

The Battle for New Jersey

Chris Christie vs. Public Employee Unions

By Kevin Mooney

***Summary:** Governor Chris Christie is rallying public support for his fight against public sector unions and activist courts, and he is succeeding in the unlikeliest of places—New Jersey, a state comprised of small municipalities many residents of which (and their parents, spouses, children, and siblings) have government jobs as clerks, cops and schoolteachers. But New Jersey is heading towards bankruptcy, and attitudes toward public-sector unions are changing. Families are deciding that they cannot afford New Jersey’s high (and getting higher) property taxes, and judges who keep ruling in favor of entrenched union interests.*



New Jersey Gov. Chris Christie

Just after the sun set on the second Battle of Trenton in 1776, General Charles Cornwallis, convinced that he had George Washington’s army trapped, turned to a subordinate and remarked, “At last, we have run down the sly fox and will bag him in the morning.” But that very evening, Washington had already slipped behind the British lines under the cover of darkness and was making his way to Princeton, where his troops would defeat the rear guard of Cornwallis’s army.

These days New Jersey State Senate President Stephen Sweeney, a Gloucester County Democrat, sounds a lot like the confident Cornwallis. In Trenton, his party controls the legislature and enjoys the sympathy of the news media and the power of organized labor. Democrats hold the state senate 24-16 and the state assembly 47-33.

But the political terrain is shifting. In November 2009, New Jersey voters elected Republican Chris Christie governor, and five months later they got a say in voting for or against the annual budgets of their

state’s local school districts. Sweeney should recall what happened. The freshman governor waged a spirited public campaign to cut school district spending, and he called on

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New Jersey residents to vote down district spending plans if teachers did not agree to accept a one year wage freeze and contribute a mere 1.5 percent of their salary to fund their own health benefits.

Earlier in his term, Christie had created a firestorm by proposing an \$820 million cut in state school aid. "I am not going to back away from the storm," he said. "This is the moment. This is it. We're in the middle of a crisis. I've got everyone's attention. This is the moment to fix it." Christie added, "My view is, I'm a Republican who's been elected governor of New Jersey. If I play along the margins and don't try to fix these problems, then I didn't deserve to be elected in the first place."

In April 2010, New Jersey voters responded by rejecting some 260 of the 479 school district budgets, a record number. This year's school budget elections are on April 27 and they have already become a sharp point of contention between the governor and State House officials. Assembly Speaker Sheila Y. Oliver, a Democrat, has accused Chris-

tie of "pitting neighbor against neighbor, school teacher against senior citizen" in his budgeting plan.

But with all 120 New Jersey state lawmakers up for election this coming November, the timing could be auspicious for Gov. Christie's policy ambitions. Property taxes remain the highest in the nation at an average of \$7,300 per homeowner.

"Democratic governors and Republican governors now look to New Jersey as a beacon of hope for what can happen when leaders lead and a people sacrifice as one for the future of our children," Christie was quoted as saying in *Trentonian*. "I thank the people of New Jersey for standing with me in turning our state into a national model."

New Jersey: A Legacy of Judicial Activism

As much as today's New Jersey residents celebrate the "Spirit of 1776," the sad reality is that they inhabit a world created by the New Jersey Supreme Court in 1973. In that year in the case *Robinson v. Cahill* Chief Justice Joseph Weintraub overturned a century of local public school finance when he proclaimed the system of funding schools by county property taxes violated the state constitution because it shortchanged urban school districts.

In rejecting the funding mechanism for K-12 public education, the state supreme court set in motion a series of subsequent court rulings under the name *Abbott v. Burke* that ordered New Jersey to equalize school spending. The state was required to put poor

school districts on an equal financial footing with wealthy districts. In subsequent "Abbott" rulings through 2009, the court ordered state officials to maintain equal funding levels and support supplemental programs to boost the quality of urban education.

Some think these court decisions are an imperial judiciary at work. "How much money is spent and where has nothing to do with the constitution," said Gregory Sullivan, a *Trenton Times* columnist who is also a practicing attorney. "It has everything to do with determinations by legislators and governors who are electorally responsible for their decisions. By contrast, it is essentially impossible to hold any court accountable for the squandered millions that have been judicially ordered for decades."

