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### **Permalink**

<https://escholarship.org/uc/item/8pd4d62h>

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### **Publication Date**

2008-02-01

## **UNIONS AND DIRECT DEMOCRACY IN CALIFORNIA: A NEW PATTERN EMERGING?**

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Thanks in part to ballot initiatives and to federal legislation, the State of California has signed compacts with various Indian tribes conferring rights to build casinos and develop or expand gambling operations. The degree to which such casino/hotels operate outside the jurisdiction of federal and state laws that apply to non-Indian employers is a matter of dispute and litigation. This question is a complex legal and even constitutional issue related to the degree of sovereignty enjoyed by the tribes.

Until a 2007 court decision, it appeared that federal labor relations law – the National Labor Relations Act (as amended) – did not apply to such casino/hotels or their employees.<sup>1</sup> During the period before the court decision, the Hotel Employees and Restaurant Employees (HERE, now part of a larger union UNITE HERE) pushed for incorporation into such compacts of a Tribal Labor Relations Ordinance (TLRO) which to some degree paralleled federal law.<sup>2</sup> The union hoped such arrangements would give it legal protections in organizing workers at the new casino/hotels. It has continued to push for special labor relations language built into compacts after the 2007 court decision on the assumption that the added protection would aid in its worker organizing campaigns. The union is particularly interested in a “card check” accord under which union recognition by the employer would be triggered when a majority of workers sign union authorization cards.<sup>3</sup>

Despite the union interest in incorporating such an accord into California compacts with the tribes, four such compacts were signed by the governor and ratified by the legislature in 2007 that did not have the desired language.<sup>4</sup> It was argued by the governor that revenues from these compacts were important for the state’s budget.<sup>5</sup> A UNITE HERE representative filed referenda to repeal the four compacts in conjunction with some dissident Indian gaming groups and non-Indian gaming interests.

At this writing, a signature verification process by the California Secretary of State is pending and there is also litigation challenging the process. If enough signatures are found to be valid and the litigation challenge fails, the union could succeed in voiding the compacts by majority vote of the electorate.

Although the Indian gaming controversy is interesting by itself, the larger issue of labor union use (or non-use) of California’s “direct democracy” is the focus of this chapter. As will be discussed below, although direct democracy has been available for political interest groups for almost a century in California, unions have exhibited only limited use of it – and that often on the defensive side. The question raised by the 2007 action of UNITE HERE is whether the four referenda, whatever their specific fate, signify a new interest by labor unions in proposing ballot measures.

## Background

In 1910, Republican progressives elected Hiram Johnson as California's governor. The progressive victory soon brought to the state direct democracy – the initiative, referendum, and recall – along with women's suffrage and Workers' Compensation insurance. Workers' Comp reflected a concern for industrial accidents, common at the time, and a sense that public policy should intervene in this troubling social matter. Labor unions certainly existed in California during the Progressive Era – particularly in San Francisco – but they were not major players among the progressives. Indeed, the progressive “do-gooder” approach was regarded suspiciously by local unionists who were more likely to want to influence existing public policy through support of candidates, lobbying, and traditional deal-making. In any event, as the chapter in this volume by John H. Laslett shows, unions at the time had little presence in southern California or outside the Bay Area.<sup>6</sup> Public-sector unionism as we know it today did not exist.

Over time, however, substantial changes occurred. During the Great Depression of the 1930s, unionization in the private sector began to grow rapidly, encouraged by federal labor legislation. Unionization peaked in the 1950s nationally. With somewhat of a lag, California followed the national trend. Public sector unionization in the sense of unions actually bargaining for contracts with governmental employers evolved in the state during the 1960s, 1970s, and 1970s with a series of laws covering local employees, educational employees (K-14), higher education employees (UC and CSU), state employees, along with specialized legislation for smaller groups such as transit workers.

Much of the legislation passed in California was copied – with modifications – from the early federal laws covering private employment. While similar trends occurred in many other states in this period, California is relatively unusual in that most public workers have an unfettered right to strike. Moreover, as a chapter in the 2005 edition of *California Policy Options* reported, legislation in California to resolve labor disputes in the public sector is quite limited in scope.<sup>7</sup>

In 2005, Governor Arnold Schwarzenegger pushed for various ballot initiatives and called a special election – an effort dubbed “The Year of Reform.”<sup>8</sup> Three of the five initiatives first proposed by the governor were aimed at public-sector unions. One was aimed at teacher “tenure” in K-12 and would have raised the apprentice period for teachers from two to five years. The powerful California Teachers Association felt targeted by this initiative. Another – aimed more generally at public sector unions who tend to support Democratic candidates – was a “paycheck protection” proposal (similar to one rejected by voters in 1998). It would have required unions to obtain permission individually from members before spending money on political activity.<sup>9</sup>

There was to be a third initiative related to public workers that would have cut pensions for new hires in the public sector. But that one was pulled before it reached the ballot due to its adverse impact on survivor benefits and the resultant negative publicity. Two other initiatives were aimed at giving the governor more control of the state budget during periods of financial distress and at redistricting the legislature.

All of the governor's four initiatives that were on the 2005 ballot went down to defeat and he then dropped the issues they entailed and focused instead on infrastructure bonds in the 2006 gubernatorial election year. After being re-elected, he also turned to a proposed California health plan to cover the uninsured. Nonetheless, the governor's prior focus on public-sector unions – and their prominent activity in defeating the 2005 initiatives – suggests that the union role in state politics could be usefully examined. Do unions use the initiative process to obtain goals in public policy? Or do they just fight defensive battles against initiatives they don't want passed and look for positive results through other political channels?

### **A Statistical Portrait of California Unionization**

Private-sector unionization – defined as the proportion of wage and salary workers represented by unions – in the U.S. has been on the decline as a percentage of the relevant workforce since the 1950s. The decline became particularly marked in the 1980s. As Chart 1 shows, the unionization rate was below one tenth in the private sector – nationally and in California – by 2006.<sup>10</sup> In contrast, public-sector unionization has floated around 40% and did not exhibit the big slide found in the private sector in the 1980s.

California has been more union-friendly than the nation as a whole, as can be seen on Chart 1. Indeed, a preliminary analysis of unionization based on partial 2007 data suggests the rate may have risen in California.<sup>11</sup> The state has relatively limited authority to regulate labor relations in the private sector since federal legislation generally pre-empts state regulation. But in the public sector, the state is the prime regulator and the public unionization rate in California is notably higher than the U.S. national average.<sup>12</sup>

Chart 2 provides a more detailed breakdown of private unionization in California relative to the U.S. The private unionization rate in California manufacturing is below the national average. At one time the state had a considerable presence in heavy manufacturing industries such as automobile assembly, tires, aerospace, and steel. These activities had considerable union presence starting with the Great Depression. But a substantial portion of the jobs in those sectors disappeared in California in the 1980s and after – in part under the pressure of international competition and in part due to the end of the Cold War. Unionization in the state tends to be higher than the national average in the rest of private employment in such sectors as construction, health care, hotels, building services, and retail food stores.

The result of de-unionization in the private sector has led to the notable contrast between the composition of general employment in California and the union sector. As Chart 3 shows, a bit more than half of all union-represented workers are in the public sector in the state. Some of those workers are federal employees – notably in the U.S. Postal Service – but the bulk of them are employed by state and local entities. In contrast, public employment accounted for only 15% of total California in 2006. Thus, although the stereotype of a union worker as a factory worker or “hard hat” is still prevalent, a school teacher might be a more accurate image today.

## Strike Activity

In recent years, major strike activity has also been concentrated in public employment in California. The U.S. Bureau of Labor Statistics tracks work stoppages involving 1,000 or more employees. Table 1 shows the stoppages occurring in California in 2005 and 2006. The public-sector strikes in that period were generally of short duration. But sometimes public-sector strikes can be longer. For example, a transit strike in Los Angeles in 2003 lasted more than a month.

Many public jurisdictions in the U.S. forbid or tightly limit strikes of their own workers – including the federal government. Usually, an alternative mechanism is included in the relevant labor laws to resolve contract impasses such as some form of compulsory arbitration. California, however, does not generally prohibit strike activity by public workers except those involved in public safety. And its mechanisms for dispute settlement generally are limited to mediation and, in some instances, cooling off periods and constrained fact-finding.

