

# THE GOVERNMENT SUBSTITUTION THEORY AND UNIONIZATION IN PUERTO RICO

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## **Introduction**

Puerto Rico was a colony of Spain from 1493 to 1898. During Spanish rule, unions were prohibited in Puerto Rico. In 1898, the island became a territory of the United States and soon after labor unions began to develop in the island. The firsts labor unions consisted mostly of artisans. The labor movement in Puerto Rico began to develop at the beginning of the twentieth century with the influence of the American Federation of Labor (AFL). In 1902, the military government recognized the right of workers in Puerto Rico to organize, bargain collectively, and participate in concerted activities for mutual aid. The change to U.S. sovereignty, the development of agriculture at the industrial level bringing with it low wages and poor working conditions, and the instability of employment made labor unions an attractive mechanism for workers to improve their economic situation. The change in government economic strategy to substitute the agrarian economy with a manufacturing-ori-

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The American military government was established 1898 and lasted until 1900. N.E.

ented economy during the 1940s led to continued increase in union density until 1970. As shown on Table 1, union density in Puerto Rico started to show a marked decline from 20% in 1970 to 7% in 1996. Manufacturing and agriculture industries had the highest proportion of organized workers with 30% and 29% respectively in 1970. However, by 1979, the proportion of organized workers declined dramatically to 12%. The proportion of organized workers decreased in all industry groups during this decade.<sup>1</sup>

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**Table 1: Union Density in Puerto Rico**

Year	Union Density (%)
1965	19
1968	19
1969	18
1970	20
1973	19
1974	16
1975	14
1976	14
1977	13
1978	13
1979	12
1980	11
1986	7
1987	5
1988	6
1989	6
1990	6
1991	6
1992	6
1994	7
1996	7

Source: Commonwealth of Puerto Rico. Department of Labor and Human Resources. *Estadísticas de Unionados*. Bureau of Statistics. San Juan, PR..

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<sup>1</sup> Department of Labor and Human Resources of Puerto Rico, *Estadísticas de Unionados en Puerto Rico* (San Juan, PR: Bureau of Labor Statistics, 1990, 1991, 1994, 1996).

There are a variety of explanations for the decline in union density in Puerto Rico. Similar to the United States, employers in Puerto Rico have resisted unions directly and indirectly since the beginning of the twentieth century.<sup>2</sup> The actions of unions, however, may have also contributed to the decline. A variety of public surveys show that the public sees unions as powerful organizations. Since most press releases in Puerto Rico are generally associated with labor conflicts, the public tends to show a negative attitude towards unions.<sup>3</sup> The union's ineffectiveness in organizing workers as well as division within Puerto Rican labor movement may also explain part of the decline in union density.<sup>4</sup>

Structural changes in the economy are another important factor

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<sup>2</sup> Gonzalo F. Córdova, *Santiago Iglesias: Creador del Movimiento Obrero de Puerto Rico* (Río Piedras, PR: Editorial Universitaria, 1980), 30, 34, 35-37; Pedro A. Cabán, *Constructing a Colonial People. Puerto Rico and the United States 1898-1932* (Colorado: Westview Press, 1999), 235; 237; 241; Instituto de Estudios Administrativos y Legislativos Inc., *Informe sobre el Estado de las Relaciones Obrero-Patronales en Puerto Rico* (San Juan, PR: Instituto de Estudios Administrativos y Legislativos Inc., February 11, 1971), 15; Blanca Silvestrini de Pacheco, *Los Trabajadores Puertorriqueños y el Partido Socialista (1932-1940)* (San Juan, PR: Editorial Universitaria, 1979), 21-22; Miles E. Galvin, *The Organized Labor Movement in Puerto Rico* (Rutherford: Fairleigh Dickinson University Press, 1979), 74; A. G. Quintero Rivera, *Lucha Obrera en Puerto Rico* (San Juan, PR: Centro de Estudios de la Realidad Puertorriqueña. (CEREP), nd., 45; "Annual Reports of the Governor of Puerto Rico. 1901-1920", (Washington, D.C.: U.S. Government Printing Office, 1920), 485.

