



UNITED STATES ⁹⁵

El affiliates

AFT American Federation of Teachers

NEA National Education Association

Ratification

C. 144 Tripartite Consultations (1976)

Introduction

In the USA, there is a high union density rate in the education sector. The National Education Association (NEA) and the American Federation of Teachers (AFT) are among the largest unions in the country and hold significant political influence. Teachers are employed by local education agencies (LEAs)/local school districts. Depending on the State, geographic boundaries may be by county, municipality and other geographic and structural divisions unique to a particular state. According to an ILO/UNESCO report, about one third of public employees are employed in primary and secondary education and over 70% of public-school teachers are union members.⁹⁶

Public sector education employees' rights are determined at State level and at the local level either by collective bargaining or in the absence of collective bargaining by the employer. States either through state legislation or state policy determine much of what happens on the local level with regard to education and education employees. The education system in the USA is highly decentralised and is almost exclusively the responsibility of local (county or municipal) school districts. There is no federal right to education in the United States. While there may be legislation governing labour relations of public employees, there is often specific legislation covering labour relations between public education authorities and teachers' unions in many States. Moreover, it is not unusual for States to enact separate public employee legislation for state workers, teachers, firefighters and police, however it is not absolute. Educators who work for Department of Defense schools, either on U.S. military bases or overseas, are federal employees, and their bargaining rights are determined by federal law.

Freedom of Association

The First Amendment to the Bill of Rights provides that Congress shall make no law abridging the right of the people to peaceful assembly. This right, extended to the States by the 14th Amendment, has been interpreted as according public employees the right to freedom of association and the right to organise.

⁹⁵ Grateful thanks to Carolyn York, Director of Collective Bargaining and Daaiyah Bilal-Threats, Director, Center for Governance, NEA, and to Nancy Van Meter, Deputy Director Research and Strategic Initiatives, and Pat Keefer, Director International Affairs, AFT for their valuable report and additional comments and contributions.

⁹⁶ "International Survey on social dialogue in education: information sharing, consultation and negotiations," Report for the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel 10th Session 28th September- 2nd October 2009, Paris, p. 33

Under the Federal Service Labor Management Relations Statute, federal employees have the right to form or join a union, with the exception of the uniformed services, senior managers, employees of the Foreign Service, various police and intelligence services, and the Departments of Agriculture, and Commerce.⁹⁷

The State Statutes for public employees are modelled in general on the Federal National Labor Relations Act (NLRA) 1935, which provides private sector employees with rights to unionise, bargain collectively and the right to strike.⁹⁸ The major difference between the State Statutes and the NLRA is the prohibition of the right to strike. However, in some States teachers do have the right to strike but for the vast majority of teachers and their unions any strike activity is explicitly prohibited. In the private sector, the National Labor Relations Act 1935, the Taft-Hartley Act, 1947 and the Landrum-Griffin Act 1959 still provide today the main legislative framework.

Collective Bargaining

In 34 States and the District of Columbia, State laws provide K-12 public teachers, with the right to bargain collectively. Ten other States provide for collective bargaining, but only if the employer agrees, which is known as permissive collective bargaining rights. The weakest region for public sector union rights is in the South. Georgia, North Carolina, Texas and Virginia prohibit collective bargaining by legislation and in South Carolina, the State Supreme Court ruled that public employees do not have the right to bargain. Tennessee withdrew bargaining rights in 2011, although there is a new process called “collaborative conferencing” that provides some rights to teachers. Primary, secondary, and higher education support staff have the right to collective bargaining in 32 States and the District of Columbia and faculty at most public higher education facilities can bargain in 26 States plus the District.⁹⁹

Collective bargaining covers a broad range of subjects, including compensation, benefits, and working conditions, known as “mandatory” subjects. Depending on state law, some education policy issues can be bargained in some states. However, most education policy is either legislatively or judicially defined as an exclusive prerogative of the employer. Tenure systems are legislated not bargained. In some States, unions have been able to broaden the agenda to typically include issues improving learning conditions for students, such as class size, teacher training and evaluation, and health and safety issues.¹⁰⁰