## Contract Coverage

Apart from its work stoppage data, U.S. Bureau of Labor Statistics also maintains a file of collective bargaining contracts – private and public – covering 1000 or more workers.<sup>13</sup> Contracts from California can be separated out from this database and analyzed. Chart 5 shows a distribution of employment covered by these contracts in the private sector. Construction, retail food, and entertainment stand out as major unionized sectors.<sup>14</sup> Chart 6 breaks down unionized employment by union in the private sector. Union acronyms are shown in Appendix A. Given the known industrial distribution of union-represented workers, it is not surprising that unions that are concentrated in those sectors are prominent on the chart. However, the Service Employees (SEIU) is also prominent, representing workers in health care and in building services (such as janitors and guards).<sup>15</sup>

A corresponding breakdown of union employment in the public sector is provided in Charts 7 and 8. The major public activities covered by major union contracts are education, general government, and public safety. The SEIU particularly stands out in public employment. Educational unions such as the National Education Association (NEA) which is the California Teachers Association – CTA – in the state, AFT, and UTLA (jointly affiliated with AFT and CTA) are also important. In terms of political influence, size is not the only factor in strength. CCPOA, representing state prison guards, has had considerable influence in the legislature.

Unions until recently were either affiliated with the national AFL-CIO or independent. But in 2005, several unions formerly affiliated with the AFL-CIO split off into a new organization – Change-to-Win – in a dispute over appropriate organizing tactics and other issues. The split seemed to have had little practical immediate effect in California on either ongoing labor negotiations with particular employers or inter-union cooperation in political matters. Within Change-to-Win, the SEIU – which as noted above is particularly prominent in California – has played a dominant role. The affiliation of the unions listed in Appendix A is indicated. Note that UNITE HERE – the supporter of the Indian gaming referenda described in the introduction – is a Change-to-Win affiliate. Unions in Change-to-Win argue that they are open to non-traditional approaches to union organizing and bargaining.

## **Initiatives and Referendums**

Under direct democracy, the electorate has the opportunity to enact legislation or constitutional amendments it proposes (initiatives) and to repeal laws previously enacted by the Legislature (referendums).<sup>16</sup> Voters may also decide on matters proposed by the Legislature – often bond measures – but those decisions are not initiated by a public petition process. There have been ups and downs in the level of activity of direct democracy. Proposition 13 of 1978 – an initiative that sharply cut property taxes and limited state and local tax-raising ability – seemed to mark an upsurge in interest in the use of such procedures.

Prop 13 is usually viewed as the birth of the “taxpayer revolt” since prior initiatives limiting taxes or spending had failed, including one sponsored by Governor Ronald Reagan in the 1970s.<sup>17</sup> Thus, direct democracy has tended to have an image of a device for the facilitation of right-wing populism. Since unions are often identified with liberal social positions, it might be expected that they would shy away from use of direct democracy. But on the other hand, unions have many members and the ability to communicate with those members. Having petitions signed – as a practical matter, about a million signatures are often needed – would seem to be a task they could more easily carry out than other interest groups.<sup>18</sup>

Absent broad memberships, other groups – such as business interests – typically must hire signature-gathering firms, often at \$1-\$2 per name, to put something on the ballot. Apart from members, unions also have funds raised from dues and through political action committees that can be used to support political campaigns. Given these features, it might be expected that unions would make active use of direct democracy.

## **The Database**

The University of California Hastings College of the Law maintains a database of initiatives and another of all propositions (including those placed on the ballot by the Legislature).<sup>19</sup> The database covers the entire history of ballot propositions ending in 2001. Because Prop 13 seemed to be the trigger for renewed interest in direct democracy, initiatives on the ballot from 1978 to 2001 were examined. A total of 112 initiatives – whose outcomes are summarized on Chart 9 – actually made it through the petition/signature process. Forty-one percent of these were passed, although some were at least partly invalidated through subsequent litigation. Fifty-six percent failed at the ballot box with the remainder removed from the ballot before Election Day by court action.

## **Initiative Classification**

The terms “liberal” and “conservative” can have various meanings. An attempt was made to categorize each initiative in the database by those labels where possible. Generally, “liberal” initiatives were those which tightened or raised labor or environmental standards, increased public spending, or raised taxes. Conservative initiatives went in the opposite direction in those areas or emphasized wedge issues such as blocking illegal immigration, halting affirmative action, or banning gay marriage. Some initiatives, e.g., propositions to enable Indian gaming, were not readily classified as liberal or conservative. Admittedly, the standards used in

classifying each initiative have a significant subjective element. Nonetheless, as Chart 10 shows, the image of ballot initiatives as exclusively conservative does not hold up.

However, the conservative image is somewhat strengthened by ballot outcomes as opposed to mere placement on the ballot. Conservative initiatives had a 56% pass rate, compared with 35% for liberal initiatives and 26% for those not classified. Thus, as Chart 11 shows, 52% of *enacted* initiatives were conservative, 35% were liberal, and 13% were not classified. Since people are more likely to remember initiatives that were passed, it is not surprising that the conservative image is prevalent.

### **Initiative Backing**

Unfortunately, the Hastings database does not include direct information on what group instigated the various initiatives. It does, however, reproduce the ballot arguments. These arguments are signed by official supporters – typically indicating the organization they represent – and opponents (also with affiliation). In addition, the arguments themselves may cite other groups that have official positions on the proposals, pro or con. Thus, it was possible to tell if unions were among the official supporters or opponents.<sup>20</sup>

As Chart 12 shows, unions were involved (on one side or the other or on both sides) in four of ten initiatives. (In a few cases, the database does not reproduce the ballot arguments and the supporters and opponents could not be identified.) Chart 13 suggests unions were more likely to be on the defensive when they were involved in an official capacity. Where there was such union involvement, unions exclusively opposed six out of ten initiatives and exclusively supported only about a fourth. In the remaining cases, individual unions lined up on both sides, pro and con.

When there was union involvement (again, defined by an official position in the ballot arguments), unions were mainly likely to be against the conservative initiatives if they took a position as Chart 14 illustrates. In both conservative and liberal cases, unions were uninvolved in about half the initiatives. But their involvement was more heterogeneous in the liberal cases as shown on Chart 15 with exclusive support in about a fourth of the initiatives and exclusive opposition about one tenth of the time. Another tenth featured unions on both sides. Unions were least involved in the not classified group; Chart 16 indicates there was official involvement in only one fifth of those initiatives.

Chart 17 suggests that when unions supported initiatives exclusively, the pass rate was little different from the overall pass rate. When they opposed initiatives – Chart 18 – the pass rate was somewhat less than the average. However, given the loose definition of union involvement, it would be difficult to conclude from these data alone in any rigorous sense that the pass rate was drastically affected by union involvement in either direction. For example, the data do not indicate the intensity of involvement including the application of money and other resources.

It is possible that unions have a sense that the direct democracy alternative yields more success for conservatives than liberals – and there is some evidence of that. They may also

believe that it is easier to block something than to put it across, an idea also loosely supported. It may also be the case that the kinds of goals unions have are either not readily addressable at the state level or are better addressed by the traditional focus on electing friendly candidates and lobbying at the Legislature. However, the database suggests union participation on one side or the other in less than half of all initiatives on the ballot. And within those in which they participated, they were for the initiative exclusively (not on both sides or against) in around a fourth. So unions seemed to be positive (unified) initiators or supporters in less than one eighth of the cases despite what would seem to be an ability to engage in grass-roots and financial support of ballot propositions.

### **Notable Wins**

Three enacted initiatives which did have unified labor support stand out from the others in terms of impact. In the 1988 general election, the California Teachers Association (CTA) pushed Prop 98 which imposed constitutional minimum funding guarantees for K-14 education. Prop 98 has played a major part in state budgeting since that time. And during budget crises, when governors have wanted to enact emergency budgets providing less than the formulas would normally provide, CTA becomes a major player in the legislative negotiations. CTA also endorsed a successful bond issue for school construction in 1998 linked to the popular class size reduction movement. Of course, in both these examples, the union was able to capitalize on public support for education.

However, unions have had some success with more narrowly focused initiatives. In the late 1980s, Governor George Deukmejian attempted to abolish Cal-OSHA, the agency that enforces labor safety and health laws. Absent Cal-OSHA, enforcement activity – but likely at a lower level – would have devolved to federal OSHA. Prop 97 in the 1988 general election – endorsed by the California Federation of Labor – revived Cal-OSHA.<sup>21</sup> Cal-OSHA has operated since that time.