<sup>3</sup> "El Sondeo de Endi," *El Nuevo Día*, 16 Octubre 2001, p. 3. Pregunta de investigación: En cuanto a las huelgas en el sector educativo y la amenaza de otras en el sector gubernamental, cree usted que el gobierno es muy inflexible (275 votos- 76.9%) o le falta mano dura (916 votos-23.1%); Barómetro Iberoamericano. Hispania Research, "¿En quiénes confían los puertorriqueños? Nivel de Confianza de los Puertorriqueños en las Instituciones," *El Nuevo Día*, 30 January 2001, p. 6.

<sup>4</sup> Gervasio L. García and A. G. Quintero Rivera, "Difícil Renacer del Sindicalismo Puertorriqueño," in *Desafío y Solidaridad. Breve Historia del Movimiento Obrero Puertorriqueño* (San Juan, PR: Ediciones Huracán, 1997), 150-154.

that may also contribute, to the decrease in union density in Puerto Rico. The economy of the island has moved from agricultural to manufacturing, which was more likely to be unionized.<sup>5</sup> However, in recent years the trend has moved from been from manufacturing to service, which is an industry even less likely to be unionized. The agriculture industry was highly organized by independent unions affiliated with the AFL and the CIO until the middle of the twentieth century. Over time, the labor-intensive manufacturing industry became the most important economic sector on the island. This sector was highly organized by U.S. national unions during the 1950s, 1960s and 1970s. However, the movement from labor-intensive to capital-intensive manufacturing since the 1980s, began to introduce more sophisticated and effective strategies in order to avoid unions in Puerto Rico. The decline in new business initiatives and mergers may explain part of the decline.<sup>6</sup> Moreover, part-time work, temporary employees, and other non-traditional or irregular work arrangements, which are very difficult to organize, increased in demand. Growth in capital intensive and service industries have led to an increased use of technology in Puerto Rico, which also may contribute to the decline in union density on the island.

Another commonly mentioned reason is the federal public policy on labor management relations, which applies to Puerto Rico as a U.S. territory, in particular, the Taft-Hartley Act of 1947 as amended. In contrast to the original National Labor Relations Act of 1935,

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<sup>5</sup> James L. Dietz, *Economic History of Puerto Rico* (Princeton, NJ: Princeton University Press, 1990), 139-155; Pedro A. Cabán, *Constructing a Colonial People. Puerto Rico and the United States 1898-1932* (Colorado: Westview Press, 1999), 182, 239; 251-254.

<sup>6</sup> Angel L. Ruiz Mercado and Edwin Meléndez, *The Potential Impact of the Repel of Section 936 on Puerto Rico's Economy: Summary* (Río Piedras, PR. Boletín de Economía, Unidad de Investigaciones Económicas. Universidad de Puerto Rico, Julio-Septiembre 1997), 4-10; Julio Ghigliotti, "Teoría Alarmista sobre la Economía," *El Nuevo Día*, 12 March 1998, 6.; Alexander Díaz, "The Thrill and the Agony," *Caribbean Business*, 31 December, 1998, 8; Gobierno de Puerto Rico, "La Economía de Puerto Rico en el Año Fiscal 1999 y Perspectivas para el Año Fiscal 2000," in *Prstar.net* [electronic site] 2 June, 2000. 1-11. Available in the Internet: [http://www.presupuesto.prstar.net/Inforefecap\\_economía.htm](http://www.presupuesto.prstar.net/Inforefecap_economía.htm).

known also as the Wagner Act of 1935, the Taft-Hartley Act of 1947 included the right to abstain from organizing, introduced unfair labor practices for unions, and limited the right to strike. The application of this law was not welcome by unions in the United States as well as Puerto Rico.<sup>7</sup>