In January, the New Jersey Supreme Court appointed Superior Court Judge Peter Doyne to examine whether Governor Christie had the authority to make the \$820 million in school aid cuts to close the state's budget gap. The Education Law Center, a Newark-based nonprofit, wants the Court to rule that the cutbacks for the 2010-11 school year are illegal because they violate the latest *Abbott v. Burke* ruling.

If Doyne recommends a restoration of funding, Christie could force a showdown over the court's authority to direct policy without popular consent. For starters, it is expected that the governor could fill up to three openings on the New Jersey Supreme Court before he must stand for re-election in 2013. Christie has already declined to reappoint one sitting justice.

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Enter Chris Christie

When he became governor early in 2010, Chris Christie moved decisively to close an \$11 billion state budget gap. But in proposing spending cuts rather than tax increases, he ran straight into the buzz saw known as the New Jersey Education Association (NJEA).

To avoid deeper cuts, Christie asked teachers for the one year pay freeze and 1.5 percent salary contribution toward their health insurance premiums, a first for state employees. The Governor argued that his proposal was minimal but necessary, and that with

millions of Americans in the private sector threatened by job and wage cuts his proposal was not unreasonable.

The NJEA went crazy, bitterly denounced Christie and accused him of undermining the state's education system. "Gov. Christie's attitude toward public education is clear," NJEA President Barbara Keshishian declared last September as the governor unveiled his budget reforms. "He has spent his entire term as governor defunding public schools and demonizing the people who work in them. It is time to bring educators to the table for a meaningful discussion of how to help our lowest performing schools

improve without damaging our many excellent, high-performing schools."

The period for "meaningful discussion" ended quickly when Joe Coppola, president of the Bergen County Education Association (BCEA), endorsed a "prayer" that took aim at Christie. It appeared on the Facebook page "New Jersey Teachers Against Chris Christie's Pay Freeze."

"Dear Lord: This year you have taken away my favorite actor, Patrick Swayze, my favorite actress, Farrah Fawcett, my favorite singer, Michael Jackson, and my favorite salesman, Billy Mays . . . I just wanted to let

you know that Chris Christie is my favorite governor.” (NJEA’s Keshishian later apologized, saying it was “not funny.”)

Where previous governors were cowed by their states’ labor unions, Christie has been forceful and unyielding. “We can’t continue to spend money we don’t have,” Christie observed in his “State of the State” address before the state legislature in January. “We can’t print money, and we can’t run deficits. So we have to continue to make some very tough decisions about what we can afford and what we can’t. Next month, I will present to you my budget for fiscal year 2012. I will guarantee you this: It will be balanced, and it will not raise taxes.”

The Governor reviewed the status of health benefits the state gives current workers and retirees. They now cost New Jersey taxpayers \$4.3 billion a year. He said the state cannot afford to have workers’ benefits absorb an increasing percentage of the state budget that goes to local municipalities and school districts to offset rising property taxes. And, to cut a current \$54 billion unfunded pension liability in half, he proposed raising the retirement age for state workers from 62 to 65 and scaling back previous pension increases. Toward the end of his address, Christie administered the coup de grace: he called for ending teacher tenure and introducing a merit-pay system, closing underperforming schools, expanding charter schools, and initiating school choice through inter-district transfers and opportunity scholarships.

“Overall, statewide per pupil spending in New Jersey is the highest in the nation, at

over \$17,600 per student,” Christie said. “But our results in terms of achievement are not number one, and they are not uniformly excellent or even acceptable. In multiple categories, and at multiple grade levels, the gap between at-risk students and those not at risk has changed little in years—and it is way too high.”

Directly confronting the New Jersey Supreme Court’s insistence on equalizing school finance, Christie declared, “We must end the myth that more money equals better achievement. It is a failed legal theory—and we can no longer waste our children’s time or the public’s money waiting for it to finally work.”

Public Employees vs. U.S. Taxpayers

The NJEA wasn’t buying Christie’s argument. With 200,000 members and \$100 million in dues income (\$760 in annual dues for a full-time teacher), the NEA state affiliate makes and breaks state officeholders. With offices across the street from the state legislature, it is “the bully of State Street,” according to the Governor. (The much smaller New Jersey affiliate of the rival American Federation of Teachers has 30,000 members, many of them non-teachers.) In its official rejoinder, the NJEA said the Governor’s spending cuts hurt public education. And it said his pension reforms ignored the state’s past failure to make timely contributions to the pension system, something Christie himself acknowledged.