Apart from the specifics of particular ballot initiatives, a demonstrated ability to put issues on the ballot and have them enacted creates more general political leverage. The threat can always be that if a deal isn't reached on some policy through the legislative or regulatory process, the issue will go on the ballot instead, perhaps in some form more distasteful to opponents than an offered compromise. The union groups most active in the initiative process have been teachers, nurses, and protective service workers (police and fire). They also have been active in the traditional legislative process and in endorsing candidates for public office. Because these groups represent popular causes (education, health, public safety), they have an advantage in the realm of direct democracy as well as in more standard politics. But nothing is guaranteed in initiative politics. Prop 98 mentioned above passed with 50.7% of the vote, a very small margin.

### **Narrower Interests**

It is not always possible to take advantage of popular causes, even when these are linked to more parochial labor interests. The United Food and Commercial Workers (UFCW) sponsored a ballot initiative in 1982 that required cash deposits on beverage containers. On the



face of it, this initiative – designed to encourage recycling – had an environmental appeal. And since the bottles and cans involved would have been returned for processing to supermarkets, UFCW – which represents supermarket workers – would have benefited its membership. On the other hand, the deposit had a tax-like ring to it in a period when the taxpayer revolt was still strong and the initiative failed to pass.

Similarly, outsourcing raises fears of job displacement. Prop 224, endorsed by a union representing state engineers and scientists, sought to curtail state outsourcing of designing of construction contracts. But opponents (including construction unions with an obvious job interest in public projects) argued that the limits imposed by the proposition would engender delay and higher costs. In the end, the opponents prevailed and the limit on outsourcing failed by a large margin.

### **What Do Unions Want?**

Many goals of unions are not readily amenable to resolution in the political process. On a day-to-day basis, they are involved in negotiating contracts with employers for their members and handling member grievances. Particularly in the private sector where – as noted above – close to half of all union-represented workers in California reside – there are limits to what impact state and local public policy can have. Market forces and federal preemption in many forms of policy limit the scope for any resort to state and local action. And even where state and local action might further a union interest, it might be difficult to formulate that interest in ways that would be appealing to a popular vote.

### **Private Sector: Agriculture**

As noted above, for the most part, private-sector labor relations are regulated by federal statutes. However, agriculture is excluded from federal regulation and in 1975 California enacted the Agricultural Labor Relations Act, a law modeled after the federal National Labor Relations Act as amended.<sup>22</sup> The primary union actor at the time was the United Farm Workers (UFW) under the charismatic leadership of César Chávez, a union which had attracted considerable public sympathy and had mounted a rather successful boycott of nonunion grapes. A year after the legislation passed, the union pushed a ballot initiative – Proposition 14 – to make the law’s technical features more amenable to union organizing. However, the initiative failed by a wide margin – suggesting that initiatives that appear narrowly focused on the details of labor relations law are likely to be difficult to pass.

The UFW itself fell into hard times in the 1980s, in part because Chávez himself seemed more capable of organizing a social movement than administering an ongoing organization and in part because appointees to the Agricultural Labor Relations Board (ALRB) under Governor Deukmejian were less union-friendly than those appointed previously. The ALRB itself is not an especially active agency – as its workload on Table 2 suggests. A series of articles in the Los Angeles Times under the general heading “UFW: A Broken Contract” depicted a union that was less focused on organizing than on a series of charitable foundations and fundraising.<sup>23</sup> A subsequent investigation into the foundations by the attorney general found no illegal activity but “the appearance of impropriety.”<sup>24</sup> However, the union has had some successes in the 2000s in

traditional organizing and negotiating. The union claims 27,000 workers are employed under its contracts at least one day a year nationwide.<sup>25</sup> Its actual membership is likely well under 10,000.

To the extent that the UFW has sought public policy changes in recent years, it has been through the legislature rather than via the ballot box. For example, legislation (SB 180 and a related SB 650) was sent to Governor Schwarzenegger in 2007 requiring employer recognition of a union through a “card check” procedure rather than by an election sponsored by the ALRB. At this writing, it is unknown if the governor will sign the bill although it seems unlikely he would do so. The union was more successful under Governor Gray Davis who signed a bill in 2002 which provides for a form of binding arbitration in certain “first contract” disputes.<sup>26</sup>

Although other unions have done some organizing in the agricultural field, of the 43 cases reported on Table 2, the UFW was involved in 29 in one way or another.<sup>27</sup> Since its failure to enact a ballot proposition in 1976, the UFW has not engaged in direct democracy initiative activity in any prominent way. While it seems unlikely – in part based on the 1976 episode – that the union could succeed in using the ballot to enact detailed changes in relevant state labor relations law, it might form alliances in the environmental area, e.g., chemical or pesticide exposure concerns. State water policy and potential water markets or new water infrastructure is also likely to be on the ballot. So far, however, alliances between the UFW and other groups with interests in such matters have not materialized related to specific voter initiatives.<sup>28</sup>

### **Private Sector: Federally-Regulated**

For private sector industries apart from agriculture, labor relations are primarily regulated at the federal level. But there are other areas – outside strict labor relations policy – in which state and local policy can be important. The degree to which state or local action matters varies substantially across sectors. Virtually any industry can be affected by zoning policy, largely a local matter but one whose scope is subject to state law. Air quality and other environmental regulation can affect many components of manufacturing industry, for example. Employers and unions in manufacturing also have concerns about such state policies as Workers Compensation costs and benefits, unemployment insurance, and – if the state ultimately moves in a decisive way – a California health insurance plan.<sup>29</sup>

For many issues of concern to major private industries, state action – particularly at the ballot box – is unlikely to be key. The once prominent California aerospace industry – to take a heavy manufacturing case - is now a shadow what it was at the Cold War peak. Only one major aircraft assembly plant – now operated by Boeing – remains in Long Beach with a production workforce represented by the United Auto Workers (UAW).<sup>30</sup> Its future is uncertain. Policies regarding military aircraft and related products are largely decided in Washington, D.C. The commercial side of aerospace reflects the ups and downs of the airline industry worldwide and competition from foreign sources, notably Airbus. Similarly, although the major auto manufacturers had a presence in California at one time, the only operating assembly plant left in the state is a joint Toyota-GM venture in the Bay Area with about 5,500 workers.

And, indeed, one can analyze the day-to-day bargaining concerns and market conditions of most private industries as being outside the realm of direct democracy. In the entertainment sector, to take another example, unions such as the Screen Actors Guild (SAG) and the Writers Guild of America (WGA) in the creative end of the business have pushed an agenda of increased revenue sharing from new distribution channels (videos, internet, even cell phones) that technology has made possible. New forms of entertainment – e.g. reality TV – have raised concerns among writers about unionized job opportunities in traditional shows being displaced. Unions representing “below the line” activities (stage hands, etc.) have been concerned with “runaway” production – sometimes to other states and sometimes to other countries which may provide subsidies.

In many cases, the State of California has little it can do to address such concerns. In other instances, whatever remedies there might be are more likely to be addressed through legislative contacts and regulatory decisions rather than the direct state ballot box. Sometimes, the locus of decision making that could matter is local rather than state. For example, airlines utilize local airports which are generally run by municipal authorities rather than the state. And private major construction projects are often green-lighted (or not) at the local level. Ballot measures at the local level sometimes have been used by one side or another when issues arise over new developments. In such instances, concerns put forward to voters deal with environmental or traffic impacts, tax base impacts, competition with existing local businesses, etc.<sup>31</sup>

However, as the introduction to this chapter suggests, the state direct democracy process could play a role in some disputes. The dispute between UNITE HERE and various Indian tribes over provisions for labor organizing and labor relations is in a sense local; each affected casino/hotel operates in a specific geographic area. But because the state is involved in signing and ratifying compacts, the referendum option at the state level came into play.<sup>32</sup>

## **The Public Sector**

Since public sector unions deal directly with government – including the state and/or state funded activities at the local level – there would seem to be even greater potential for the exercise of influence through direct democracy by such unions. In addition, much of the purely local bargaining that occurs is regulated in one way or another through state labor relations law. As Table 3 shows, the California Public Employment Relations Board (PERB) – which handles much of the regulation of governmental labor relations in the state – is a much more active entity than the Agricultural Labor Relations Board.<sup>33</sup>

Despite their closer connection with state business, public employee unions – if they want to take advantage of direct democracy – have to find issues of public appeal. Certain groups – police, fire, nurses, teachers – tend to elicit more public sympathy than others. The functions carried out by these groups – public safety, health, children’s education – are obvious matters of public concern. And, as noted earlier, these groups have tended to be more active in direct democracy than others. However, there are other issues such as budgets for particular activities or limits on outsourcing which could be posed in politically appealing ways.

