

<sup>6</sup> Harris, Jessica. "Captive Audience Meetings: A Backgrounder" *onlabor*, 2 April 2014, <https://onlabor.org/captive-audience-meetings-a-backgrounder/>

## Unit Determination, Certification, and Representation for Public Employees (Majority Sign-up)

- Majority sign-up, also known as card check elections, authorizes the person or labor organization as the exclusive bargaining representative of the bargaining unit, so long as the unit is not already represented by another person or labor organization as the exclusive bargaining representative if employees submit a petition of 50% of eligible employees plus one.
  - Nine other states currently have majority sign-up or card check elections (CA, NY, MA, NJ, ME, IL, OR, WA, and NM).<sup>7</sup>
  - Current Vermont law requires public-sector workers to move through an onerous, multi-step process that typically ends in a secret-ballot election. Employees wanting to form a union need to not only sign up a majority of eligible bargaining unit members (via signing union cards that explicitly authorize the person or labor organization as the exclusive bargaining representative), but they must also hold a Vermont Labor Relations Board election unless their employer grants voluntary recognition. The board election usually takes place several weeks from when the petition is filed, giving the employer ample time to conduct an aggressive anti-union campaign to dissuade employees from exercising their rights.
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## Popular Demand for Unions and Benefits of Unions

- 60 million workers would join a union if they could, yet only 14.3 million workers are in unions in the US.<sup>8</sup>
- Eric Dirnbach has led a new, grassroots union organizing project called the “Emergency Workplace Organizing Committee” (EWOC). EWOC was founded in 2020 in response to the disregard for workers’ lives during the pandemic. After two years of running the project, Dirnbach has shared the following data demonstrating the immense challenge in organizing unions: “Overall, after almost two years of operation, over 3,000 workers have reached out to EWOC, and we attempted to connect with all of them. Over 800 had intake calls and were assigned to an organizer for further discussions. These workers were employed by over 600 different employers. Of these, nearly 400 campaigns were launched with some organizing activity. Of these, there have been about 60 successful

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<sup>7</sup> Lewis, C.M. “The Stunning Workers' Victory in New Mexico That You Haven't Heard About” *In These Times*, 22 December 2020,

<https://inthesetimes.com/article/new-mexico-workers-rights-victory-publicsector-union>

<sup>8</sup> Lewis, C.M. “The Union Membership Rate Has Dropped to a Historic Low. It Doesn't Have to Be This Way.” *In These Times*, January 21, 2023. Web.

<https://inthesetimes.com/article/the-union-membership-rate-has-dropped-to-a-historic-low-it-doesnt-have-to-be-this-way>

campaigns which have won improved conditions or stopped concessions so far, involving thousands of impacted workers.”<sup>9</sup> That’s only a 2% success rate.

- Unions disproportionately benefit those with low and moderate wages, those with lower levels of education, and nonwhites.<sup>10</sup>
- States with higher unionization rates also have less poverty.<sup>11</sup>
- Vermont only ranks 16th in unionization rates compared to other states, according to the latest BLS report.<sup>12</sup>
- When more workers have unions, wages rise for union and non-union workers. The converse is also true: when union density declines, so do workers' wages. The decline in unionization has cost the typical full-time, year-round worker \$3,250 in lost earnings per year.<sup>13</sup>
- Workers with union representation enjoy a significant pay premium compared to non-union workers. The Bureau of Labor Statistics reports that non-union workers earn just 83% of what unionized workers earn (\$975/week vs. \$1,169/week).<sup>14</sup>
- The American Public Health Association, the largest and oldest public health organization in the country, recently released a policy statement that considers the universal right to unionize a core part of “decent work” and an important public health goal for the United States.<sup>15</sup>
- Expanding collective bargaining will increase protections for women, people of color, immigrants, and the LGBTQ community in areas where our laws are still falling short. Many collective bargaining agreements have articles that address wage transparency and non-discrimination clauses. Most include grievance procedures to address pay gaps and other forms of discrimination at work.<sup>16</sup>

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<sup>9</sup> Dirnbach, Eric “Millions of Workers Want a Union. EWOC’s Organizing Model Shows How it Could be Done” *Socialist Forum*, Winter 2022, <https://socialistforum.dsausa.org/issues/winter-2022/millions-of-workers-want-a-union-ewocs-organizing-model-shows-how-it-could-be-done/>

<sup>10</sup> Mishel, Lawrence. *The Enormous Impact of Eroded Collective Bargaining on Wages*. Economic Policy Institute, 2021. <https://www.epi.org/publication/eroded-collective-bargaining/>

<sup>11</sup> VanHeuvelen, Tom, and David Brady. “Labor Unions and American Poverty.” SocArXiv, 3 Mar. 2021. Web. <https://osf.io/preprints/socarxiv/bgcp6/>

<sup>12</sup> “Economic News Release: Table 5. Union affiliation of employed wage and salary workers by state” *U.S. Bureau of Labor Statistics*, 19 January 2023, <https://www.bls.gov/news.release/union2.t05.htm>

<sup>13</sup> Mishel, Lawrence. *The Enormous Impact of Eroded Collective Bargaining on Wages*. Economic Policy Institute, 2021, <https://www.epi.org/publication/eroded-collective-bargaining/>

<sup>14</sup> United States. Department of Labor. *Union Members – 2022*. Bureau of Labor Statistics, 2023.

<sup>15</sup> “Support Decent Work for All as a Public Health Goal in the United States” *American Public Health Association*, 8 November 2022, <https://www.apha.org/Policies-and-Advocacy/Public-Health-Policy-Statements/Policy-Database/2023/01/18/Decent-Work-for-All>

<sup>16</sup> This is based on the dozens of contracts Vermont State Labor Council Executive Director Liz Medina has reviewed, covering over 13,500 union members across VT.