Will the NJEA and its Democratic Party allies prevail in the fight over public sector

union pensions and benefits? In 2009, for the first time, more union members worked for government than for the private sector, a shift that occurred even as overall union membership was falling. Unions lost over 612,000 members in 2010, most of them in private sector unions. 7.6 million government workers belonged to a union in 2010, while only 7.1 million private sector workers belonged to a union. Only 11.9 percent of all wage and salary workers, public and private, are union members, and the percentage of union members in the private sector is a mere 6.9 percent.

The membership fall-off is striking even in union-strong New Jersey. According to the Bureau of Labor Statistics, the percentage of New Jersey workers represented by unions fell from 19.9 percent in 2009 to 17.7 percent in 2010. Actual union membership was even lower—from 19.3 percent in 2009 it fell to 17.1 percent in 2010. <http://www.bls.gov/news.release/union2.t05.htm>

“While the traditional face of the union movement is workers on the assembly line, this stereotype no longer matches reality,” notes James Sherk, a labor policy analyst with the Heritage Foundation. “Almost two-and-a-half times as many union members now work in the post office as in the domestic auto industry.”

In the private sector today, 93.1 percent of workers nationwide are non-union. “We are not talking about a temporary blip, we are seeing a trend,” says Sherk. That percentage is even higher than in the days when there was no collective bargaining, before Presi-

dent Roosevelt signed into law the 1935 National Labor Relations Act.

(The NLRA oversees most union elections and requires an employer to recognize only one union as its employees' exclusive bargaining agent and to engage with it in collective bargaining. Public sector employees like teachers only began to win collective bargaining "rights" beginning in the 1960s.)

Polls show that only one in 10 non-union workers want to organize. However, as private sector unions wither, public sector unions grow stronger. Says Sherk, "The future is going to be with unions in government where you have no competition. They are not bargaining over how to split profits, instead they are bargaining over how much in taxpayer dollars will be spent on benefits instead of providing a service to the public. The union movement now consists primarily of government employees lobbying for more government and higher taxes."

Nationwide, 37.4 percent of government workers are unionized and the figure is even higher—42.3 percent—for local government workers like police and teachers.

Union-strong New Jersey has the 5th highest percentage of public sector union members: 59 percent of government workers are union members and 60.6 percent are covered by union contracts. In New York, the #1 state, 70.5 percent of government workers are union members (and 72.9 percent are covered by union contracts).

Public Sector Escapes Recessionary Pressures

With unemployment hovering near 10 percent, the American public is growing suspicious of any class of workers insulated from the financial fallout. Private-sector employment is nearly 7 percent smaller now than just three years ago, but public employee rolls have grown by nearly 2 percent and the average hourly compensation for state and local government employees rose by 9.8 percent from the first quarter of 2007 through the last quarter of 2009. By contrast, private sector compensation grew by only 6.9 percent. During this recessionary period, compensation for public employees has risen 50 percent faster than private-employee compensation, according to the Manhattan Institute.

Until recently, union leaders could push compliant governors and state legislators into accepting a deficit-be-damned fiscal policy that provides benefits that are overt and visible to pressure groups, but hidden away from taxpayers. Pension payouts are the most obvious example. As University of Chicago law professor Richard Epstein has explained, public sector collective bargaining is the arrangement that enables unions (and the politicians they help elect) to put their interests ahead of taxpayers.

"So what happens in bad times?" Epstein asks. "First, no public employee loses either a job or a dollar in pension benefits. Ordinary citizens lose in two ways: jobs are cut – unemployment in California just hit 10 percent - and taxes are raised. What makes

this pill all the more bitter is that unions happily wave the libertarian banner of freedom of contract to lock in the status quo. Public unions point to court cases that require the state to honor its employment contracts just like other agreements. Translation: the downturn is everyone else's problem."

And the money unions give to political campaigns ensures that it stays that way. When sympathetic politicians are elected, they collude with their union benefactors to hike government pay and benefits. Meanwhile no one sits at the table to safeguard taxpayer interests. That's what you call a conflict of interest. All told in just the 2009 election cycle, the NJEA donated \$594,685 with over 73 percent of that amount going to Democrats, according to campaign finance records. Since 2003, it has donated over \$2 million with almost 70 percent going to the Democratic Party and Democratic candidates. Another active player here is the Service Employees New Jersey State Council, which donated \$25,000 to the State Democratic Party in 2008. Essentially, the teachers union finances and elects sympathetic office holders who reciprocate with generous benefit packages.