The kinds of conservative issues that have tended to pass in the database used previously are tax limits (although not necessarily sin taxes such as tobacco), crime restriction (although not necessarily related to drug use), what might be termed traditional value protection (definition of marriage, use of English, immigration restriction), and restrictions on the legislature. On the liberal or not-easily-classified side, there are environmental controls, educational enhancement, transportation improvement, regulation of industries seen by the public as acting abusively, animal protection, and labor standards (minimum wage, worker safety and health).

Thus, while public sector unions are unlikely to achieve direct bargaining goals – “pay me more” – through direct democracy, framing of issues and alliances with other interest groups can achieve more general objectives. The California Teachers Association in alliance with school boards and other education interest groups was successful in enacting Prop 98 in 1988 – which as noted earlier has provided a floor on K-14 state spending ever since. But other public sector unions have generally not been as proactive as CTA, despite this prominent example.

## **Conclusion**

California has had direct democracy for almost a century. The kinds of issues that have been on the ballot have ranged across the liberal-to-conservative spectrum. However, conservative-oriented initiatives have tended to be more successful than liberal, at least since the taxpayer revolt of the late 1970s. Despite their decline in the private sector, labor unions in California represent an absolutely large number of workers and have the potential – with well over 2 million members - for grass-roots campaigning. California unions have tended, however, to focus on traditional candidate endorsements and legislative lobbying and have sometimes end up on the defensive in initiative campaigns. The decision by UNITE HERE to file referendums in 2007 in the case of Indian gaming compacts – whatever the outcome of that particular effort – could signal a shift toward more active use of direct democracy by organized labor in California.

Chart 1: Union-Representation Rates: California vs. U.S.: 2006

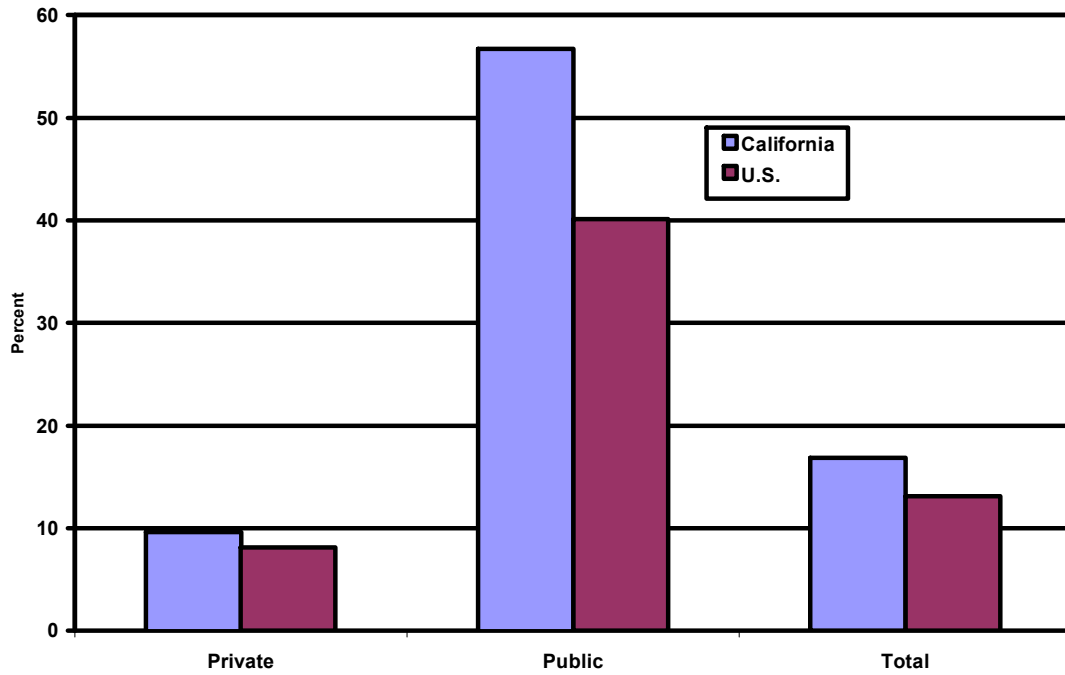


Chart 2: Union Representation Rates by Sector: California vs. U.S. 2006 (Percent)