⁹⁷ Gemigon, Bernard “Labour Relations in the public and para-public sector” *International Labour Standards Department, Working Paper No. 2, ILO Geneva 2007, p. 80*

⁹⁸ *Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection”. NLRA 29 U.S.C. §§ 151-169 1935.*

⁹⁹ *Information provided by NEA valid at December 2011*

¹⁰⁰ *NEA Brochure “Collective bargaining: what it is and how it works” available at <http://www.nea.org/home/16375.htm> and accessed 12.03.2013*



In order to be recognised as a bargaining agent, the union needs to meet a threshold of 50% plus one of the workers in the bargaining unit in the case of a card check and 50% plus one of those voting, in the case of a ballot.¹⁰¹

However, card check is not universally recognised and most unions are recognised through a ballot election. Once the union is recognised, it negotiates a collective agreement for all employees in the bargaining unit. In 19 States, the unions can charge an agency fee, in 6 States and the District, there is no legal provision and in 25 States, the agency fee is prohibited.¹⁰²

In the absence of the right to collective bargaining, public sector employees may use the legislative process to put forward issues that collective bargaining typically addresses, such as wages, benefits, and other conditions, and in some states, they may enter into binding agreements with willing employers. A federal appeals court found that the prohibition on collective bargaining by public employees in North Carolina does not extend to a union's advocacy work.¹⁰³

Charter schools, which are publicly funded but managed by private groups rather than school districts, are largely not organised. There are often poorer work conditions in the charter schools. There has been an increasing trend towards unionisation in these schools.¹⁰⁴ In 2010, approximately twelve percent of charter school educators were represented by a union.¹⁰⁵

Faculty at private higher education institutions have been denied collective bargaining rights by a decision of the National Labor Relations Board.¹⁰⁶

A significant number of States prohibit strikes by public employees and impose fines or similar penalties. In the absence of the right to strike, there are sometimes mechanisms for compulsory arbitration, mediation and fact finding. For example, in Connecticut, the Teacher Negotiation Act (1979) appoints an arbitrator who is guided by a certain number of criteria, such as financial capability of the school district, cost of living, salaries and other conditions of employment prevailing in the labour market.¹⁰⁷ In States where public employees are authorised to strike, certain conditions need to be respected, such as the certification of a bargaining unit, the exhaustion of the dispute settlement procedures, the

¹⁰¹ "Collective bargaining in the public service: a way forward," ILO 102nd Session 2013 General Survey concerning labour relations and collective bargaining in the public service Third item on the agenda: Information and reports on the application of Conventions and Recommendations Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution) p. 100

¹⁰² Information provided by NEA valid at December 2011 and see charts at end of section⁹⁹ Information provided by NEA valid at December 2011

¹⁰³ Gernigon, Bernard *op. cit.*, p. 81

¹⁰⁴ International Survey on Social Dialogue in the Education Sector *op.cit.*, p. 34

¹⁰⁵ National Alliance for Public Charter Schools <http://dashboard.publiccharters.org/dashboard/schools/page/union/year/2010>

¹⁰⁶ Ratteree, Bill "Social dialogue in education: national good practices and trends", Background Paper for discussion at 11th Session of CEART, Geneva 8-12 October 2012, p. 9

¹⁰⁷ Gernigon, Bernard, *op. cit.*, p. 85

expiration of the current collective agreement and due notice to the employer. In many of these States, however, workers in essential services cannot strike, and in most cases, teachers are included in this category.

At the end of 2012, 68% of States legally permitted teacher collective bargaining while only six States prohibited it. Over two-thirds of the States made provision for dispute resolution mechanisms. Collective bargaining was thus well established and an effective form of social dialogue in thousands of local school districts throughout the country. AFT represents over 1 million educators working in early childhood, K12 schools, colleges and universities and the majority of them have collective bargaining rights. NEA represents 3.2 million educators in approximately 14,000 local school districts and institutions of higher education and the majority of those also have the right to collective bargaining.