The Situation on the Jersey Shore

But, the tide is turning. This much was evident in New Jersey last year when Gov. Christie turned the school budget elections into a referendum on fiscal conservatism and union privileges. For years, the NJEA had argued for raising property taxes to fund education needs. This time voters balked. In appearances across the state, Christie urged

residents to reject any school budget that did not include a pay freeze for teachers. They responded by rejecting 58 percent of the school budgets last April.

Christie described the rejection rate as “a seismic change” reflecting a new attitude. “They want real fundamental change,” he said at a post-election press conference. “We didn’t lead in that regard. We merely gave voice to what the people of New Jersey were already feeling.”

Even so, it is apparent that union officials aren’t getting the message. Coppola, the teacher union head with the death wish prayer, received a standing ovation from 450 union members at a dinner banquet. “The membership is very supportive,” he said in an interview with the Bergen Record. “I go to bat for each and every one of them.”

But the public is not applauding for government unions—and neither are union members in the private sector. Manhattan Institute scholar Steve Malanga notes that public sector union members are increasingly perceived to be a white-collar interest group. Culturally progressive and fiscally liberal, they are the ones eager to raise taxes, especially at the state and local levels where government worker unions are strongest.

Gov. Christie and other state executives benefit from the growing public recognition that public employee unions are unloading financial burdens onto the backs of state taxpayers. New Jersey attorney Tom Gentile, a former clerk to then-appeals court judge Samuel Alito, notes that Christie’s reforms

might not have been possible just a few years ago. But the political terrain is changing in New Jersey, Wisconsin, Ohio and other states with looming deficits. That the job of elected officeholders is to provide benefits to government workers whose unions contribute to their election campaigns is no longer politically acceptable.

“Revolution is a good word for what Gov. Christie is trying to do,” Gentile said. “We are talking about a radical change in New Jersey politics that could possibly result in profound fiscal reform. The ultimate goal here is to re-empower the governor and the legislature with the ability to push for creative solutions to education such as charter schools and voucher programs that are better suited for the modern age and get beyond the idea of just spending a lot of money. Unfortunately, you can’t begin to scratch the service here with what’s possible under the budget restraints imposed by the New Jersey Supreme Court. That’s why Christie has made it a priority to end judicial activism in his state. That’s now a winning issue politically. The over-reaching of the public employee unions has created the right environment politically for reform.”

Last year, Christie broke with precedent by refusing to reappoint Justice John Wallace to the New Jersey Supreme Court and instead settled on an alternative pick. This is the first time a New Jersey governor has refused a sitting justice seeking reappointment since the current state constitution was adopted in 1947. Governor Christie has been particularly critical of the 30 year-old *Abbott v. Burke* Supreme Court ruling that forces the state to

equalize school spending to put poor urban school districts on an equal financial footing with wealthier suburban districts. “Many of these decisions have been results in search of a rationale,” Christie has said. “And that’s not the way to appropriately interpret the laws and interpret the constitution. And there have been any number of examples of that over time.”

Although Senate President Stephen Sweeney has thus far refused to hold a confirmation hearing for Christie’s court pick, Gentile anticipates that the governor will prevail. “Christie has been very skilled at disrupting business as usual,” he said. “There has been this assumption going back for decades now that school budgets always get rubber stamped without public approval, employee pensions keep going up and the state supreme court can impose its policy preferences on the other branches of government. This has all been turned upside down.”

School reform is also on the agenda. In February, a voucher bill to fund scholarships for students stuck in failing schools advanced in the State Senate, despite the stiff opposition of the NJEA. The bill is sponsored by Sens. Raymond Lesniak (D) and Tom Kean Jr. (R), the senate minority leader and son of the former governor. That would have been unheard of in the pre-Christie era.

The NJEA response was predictable. “This legislation would take New Jersey down a road no one ever thought it would travel,” NJEA president Keshishian declared. “At a time when our public schools have suffered more than a billion dollars in cuts by

the state, S1872 would send up to another billion tax dollars to unaccountable private and religious schools. That's an educational travesty."

The part about N.J. sending tax dollars down a new road is true enough. For the first time in recent memory, the state's elected officials, not its judges, are reasserting their authority over public policy. Chris Christie is accountable to the voters, and he is counting on their support.

