Most labor unions unlikely to follow decertification path of NFL players

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With legislation to diminish private- and public-sector collective bargaining rights already in the books in Wisconsin and Ohio, should more labor unions steal a page from the playbook of the NFL Players Association and decertify? Although there are parallels between the pros and regular Joes (and Janes), union decertification is not a viable strategy for ordinary workers to use when bargaining for better wages and working conditions, says a University of Illinois law and labor expert.

Whether it's a teacher in Wisconsin or a construction worker in Indiana, what ordinary workers and NFL players have in common is that "collective bargaining is so stacked against them, they have very little to negotiate over," said Michael LeRoy, a professor of law and of labor and employment relations at Illinois.

Ultimately, it's not a legal matter but an economic one for both professional athletes and unionized workers.

"That's how the NFL players association felt – we have a union, but the other side is crushing us," LeRoy said. "If you're a member of a teachers union in Wisconsin, you're probably thinking the same thing – what's the point of having a union when you can't bargain? So there are parallels between unionized workers and NFL players. But I'm not sure how realistic it is for the average union to think they can accomplish their goals more effectively if they choose to decertify and drop out of labor law."

According to LeRoy, who specializes in employment and labor law, the main rationale for state collective-bargaining laws was to take labor disputes that were being fought (sometimes literally) in the streets or on picket lines and put them in a conference room where parties could bargain in a highly regulated process.

If workers disbanded their union and reconstituted as a voluntary trade association, similar to what NFL players did last March, LeRoy says there inevitably would be more work stoppages over grievances.

"In that format, you could have workers who coordinate days they don't show up to work," he said. "Another issue is grievance settlement through arbitration. The Wisconsin law, as I understand it, curbs arbitration substantially. Well, arbitration was put in place as substitute for interrupting work over a grievance. So if a worker was fired or disciplined and we thought it was unfair, back in the 1930s and earlier we would put down our tools and go out to the parking lot. We wouldn't fight, we would just say nothing's getting done until our colleague is treated fairly. That's the kind of system we would return to if unions disbanded."
Ironically, the use of arbitration in lieu of striking came about through Republican-backed legislation.

"But in Wisconsin and Ohio, we've taken that model and turned it upside down," LeRoy said.

But for all the criticism it gets, LeRoy says that labor law has worked in terms of producing negotiated outcomes in the vast majority of disputes.

"Our experience over decades shows that parties resort to their economic weapons – for owners, a lockout, and for workers, a strike – in fewer than 2 percent of labor negotiations," he said.

Provided by University of Illinois at Urbana-Champaign