Trends since the financial crisis in 2008

Beginning in 2011, following the mid-term elections, there was a clear trend to restrict collective bargaining rights and scope for teachers, and indeed all public sector employees, as a consequence of the election of very conservative governors and state legislatures. In Tennessee, the legislature simply repealed the law giving teachers the right to bargain and declared, “no local board of education shall negotiate with a professional employees’ organization or teachers’ union concerning the terms or conditions of employment.”¹⁰⁸

The CEART 2012 report notes: “State fiscal difficulties and the costs of teacher pensions, health care and other benefits have usually been cited as the prime reasons for often drastic changes in bargaining scope and capacity. However, evidence points instead to a political/ideological agenda among right-wing politicians, think tanks, private foundations and business leaders advocating a reduction across the board in public sector bargaining power, and by extension, weakening the engagement of teacher unions in the political process.”¹⁰⁹

The NEA has identified some of the most egregious changes as:

- Enactment of legislation prohibiting the right to have union dues deducted from the pay check in Michigan, Alabama, Arizona, and Wisconsin ; this prohibition is under legal challenge in Arizona, Michigan, and Alabama;
- elimination of most collective bargaining rights for most public employees in Wisconsin (public educators can only bargain wages up to the rate of inflation);
- elimination of collective bargaining rights for teachers in Tennessee. It has been replaced with a still undefined process called “collaborative conferencing” .

Other changes have included:

- restricting the scope of collective bargaining to teacher salaries, excluding in the process according to the State legislation, issues such as: placement of teachers; teachers’ discipline

¹⁰⁸ Information provided by NEA and see charts at end of section

¹⁰⁹ Ratteree, Bill *op.cit.* p. 9



and dismissal procedures, including staffing decisions when reducing the number of teachers due to financial constraints; teacher evaluation and performance management criteria; performance based compensation; hours of work and working days; restructuring options, including outsourcing and public-private partnerships (Indiana, Michigan, Tennessee, Wisconsin);

- reduced dispute resolution procedures (Indiana and Tennessee);
- prohibition or extended union member approval requirements for strikes (Illinois, Wisconsin);
- imposition of unilateral rejection, modification or termination of the collective bargaining agreement if school district is under the control of an appointed emergency manager under fiscal accountability legislation (Michigan).

Another issue has been that employers have demanded that employees pay more for health care benefits or introduce plans with lower benefits. While public employees do not bargain pension benefits as they are determined at the State legislative level, there have been repeated, strong attempts to close public employee pension plans and replace them with defined contribution plans.

Union Strategies

In the face of these prohibitions and restrictions on collective bargaining, the unions have needed to re-engage with their membership and the wider community, in particular to counter views that unions are in some way responsible for the economic crisis or preventing the country recover from it. They have worked extensively to promote views about the central role of collective bargaining in ensuring quality education through addressing the needs of both teachers and students.

“Rethink and re-build”

The decision to withdraw automatic check-off of union dues from educators’ salaries in Michigan, Alabama, Arizona, Wisconsin and North Carolina (later overturned in North Carolina) has obviously posed a major challenge to the unions. However, it has also been seen as an opportunity to rethink and rebuild the membership base.

NEA has organised one to one discussions with teachers and support professionals and have been conducting membership surveys to review their programmes and services. NEA has also embarked on an ambitious agenda to transform the teaching profession through the NEA Three-Point Plan.¹¹⁰ The plan declares, “If we want to create an education system for the students of the 21st century, we must transform that system, including the teaching profession. Since teachers know best about what we do, teachers should take responsibility for leading the transformation of our profession.” After listening to the advice of its members and leaders, NEA identified three areas where it believes steps can and should be taken to transform the profession: 1) Raising the bar for entry into the profession; 2)

¹¹⁰ “Leading the Profession: NEA’s Three-Point Plan for Reform”. Statement by NEA President Dennis Van Roekel, December 8, 2011. http://www.nea.org/assets/docs/NEA_3point_plan_for_reform.pdf

Ensuring that those who are in the classroom maintain a high standard of practice through programs such as peer assistance and review; and 3) Developing and empowering member leaders to transform our profession.