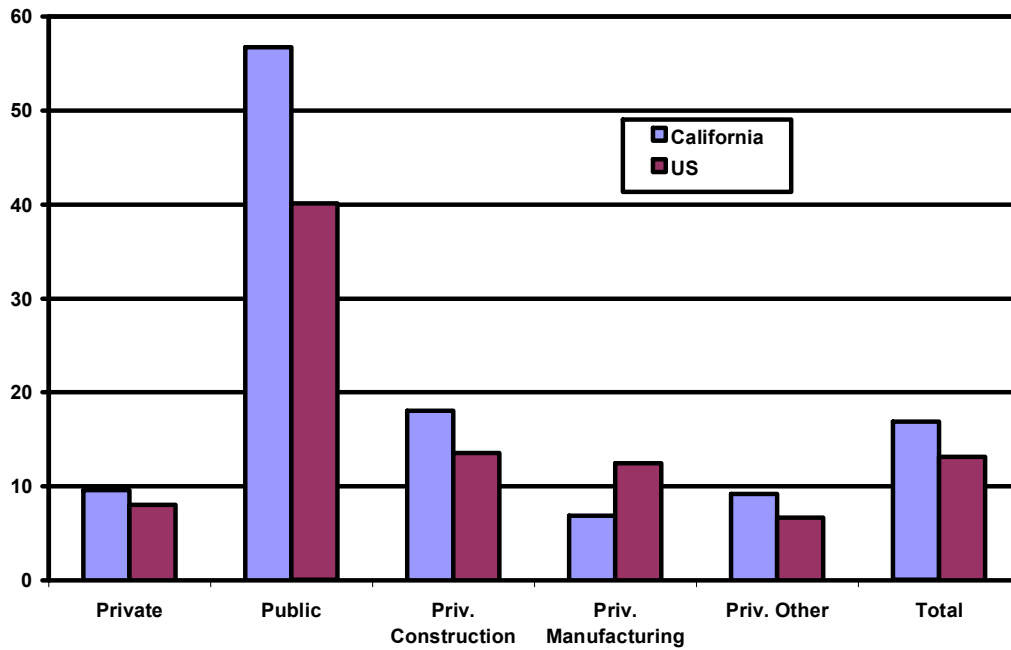


Chart 3: Distribution of Union-Represented Employment: California 2006

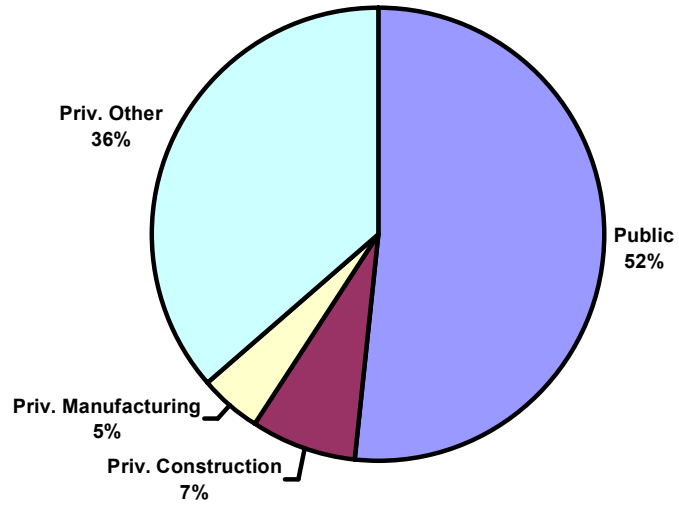


Chart 4: Distribution of California Wage and Salary Employment by Sector: 2006

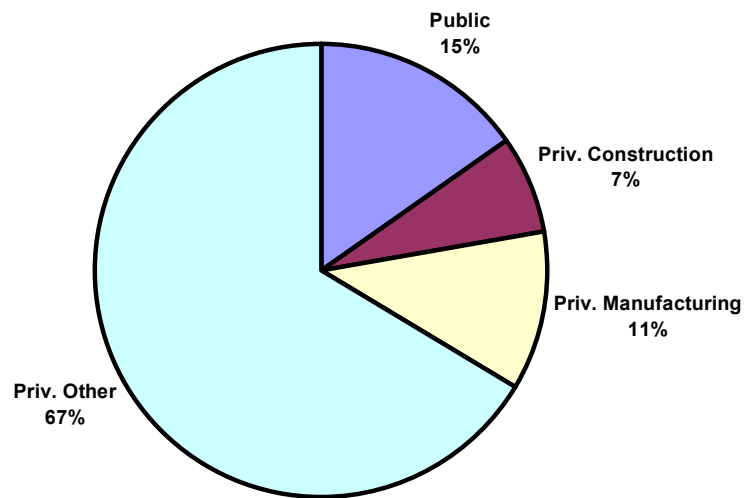


Chart 5: Major Private Union Contract Employment Coverage By Sector

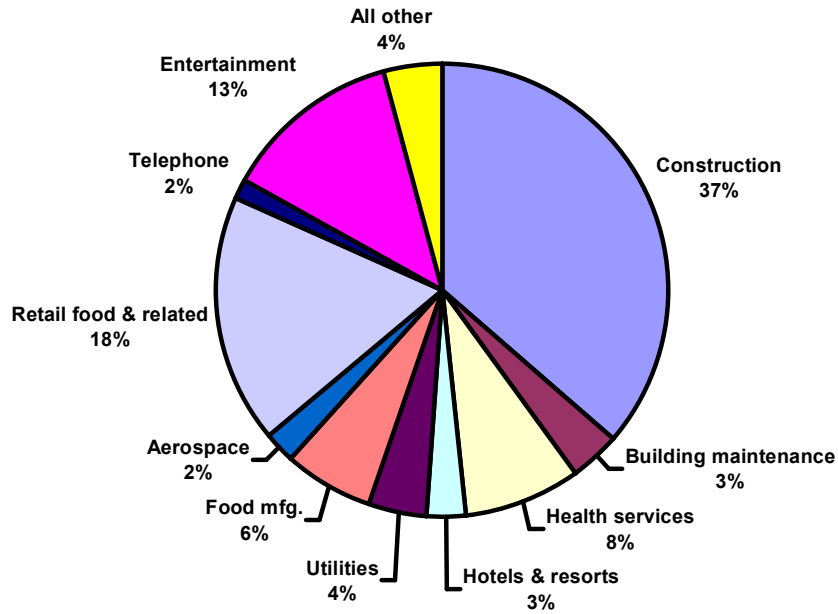


Chart 6: Major Private Union Contract Employment Coverage By Union

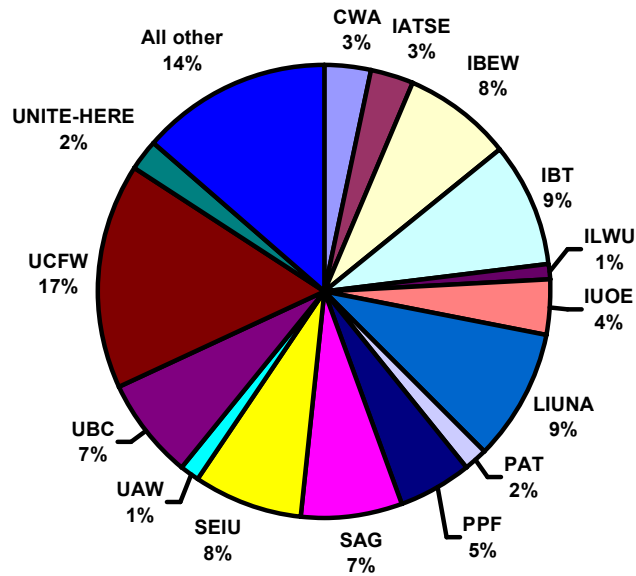


Chart 7: Major Public Contract Coverage: Sector

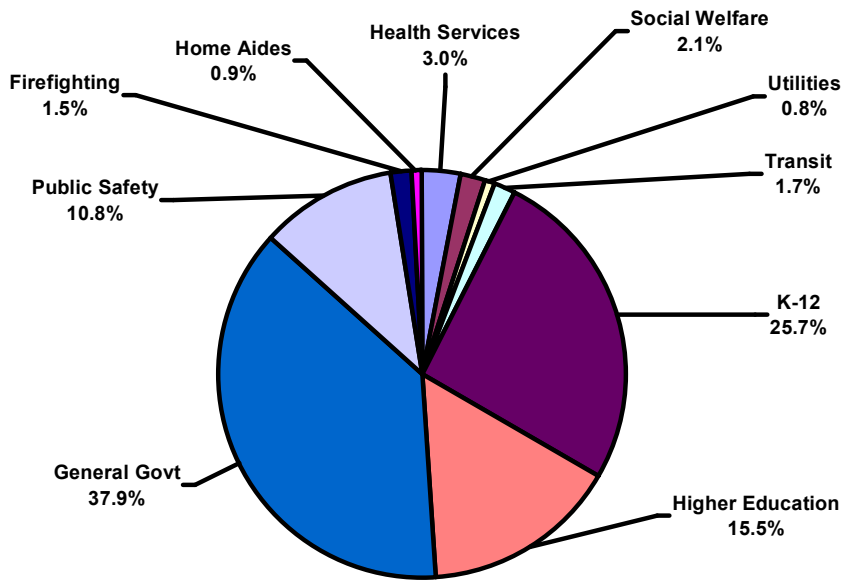


Chart 8: Public Major Contract Coverage: Unions

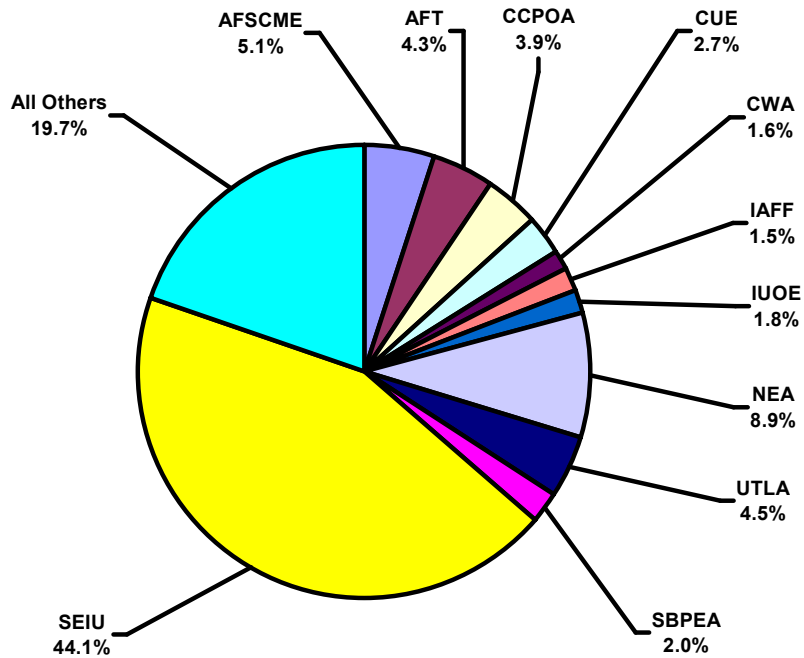