The increased intervention of both the federal and local governments through protective labor legislation may explain part of the decline, because through public policy, the government has provided more and more employment protection. According to Katz & Kochan (1996), the federal and local governments have become more involved in shaping employment conditions. The government influence on the minimum conditions of employment comes, in part, through regulations of compensation, discrimination, occupational safety and health, among others. According to the government substitution theory, the government has weakened the need for unions by passing this kind of legislation and providing workers with many of the rights that unions provide. Although this is not the case in Europe, where government intervention and the union density are higher, it may be the case of the U.S. industrial relations system, which as a result, would be the case of Puerto Rico, a U.S. territory.

According to a 1971 report on labor-management relations in Puerto Rico, the enactment of labor legislation to strengthen and amplify the rights and benefits of workers was targeted at dealing with the social and economic problems of the labor force. This may be explained by the fact that most workers in Puerto Rico were not unionized. Usually, protective labor legislation applies to the union and non-union sector, and most labor unions in Puerto Rico support it generally. Moreover, many unions have supported the en-

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<sup>7</sup> Gervacio L. García and A. G. Quintero Rivera, "La Ley Taft Hartley, las Internacionales y la Fragmentación del Movimiento Obrero en Puerto Rico," in *Desafío y Solidaridad. Breve Historia del Movimiento Obrero en Puerto Rico*. (San Juan, PR: Ediciones Huracán, 1997), 135-138.

<sup>8</sup> Bureau of Supplies, Printing and Transportation, *Annual Report of the Commissioner of Labor Submitted to the Governor of Puerto Rico. 1932-33* (San Juan, PR: Bureau of Supplies, Printing and Transportation, 1933), 9.; Estado Libre Asociado de Puerto Rico, *20 Años de Labor* (San Juan, PR: Departamento del Trabajo, October 1960), 9-10.

actment of protective labor legislation from early years.<sup>8</sup> Some labor unions however felt that the government should not intervene in areas covered by collective agreements because it debilitated the development of the labor movement as well as the bargaining power of unions in many instances.<sup>9</sup> Based on Cabán's theory (1999), government's intervention came about as a result of wanting to maintain industrial peace.<sup>10</sup>

In summary, the first theory that attempts to explain the decrease in union density is that the government became more involved in order to promote the socio-economic development of the island. The second theory is that the government's involvement was a result of wanting to reduce the power of the organized labor movement in a capitalist system. The third theory is that influences from the different economic sectors in the political system of Puerto Rico may have caused the decrease in union density. All three of these factors may be present. The degree of impact of each one, however, may differ by time period and political ideology.

### **Labor-Management Legislation in Puerto Rico**

Labor in Puerto Rico is extremely regulated in both non-organized and organized sectors. According to Delgado (1988), labor law may be divided into two general categories: labor management relations laws and protective labor legislation. Labor management legislation establishes the rules and procedures that will govern the relations between employers and groups of employees or labor unions. Protective labor legislation establishes the minimum working conditions for individual employees.<sup>11</sup>

Labor management relations in Puerto Rico is regulated by a

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<sup>9</sup> Instituto de Estudios Administrativos y Legislativos Inc., *Informe sobre el Estado de las Relaciones Obrero-Patronales en Puerto Rico*. vii.

<sup>10</sup> Cabán, *Constructing a Colonial People*, 248.

<sup>11</sup> Ruy N. Delgado Zayas, *Apuntes para el estudio de la legislación protectora del trabajo en el derecho laboral Puertorriqueño* (San Juan, PR, 1989) 1-4.

group of federal and local laws that has established collective bargaining as the mechanism for employees to use to secure and improve their working conditions as well as the rules and procedures that must be followed when a group of employees want to organize labor organization or when a labor organization already exist. Generally, an employee's desire to create a labor organization or to bargain collectively as a mechanism to improve working conditions will incite the application of this group of laws.