The AFT has launched numerous campaigns to counter the systemic dismantling of public education by the so called “education reformers”. These efforts have included AFT’s initiative to adopt “solution driven” unionism in local communities across the US; proposals to enhance the professionalization of teaching by raising the bar in the teacher preparation process; campaigns to limit the stakes attached to standardized testing, and expanded and deepened alliances with parents’ groups and other community partners.

Good Practice : “We are Ohio” Campaign

Senate Bill 5 was signed into law by Governor John Kasich in March 2011 and would have prohibited collective bargaining for public employees in the State. There had been no consultation with public sector employees before it was first presented in the Senate. Both AFT and NEA were key players in the “We are Ohio Campaign”, which was formed as a citizen-driven, community based, bi-partisan coalition to stop the bill becoming law and which was supported by labour organisations across the state. The coalition needed to collect over 230,000 signatures in 90 days to call for a referendum and block the law from coming into effect. A State-wide People’s Petition was organised, which collected more than a million signatures. The coalition recruited over 17,000 volunteers who carried out a massive canvassing drive with union members and the general public and to get them to vote against the bill. NEA provided 177 staff members from 22 states and members of the Cleveland Teachers Union, affiliated to AFT, made over 300,000 calls in phone bank centres. The campaign developed a sound media strategy and was supported with polls and surveys to see where the voting stood. The referendum was a resounding defeat for the proposal with an exceptionally high voter turnout giving a 68-32 majority against in November 2011.

The vote, which marked the first time that the collective bargaining rights of public employees have been upheld on a statewide ballot, sent a clear signal that the public in Ohio would not sit idly by while politicians scapegoat hard-working public employees for an economic crisis they did not create.

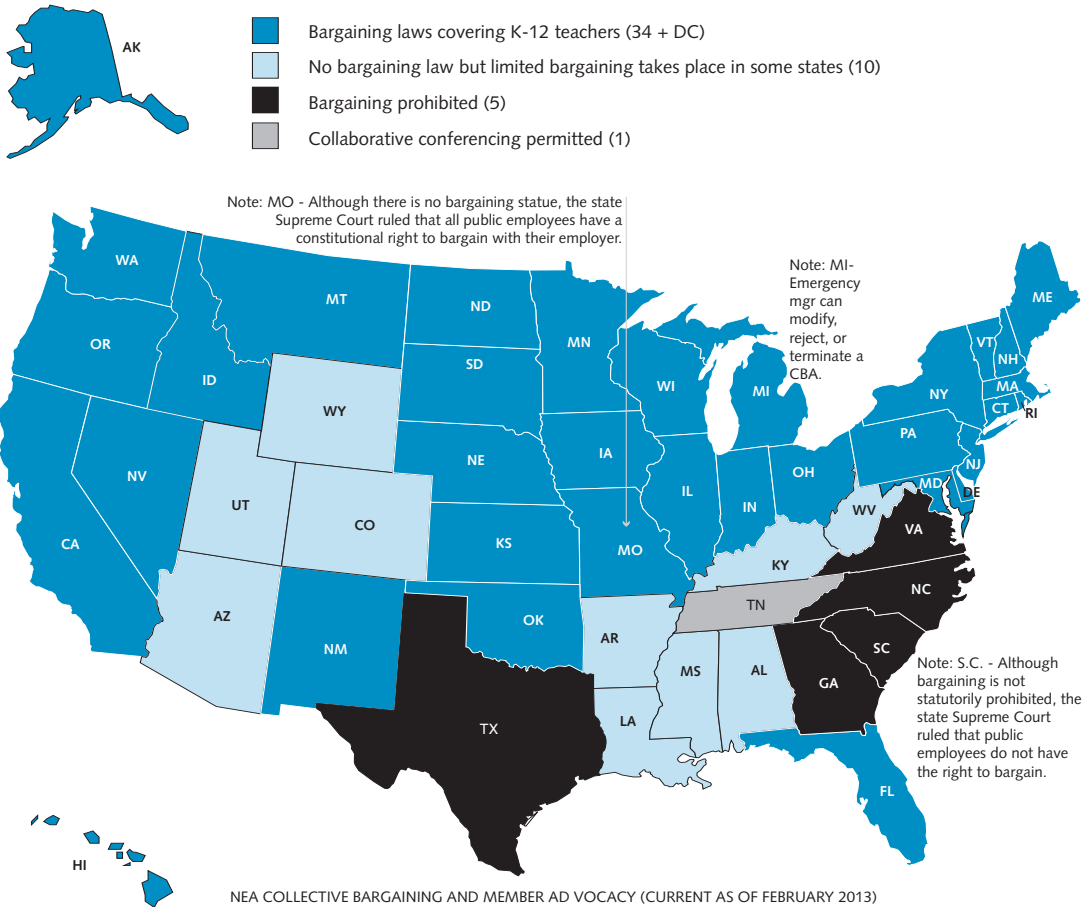
“Those who would dare try to strip collective bargaining rights away from hard-working citizens will now think twice,” said President Randi Weingarten on the night of the vote. “Ohio voters made it clear to them that there is a price to pay for turning your back on the middle class.”