Chart 9: Initiative Outcomes

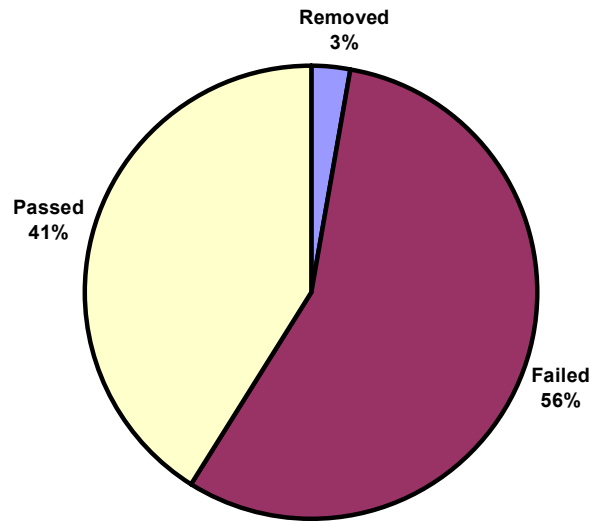


Chart 10: Initiative Type

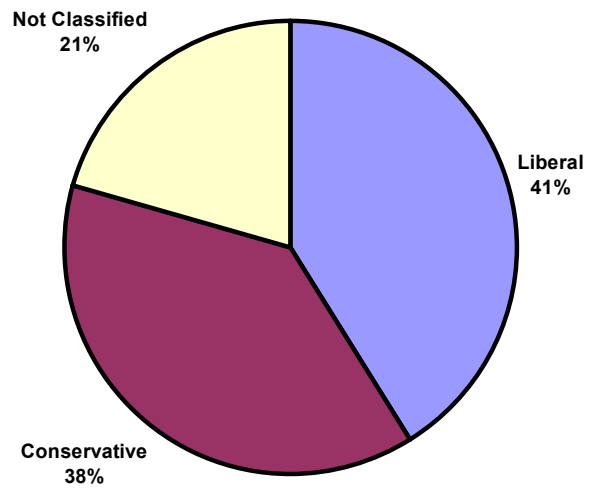


Chart 11: Type of Enacted Initiatives

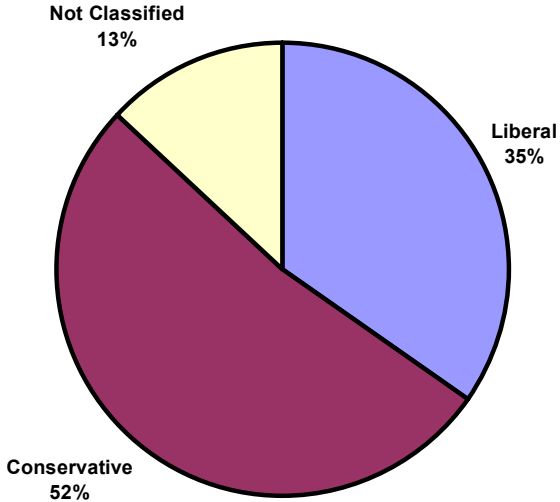


Chart 12: Union Initiative Participation

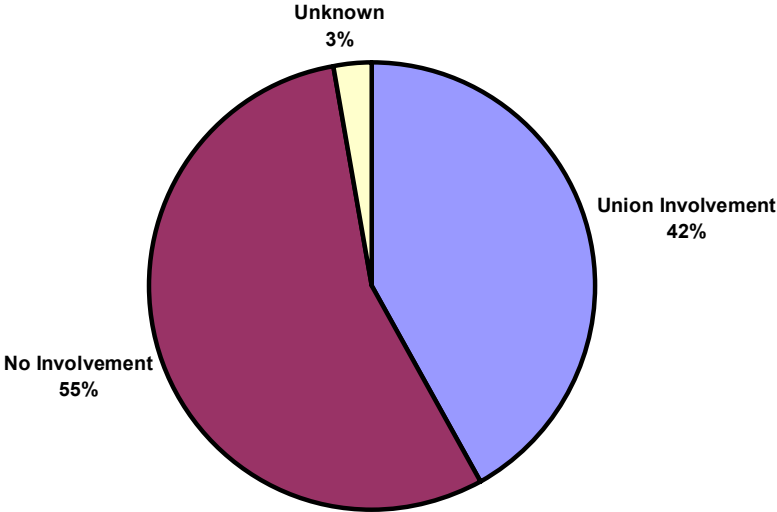


Chart 13: Union Initiative Involvement

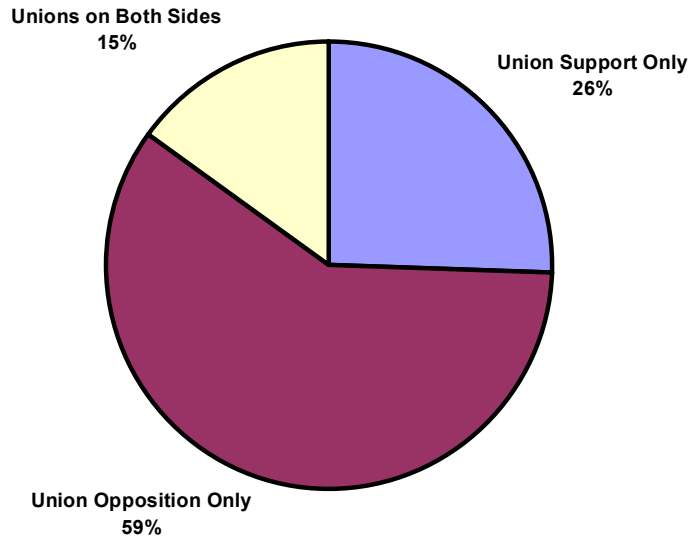


Chart 14: Union Involvement in Conservative Initiatives

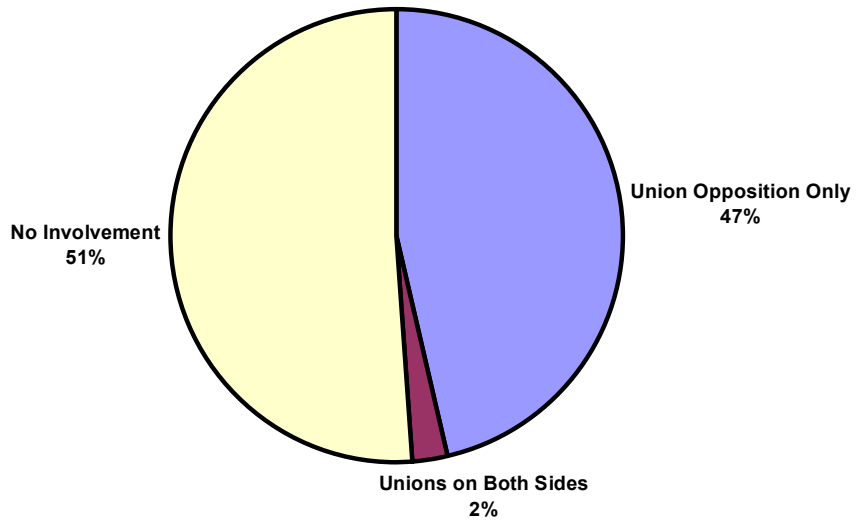


Chart 15: Union Involvement in Liberal Initiatives

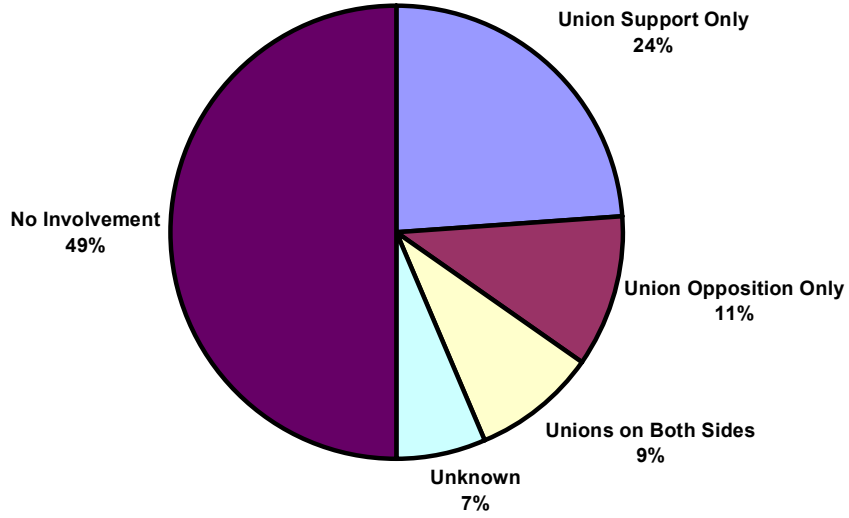
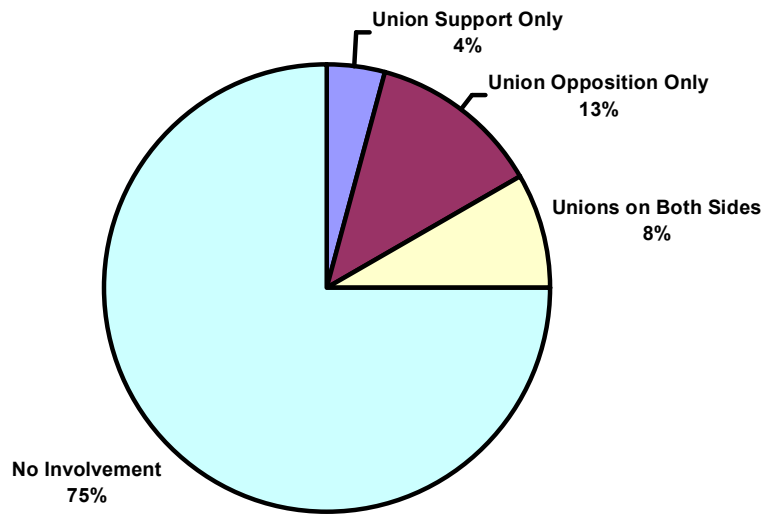
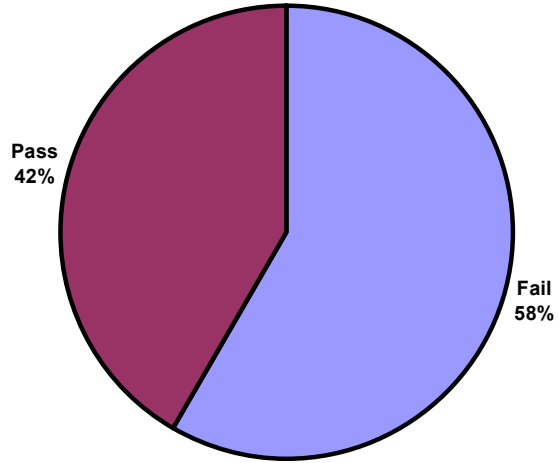