**Table 2: Most important labor-management legislation passed by the Puerto Rico legislature by content and year, 1902 - 1999**

Year	Description
1902	The rights to meet and to organize guilds in order to secure better wages were declared legal by the courts, the legislature, and the governor.
1917	The right of laborers to become members of labor organizations granted, and the duties of employers in case of strikes defined.
1919	The creation of the Mediation and Conciliation Commission.
1930	Acts to protect the workers' right to vote and to prohibit the creation of worker black lists because of political ideologies or public opinions by employers.
1938	Act to reduce the causes of labor disputes and to create the Insular Labor Relations Board*.
1939	Act to amend the act of 1902 in relation to the right of workers to organize unions.
1941	Act to amend the term "employee" under the act to reduce the causes of labor disputes, to include any person who does agricultural tasks, either in shops or in factories of any kind of product of Puerto Rico*.
1942	Act to prohibit discrimination against workers because of union activities.
1945	Puerto Rico Labor Relations Act (PRLRA).
1946	Act to create the Puerto Rico Labor Relations Board and to amend the PRLRA; act to create the Bureau of Accounting for Labor Unions*.
1947	Act to limit the jurisdiction of local courts to provide injunctions in labor disputes; act to amend PRLRA.
1949	Act to amend the PRLRA.
1952	Constitution of the Commonwealth of Puerto Rico, which recognized and established the basic rights of workers in Puerto Rico, including the rights to organize, bargain collectively and go on strike, to employees of the private sector and public corporations.
1954	Act to authorize the Governor of Puerto Rico to takeover, and operate local port facilities affected by a strike in case of serious emergency, where there is a clear danger to public health and security or to the essential public services*.

\* Repealed

- 1955 Acts to amend the PRLRA in terms of meal allowance for the board members; act to make it unlawful for any worker representative to receive money or any valuable thing from an employer of those workers any.
- 1956 Act to amend the PRLRA to rename the Department of Labor.
- 1957 Law to amend the PRLRA in terms of structure
- 1959 Act to prohibit discrimination of employment for age, race, color, sex, social origin or condition, religion or national origin by employers or labor organizations.
- 1960 Act to provide local government employees the right to organize in associations.
- 1961 Acts to provide municipal government employees the right to organize in associations; and to limit the right to strike to employees of local public corporations\*.
- 1964 Act to amend the PRLRA to increase the meal allowance.
- 1965 Act to allow the governor of Puerto Rico to create a special committee in cases of labor disputes within local public corporations resulting in strike activity that may endanger public safety and security.
- 1966 Act to create the Employees Association of the Commonwealth of Puerto Rico.
- 1967 Act to amend the act that created the Employees Association of the Commonwealth of Puerto Rico.
- 1969 Act to provide employees in the state insurance fund (state workmen compensation) the right to organize and to bargain collectively.
- 1970 Law to amend the PRLRA to change the meal and mileage allowances for the members of the board.
- 1971 Acts to amend the PRLRA in order to allow the President of the Labor Relations Board of Puerto Rico to delegate its functions when absent.
- 1974 Acts to create the Bureau of Services for Labor Unions at the Department of Labor and Human Resources of Puerto Rico to help unions manage their accounting systems and comply with the requirement of the Landrum Griffin Act; act to amend the act that created the Employees Association of the Commonwealth of Puerto Rico.
- 1977 Act to allow the governor of Puerto Rico to create a special committee in cases of labor disputes within local public corporations resulting in strike activity that may endanger public safety and security.
- 1979 Law to amend the PRLRA to increase the meal and mileage allowance for the members of the board; act to amend the act which created the Bureau of Services for Labor Unions at the Department of Labor and Human Resources of Puerto Rico.
- 1985 Acts to prohibit employers and labor unions from discriminating against workers based on sex; to amend the act that provided local government employees the right to organize in associations; act to amend the act that provided municipal government employees the right to organize in associations.
- 1988 Act to amend the act that created the Employee Association of the Commonwealth of Puerto Rico.
- 1992 Act to amend the act that created the Employees Association of the Commonwealth of Puerto Rico.
- 1996 Acts to amend PRLRA to establish the parameters of the salary of the President of the Labor Relations Board of Puerto Rico; to amend the



- act that creates the Employee Association of the Commonwealth of Puerto Rico.
- 1998 Law to provide local government employees the right to organize and bargain collectively.
- 1999 Acts to amend the PRLRA to authorize salary deductions for the payments of income tax debts; to amend the act that creates the Employees Association of the Commonwealth of P.R.