“As teachers, we appealed to parents and explained what the consequences could be for the quality of education, for class sizes and other issues. We wanted to “put a face” on the law as teachers’ views are trusted in the community. The campaign was conducted over 9 months and it was a real investment of time and resources. Yet we all kept true to the process, contributed and shared resources.” Daaiyah Bilal-Threats, Director, Center for Governance, NEA¹¹¹

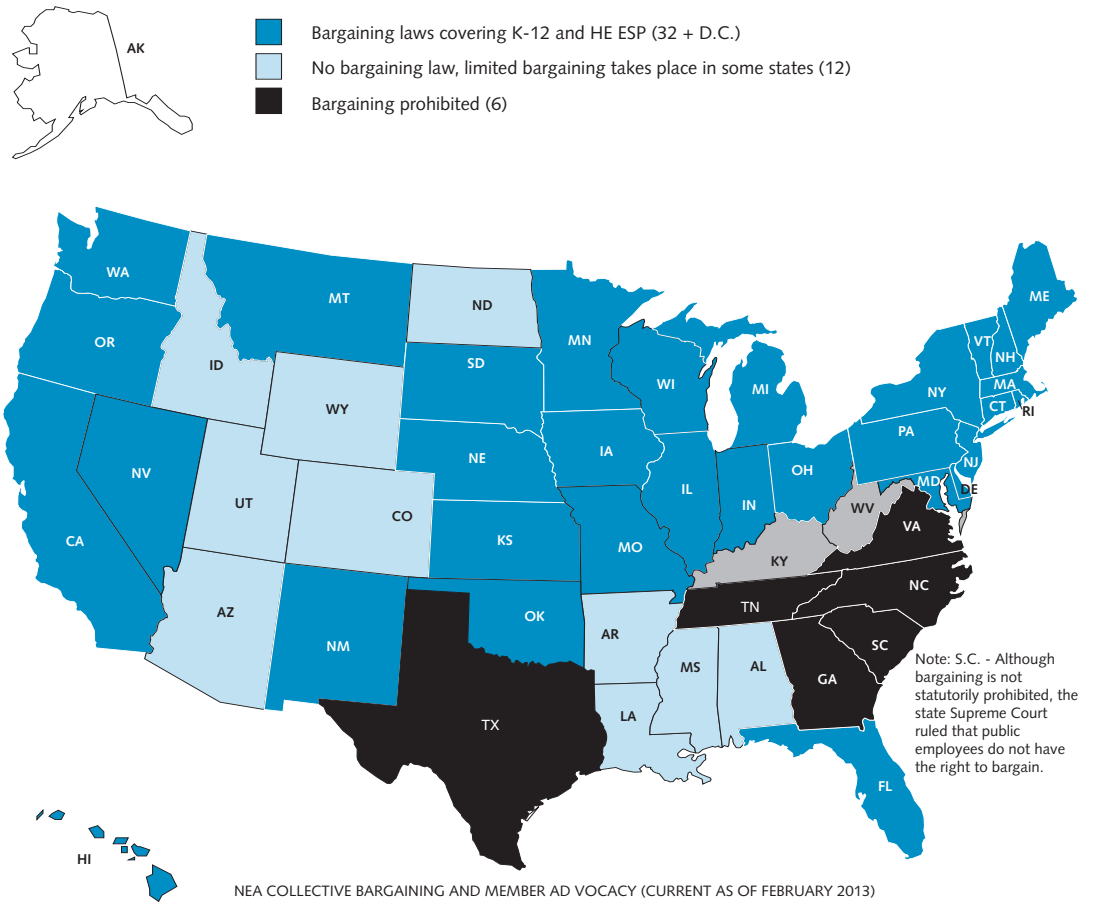
¹¹¹ Interview with the researcher, January 30th 2013