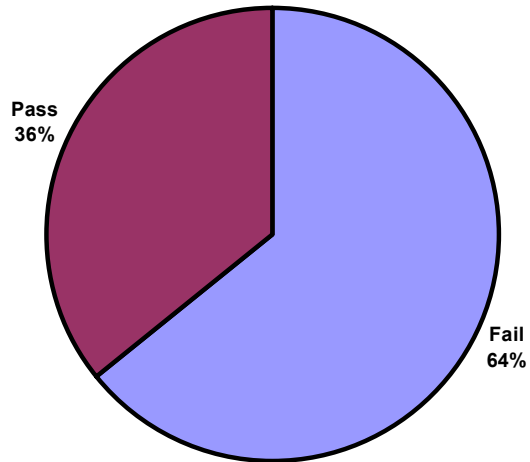
Chart 16: Union Involvement in Initiatives Not Classified as Liberal or Conservative



**Chart 17: Outcomes of Initiatives With Union Support Only**



**Chart 18: Outcome of Initiatives With Union Opposition Only**



**Table 1: Major California Work Stoppages<sup>34</sup>**

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2005:<sup>35</sup>

University of California and AFSCME, April 14-15, 7000 workers

University of California and CUE, April 14-15, 2000 workers

Los Angeles Hotel Employers Council and UNITE-HERE, June 9-11, 2400 workers

2006:

Santa Cruz County government and SEIU, March 14-15, 1600 workers

Contra Costa County government and SEIU, AFSCME, and other unions, June 27-28, 6000 workers

City of Los Angeles and Engineers and Architects Association, August 22-23, 7500 employees

Sacramento County government and AFSCME and other unions, September 5-18, 3900 workers

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Note: Union acronyms can be found in Appendix A.

Source: U.S. Bureau of Labor Statistics, Press releases 07-0304 (February 2007) and 06-363 (March 2006).

**Table 2: Decisions and Orders of the California Agricultural Labor Relations Board: Calendar 2000-2007**

| Year | Number of Cases |
|------|-----------------|
| 2000 | 5*              |
| 2001 | 5               |
| 2002 | 9               |
| 2003 | 6**             |
| 2004 | 2               |
| 2005 | 6               |
| 2006 | 6               |
| 2007 | 4***            |

\*One case listed was reported as set aside and remanded.

\*\*One case listed was reported as vacated.

\*\*\*Through August.

Source: Annual Reports of the California Agricultural Labor Relations Board, available at [www.alrb.ca.gov](http://www.alrb.ca.gov).

**Table 3: Elections Held and Unfair Labor Practice (ULP) Filings of the California Public Employment Relations Board: Fiscal Year 2000-01 – 2005-06**

| Year    | Elections Held | ULPs Filed |
|---------|----------------|------------|
| 2000-01 | 63             | 461        |
| 2001-02 | 28             | 935*       |
| 2002-03 | 19             | 802        |
| 2003-04 | 13             | 835        |
| 2004-05 | 16             | 1126*      |
| 2005-06 | 14             | 1012       |

\*Total affected by multiple filings of individual charges by same employee group.

Note: Elections involve representation, decertification, approval or removal of agency shop, severance of a group from a prior bargaining unit, or modification of an existing unit.

Source: Annual Reports of the California Public Employment Relations Board, available at [www.perb.ca.gov](http://www.perb.ca.gov).

## Appendix A: Union Acronyms

- AFL-CIO: American Federation of Labor – Congress of Industrial Organizations
- AFSCME (AFL-CIO Affiliate): American Federation of State, County and Municipal Employees
- AFT (AFL-CIO Affiliate): American Federation of Teachers
- CCPOA (Independent): California Correctional Peace Officers Association
- CTA: See below under NEA.
- CUE (Independent): Coalition of University Employees
- CWA (AFL-CIO Affiliate): Communications Workers of America
- IAFF (AFL-CIO Affiliate): International Association of Fire Fighters
- IATSE (AFL-CIO Affiliate): International Alliance of Theatrical Stage Employes, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada
- IBEW (AFL-CIO Affiliate): International Brotherhood of Electrical Workers
- IBT (Change-to-Win Affiliate): International Brotherhood of Teamsters
- ILWU (AFL-CIO Affiliate): International Longshore and Warehouse Union
- IUOE (AFL-CIO Affiliate): International Union of Operating Engineers
- LIUNA (Change-to-Win Affiliate): Laborers International Union of North America
- NEA (CTA) (Independent): National Education Association (California Teachers Association)
- PAT (AFL-CIO Affiliate): International Union of Painters and Allied Trades of the United States and Canada
- PPF (AFL-CIO Affiliate): United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada
- SAG (AFL-CIO Affiliate): Screen Actors Guild
- SBPEA (Independent): San Bernadino Public Employees Association
- SEIU (Change-to-Win Affiliate): Service Employees International Union
- UAW (AFL-CIO Affiliate): United Automobile, Aerospace & Agricultural Implement Workers of America International Union
- UBC (Change-to-Win Affiliate): United Brotherhood of Carpenters and Joiners of America
- UFW (Change-to-Win Affiliate): United Farm Workers of America
- UCFW (Change-to-Win Affiliate): United Food and Commercial Workers
- UNITE HERE: (Change-to-Win Affiliate): Union now just uses the acronym as its name. It is an amalgamation of the former Hotel Employees & Restaurant Employees (HERE) and the Union of Needletrades, Industrial and Textile Employees (UNITE).
- UTLA (Joint Affiliate of NEA-CTA and AFT): United Teachers Los Angeles



## Footnotes

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<sup>1</sup> The Act's regulatory agency is the federal National Labor Relations Board (NLRB). In May 2004, the NLRB claimed jurisdiction over an Indian casino, reversing an earlier position, in *San Manuel Indian Bingo and Casino and Hotel Employees & Restaurant Employees International Union, AFL-CIO, CLC and Communication Workers of America AFL-CIO, CLC, Party in Interest and State of Connecticut, Intervenor*, 341 NLRB No. 138, 2004. The NLRB's position was upheld on appeal in *San Manuel Indian Bingo & Casino v. N.L.R.B.*, No. 05-1392A (D.C. Cir. February 9, 2007).

<sup>2</sup> HERE and now UNITE HERE represents employees in Las Vegas hotels and casinos which are competitive to some extent with the California Indian operations. The union also represents workers in major hotels in Los Angeles, San Francisco, and many other areas around California and the U.S.

<sup>3</sup> Most federal and state laws set up a procedure of representation elections to determine if a group of workers wants to be represented by a particular union. A card-check procedure is an alternative. Employers are generally free to recognize a union by card check but they are not compelled to do so. Unions argue that card check is freer from employer intimidation than the election approach. Employers argue that elections are a more reliable index of worker sentiment and allow the employer to communicate its opposition to union representation.