Conclusion

Republican governors who are usually public-sector union targets no matter what they do are finally playing offense. The power of teacher unions in Alabama is legendary. But last year Alabama Governor Bob Riley signed a bill banning payroll deductions from the paychecks of state agency and public school employees if the money goes to political action committees. The bill also bans the payroll deduction of dues to the Alabama Education Association and other organizations if the money is used for political purposes.

Alabama is a Right-to-Work state, but the last time Republicans held both houses of the state legislature was in 1874. New Jersey and Wisconsin are not Right to Work states so the battles Gov. Christie and Wisconsin Governor Scott Walker are waging against public employee unions will be even more difficult. That's where the fight for representative government will be lost or won.



New Jersey Education Association Members Protest Gov. Christie's Budget Cuts

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LaborNotes

In his March testimony to the Senate Banking Committee, Federal Reserve Chairman **Ben Bernanke** noted that, while the national economy is showing signs of growth, the unemployment rate is still high and likely will remain so for the foreseeable future. "Following the loss of about 8-3/4 million jobs from early 2008 through 2009, private-sector employment expanded by only a little more than 1 million during 2010, a gain barely sufficient to accommodate the inflow of recent graduates and other entrants to the labor force," said Bernanke. And indeed, "it could be several years before the unemployment rate has returned to a more normal level." It begs the question: What if you held a recovery and no jobs came?

For anyone who has ever wondered why cities like New York face gargantuan budget deficits, the *New York Post* provides a clue: "The [NY] Department of Education pays about 1,500 teachers for time they spend on union activities -- and pays other teachers to replace them in the classroom. It's a sweetheart deal that costs taxpayers an extra \$9 million a year to pay fill-ins for instructors who are sprung -- at full pay -- to carry out responsibilities for the **United Federation of Teachers** [UFT]," according to *The Post*. The aforementioned lucky teachers get another salary from the UFT, resulting in astronomical pay for very little actual teaching. *The Post* notes one **Tom Dromgoole**, for example, an English teacher who, "...collects top teacher pay, \$100,049 a year, from the DOE for his slot at Leadership and Public Service HS in downtown Manhattan. But he is relieved for most of the day to serve as a UFT high school rep. The UFT supplements his salary by \$50,461, records show." There can be no clearer example of how unions can tarnish the reputations of those professions they represent.

Shawn Clark, a former business agent for **United Brotherhood of Carpenters and Joiners Local 455** in Somerville, New Jersey, was sentenced in December in Trenton federal court to 28 months in prison for embezzling union funds over a seven year period, and will have to "make restitution in an amount between \$72,000 and \$102,000, the exact sum to be determined in court later on," notes our friends at the **National Legal and Policy Center**. *Labor Notes* wonders if Mr. Clark ever represented **Willie Nelson**...

Former **Service Employees Union** (SEIU) President **Andy Stern** is speculating that labor turmoil in Wisconsin may be the best thing to happen to unions in a long time. As he told the *Washington Post's* **Ezra Klein**, Wisconsin Gov. **Scott Walker** has "...mobilized union members in a way that hasn't happened in a long time, and brought them together with students and other progressives." While *Labor Notes* agrees that the Wisconsin showdown could possibly redound to the benefit of unions, in the same interview Stern spells out succinctly why union membership has plunged in recent years: "In the '30s, people didn't want us [unions] to exist. We had to do sit-down strikes . . . we had socialist and communist tendencies. We grew up, to speak in Marxist terms, in a world with a lot more class struggle. It's not viewed through that light anymore." Yeah, poor unions -- if we were all a little more Marxist, maybe they wouldn't be having such a tough time of it.

The Left's policy regarding civil discourse: "Good for thee, but not for me." How else to explain **AFL-CIO** President **Richard Trumka's** refusal to denounce the incendiary rhetoric of some Wisconsin union protesters? On the February 27th of NBC's *Meet the Press*, Trumka was twice directly asked whether he found the tone of the protests, which featured placards and signs depicting Gov. Scott Walker as Adolf Hitler, "inappropriate" or "wrong." The union chief dodged the question, instead replying, "We should be sitting down trying to create jobs. In Wisconsin, a vast majority of the people think this governor has overreached. His popularity has gone down. They're saying to him, sit down and negotiate; don't do what you've been doing. So he's losing." Yeah, negotiate...like Hitler. That's what they're saying.