Right to Collective Bargaining in the USA

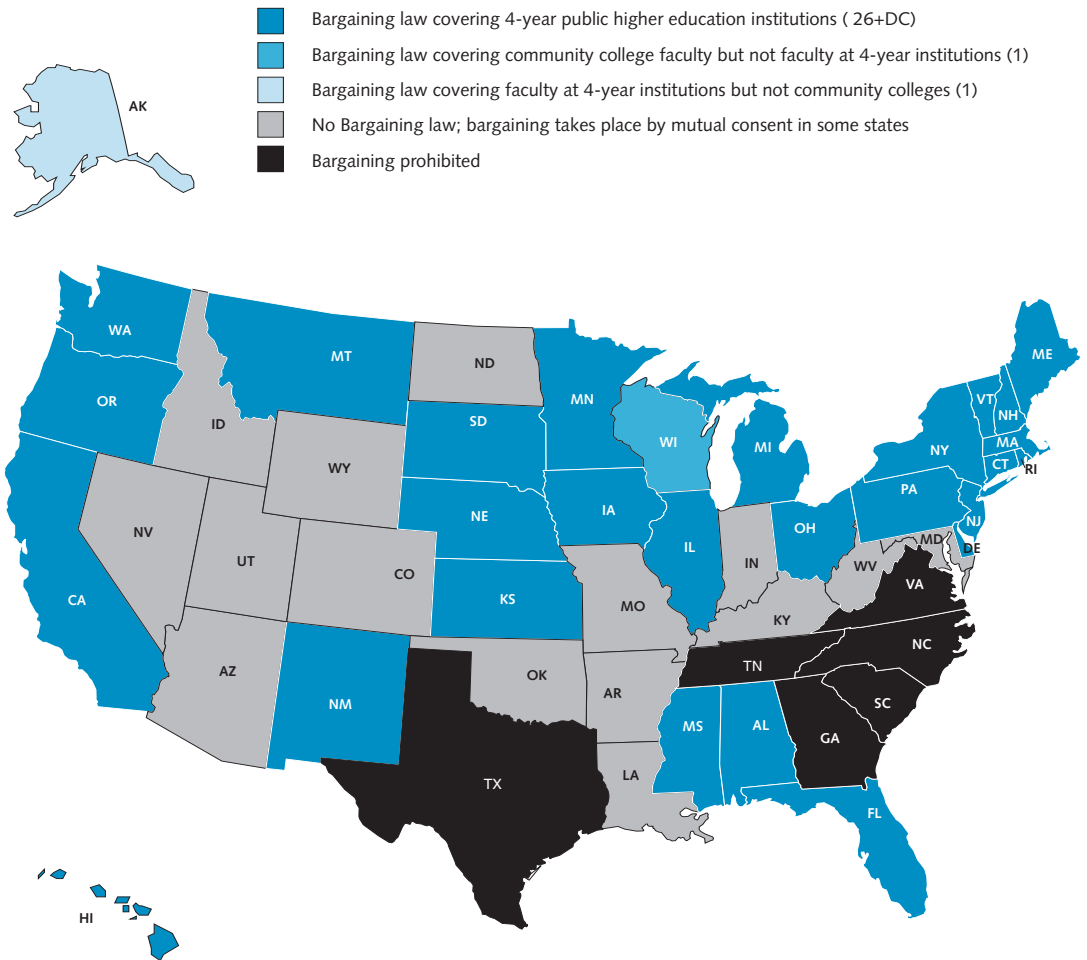
Status of K-12 Public School Teacher Bargaining