<sup>4</sup> There was considerable pressure on California Assembly Speaker Fabian Núñez not to approve the compacts or to add some conditions by labor unions. (Núñez has a union background – he was political director of the LA County Federation of Labor in the late 1990s - and had enjoyed earlier union political support.) For a variety of reasons, however, he did approve the compacts.

<sup>5</sup> The compacts are with the Agua Caliente Band of Cahuilla Indians, the Pechanga Band of Luiseño Indians, the Morongo Band of Mission Indians, and the Sycuan Band of the Kumeyaay Nation, and allow added slot machines.

<sup>6</sup> John H. Laslett, "Playing Catch-Up: The Labor Movement in Los Angeles and San Francisco, 1985-2005," chapter in this volume. A history of the progressives in the context of state budgetary policy can be found in Tom Laichas, "This Old House: Under the Floorboards with the California State Budget" in Daniel J.B. Mitchell, *California Policy Options 2003* (Los Angeles: UCLA School of Public Policy and Social Research, 2003), pp. 51-61.

<sup>7</sup> Edmund D. Edelman and Daniel J.B. Mitchell, "Dealing With Public-Sector Labor Disputes: An Alternative Approach for California" in Daniel J.B. Mitchell, ed., *California Policy Options 2005* (Los Angeles: School of Public Affairs, 2005), pp. 151-179; Edmund D. Edelman and Daniel J.B. Mitchell, "Binding-Nonbinding Arbitration: A New Process to Resolve Interest Disputes," *California Public Employee Relations Journal*, February 2004, pp. 6-14.

<sup>8</sup> Daniel J.B. Mitchell, "'They Want to Destroy Me': How California's Fiscal Crisis Became a War on 'Big Government Unions,'" *WorkingUSA*, vol. 9 (March 2006), pp. 99-121.

<sup>9</sup> The 1998 initiative covered all unions, public and private. The 2005 initiative focused on public-sector unions although there was some ambiguity about its effect on unions with membership in both sectors.

<sup>10</sup> We use the proportion of workers represented by unions in this chapter to measure unionization. Some represented workers are not union members but are covered by union contracts. Under federal and state laws, workers who are represented but are not members receive the same pay and benefits negotiated by the union. Moreover, the union must represent them individually if they file grievances.

<sup>11</sup> The complete data for 2007 will not be available until early 2008. The 2007 analysis mentioned in the text is based on the first 6 months of the year. See Ruth Milkman and Bongoh Kye, "The State of the Unions in 2007: A Profile of Union Membership in Los Angeles, California and the Nation," available at <http://www.irle.ucla.edu/research/pdfs/unionmembership07-bw.pdf>.

<sup>12</sup> As will be noted below, federal labor relations law does not cover agricultural workers leaving that sector for the state to regulate. California has its own Agricultural Labor Relations Act as a result.

<sup>13</sup> Responsibility for keeping these files is being transferred to another agency – the Employment Standards Administration - within the U.S. Department of Labor. At the time the data used in this chapter were obtained, the files were available at: <http://www.bls.gov/cba/cbaindex.htm>. According to the Bureau, the files will remain at that address during the transition period.

<sup>14</sup> Some private contracts were interstate, i.e., they covered workers in California and elsewhere. In those cases, employment within California was divided equally among the states listed. This procedure is not precise and probably understates entertainment employment in particular.

<sup>15</sup> Since the database of major contracts excludes small contract situations, unions which represent many workers in such smaller contracts will be underrepresented in the data presented here. An alternative source from an earlier

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survey of unions in California can be found in Ruth Milkman and Daisy Fooks, "California Union Membership: A Turn-of-the-Century Portrait" in Ruth Milkman, ed., *The State of California Labor 2003*, vol. 2 (2003), pp. 3-37.

<sup>16</sup> The process is begun by submitting the proposed initiative or referendum to the California Attorney General. A fee of \$200 is required which is refunded if the item acquires sufficient signatures to appear on the ballot. The Attorney General will provide a title and summary of the item so that it can be circulated as a petition. In addition, the Legislative Analyst will provide an analysis of the impact of the item including its budgetary implications. Once approved for circulation, there is a deadline of 150 days to obtain the needed signatures. Signatures are validated by the California Secretary of State who also arranges the placement of the item on the ballot. For more details, see [http://www.sos.ca.gov/elections/initiative\\_guide.htm](http://www.sos.ca.gov/elections/initiative_guide.htm).

<sup>17</sup> Daniel J.B. Mitchell, "Governor Reagan's Ballot Box Budgeting: One That Got Away," *Southern California Quarterly*, vol. 89 (Summer 2007) pp. 195-227.

<sup>18</sup> An initiative involving legislation technically needed about 434,000 signatures of registered voters in 2007. Referendums to overturn legislation also required about 434,000 signatures. An initiative involving a constitutional amendment needed about 694,000 signatures. Because signatures on petitions are often found to be invalid, it is necessary to collect a significant margin above the official requirements.

<sup>19</sup> The initiative database is at:

<http://holmes.uchastings.edu/cgi-bin/starfinder/0?path=calinits.txt&id=webber&pass=webber&OK=OK>. The proposition database is at:

<http://holmes.uchastings.edu/cgi-bin/starfinder/0?path=calprop.txt&id=webber&pass=webber&OK=OK>. Both can be reached through the general website of the California Secretary of State: [www.ss.ca.gov](http://www.ss.ca.gov) or [www.sos.ca.gov](http://www.sos.ca.gov).

<sup>20</sup> This approach has obvious drawbacks. For example, Prop 210 in the 1996 general election raised the state minimum wage – but no unions are listed as supporters in the arguments for this successful initiative. Yet it is quite likely that unions played a significant role in putting the proposition on the ballot even though the vast majority of union members earn above the minimum and were not directly affected by the increase..

<sup>21</sup> For more in budgeting in the Deukmejian era (including the issue of Cal-OSHA), see Daniel J.B. Mitchell, "From Jerry-Built to Petered Out: Lessons from the Deukmejian Era for Contemporary California State Budgeting," chapter in this volume.

<sup>22</sup> The original National Labor Relations Act was enacted in 1935. Coverage of agriculture was excluded due to significant opposition by farm interests. Thus, there is no federal pre-emption in agriculture.

<sup>23</sup> The series ran in the *Los Angeles Times*, January 8-11, 2006.

<sup>24</sup> Judy Lin, "UFW Charities Probe is Closed," *Sacramento Bee*, December 27, 2006.

<sup>25</sup> [http://www.ufw.org/\\_page.php?menu=research&inc=\\_page.php?menu=research&inc=history/01.html](http://www.ufw.org/_page.php?menu=research&inc=_page.php?menu=research&inc=history/01.html).

<sup>26</sup> First contract disputes arise when a union is recognized by the employer for the first time (after a representation election) but no contract is successfully negotiated. The 2002 law was upheld in a court decision in 2006. See "California Court Upholds Constitutionality of State's Mandatory Interest Arbitration Law," *Daily Labor Report*, July 7, 2006.

<sup>27</sup> Some cases involve the UFW and other organizations.

<sup>28</sup> Note that UFW, like UNITE HERE (the union that pushed the Indian gaming referenda), is an affiliate of Change-to-Win.

<sup>29</sup> Unemployment insurance is a federal-state program, but the basic eligibility rules and benefit amounts are in state hands. Part of the payroll tax used to finance the system is also in state hands.

<sup>30</sup> The International Association of Machinists (IAM) also represents some Boeing workers in California. It also represents some Lockheed Martin workers in the state.

<sup>31</sup> The United Food and Commercial Workers (UFCW), a union representing supermarket employees, has been involved in campaigns to block expansion of nonunion Wal-Mart stores.

<sup>32</sup> As noted in the introduction, labor relations in Indian gaming were originally not regulated federally but became so after recent litigation.

<sup>33</sup> Despite its much greater activity, PERB has a budget of \$6.2 million (2007-08 budget) compared with \$5.1 million for the ALRB.

<sup>34</sup> Major work stoppages are strikes or lockouts involving 1000 or more workers.

<sup>35</sup> In addition to the stoppages shown, some California workers – probably under 1000 each - took part in interstate strikes involving Boeing and Coca Cola in 2005.