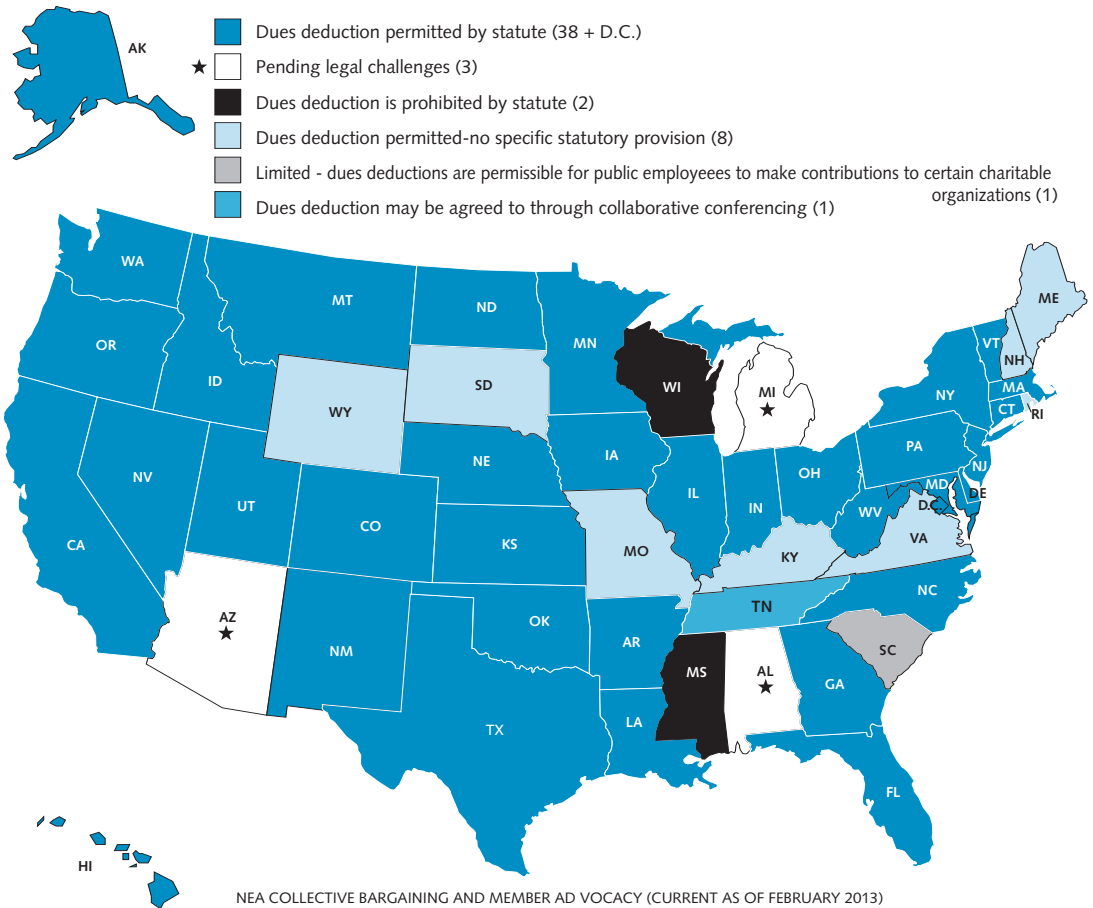
Status of Education Support Professionals Bargaining Laws for K-12 and Higher Education Support Professionals



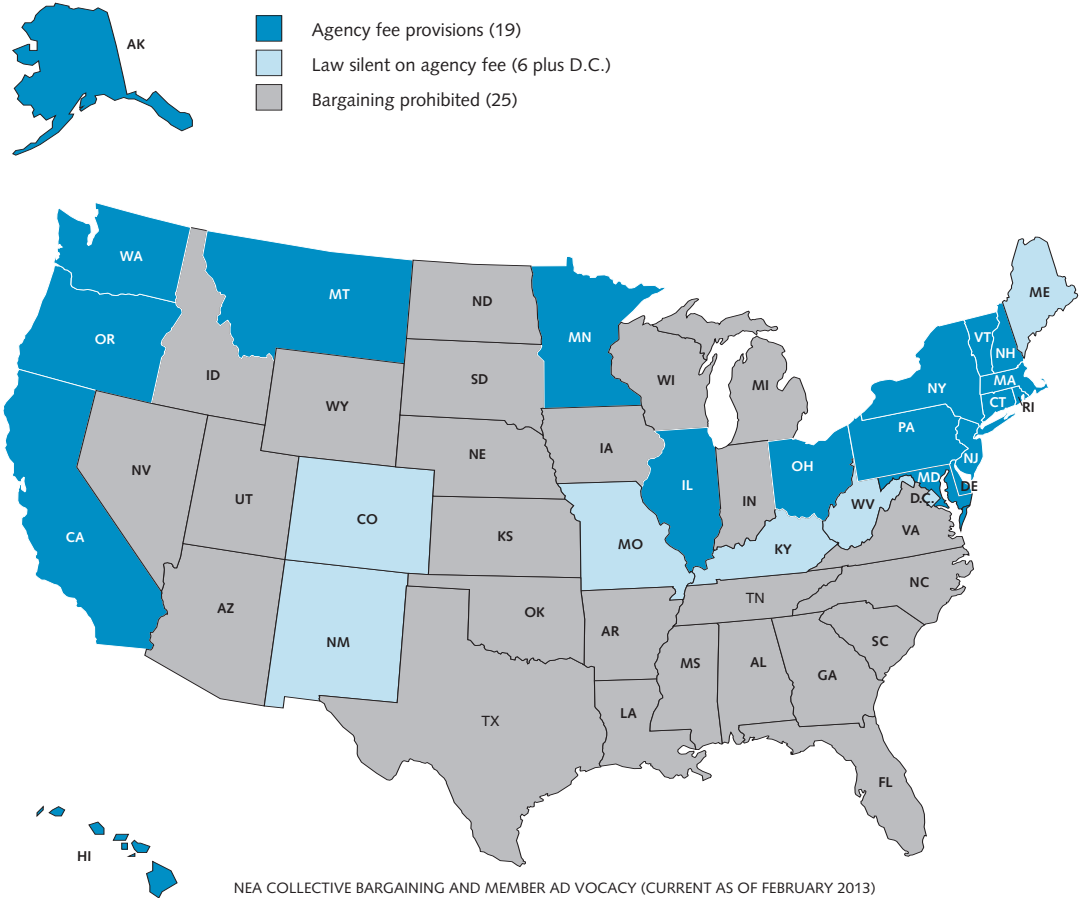
Status of Collective Bargaining for Public Higher Education Faculty at Community Colleges and Four-Year Institutions



Summary of Statutory Dues Deduction Provisions



Summary of Agency Fee Provisions



Education expenditure and GDP growth

% of government expenditure on education	% GDP spent on education	GDP % Growth
2008: 13.8%	5.5%	1.1%
2009: 13.1%	5.4%	-2.6%
2010		2.8%
2011		1.7%