Sources: Federación Libre de Trabajadores. *The Tyranny of the House of Delegates of Porto Rico*. 1913. Quintero Rivera, A.G. *Lucha Obrera en Puerto Rico*. Centro de Estudios de la Realidad Puertorriqueña (CEREP), Puerto Rico, 197\_. Page 51-52. Annuals Reports of the Governors of Porto Rico. 1901-1952. Washington, D.C.: U.S. Government Printing Office. 1901-1929. Fernández, Demetrio & Celia Romany. *Derecho Laboral. Casos y Materiales*. San Juan, P.R. Editorial de la Universidad de Puerto Rico. 1987. *Leyes del Trabajo*. Basado en el Título 29 de L.P.R.A. San Juan: Lexis Law Publishing de Puerto Rico. 1999. *Leyes de Puerto Rico Anotadas. Títulos 3, 11, 21 y 29*. Lexis Nexis of Puerto Rico Inc. Gobierno de Puerto Rico. Departamento de Trabajo, Beneficencia y Corrección. *Negociado del Trabajo. Informe Especial del Negociado del Trabajo Dirigido a la Asamblea Legislativa de Puerto Rico*. December 16, 1912. Bureau of Supplies, Printing and Transportation. 1913. Pages 103-104. Delgado Zayas, Ruy N. *Manual Informativo de Legislación Protectora del Trabajo de Puerto Rico*. San Juan, PR. 1999. *Leyes del Trabajo*.

There are a variety of unions in Puerto Rico organized under the Railway Labor Act of 1926, the Taft-Hartley Act of 1947, and the Civil Service Reform Act of 1979. However, local laws have regulated an important part of organized labor in Puerto Rico since the beginning of the twentieth century. Table 2 presents a summary of major labor management relations laws passed in Puerto Rico from 1900 to 1999. For the purpose of this article, the most important

<sup>12</sup> Galvin, *The Organized Labor Movement in Puerto Rico*, 53; Adolfo De Hostos *Tesaurus de Datos Históricos. Índice Compendiado de la Literatura Histórica de Puerto Rico* (San Juan, PR: Editorial de la Universidad de Puerto Rico. 1994), 4: 60.; *Leyes del Trabajo Basado en el Título 29 de LPR.A*. Departamento del Trabajo y Recursos Humanos (San Juan, PR, Lexis Publishing de Puerto Rico, 1999), 17-19.; Gobierno de Puerto Rico, Departamento del Trabajo, *Beneficencia y Corrección. Negociado del Trabajo Informe Especial del Negociado del Trabajo Dirgido a la Asamblea Legislativa de Puerto Rico* December 16, 1912 (San Juan, PR: Bureau of Supplies, Printing and Transportation, 1913), 95.

pieces of legislation will be described.<sup>12</sup>

The first local, detailed legislation aimed at regulating labor management relations at the local level was enacted in 1938. Act No. 143 of May 7, 1938, covered commerce within the jurisdiction of Puerto Rico. It recognized the right of workers to self-organize, form, join, assist labor organizations, bargain collectively through representatives of their own choosing and to engage in concerted activities, including the right to strike, for the purpose of collective bargaining or other mutual aid protection. The act established five unfair labor practices for employers and the rules and procedures for electing of worker representatives. It also adopted the principle of exclusive representation from the U.S. industrial relations system for the purpose of collective bargaining. The act created a specialized local administrative body called the Insular Labor Relations Board. In 1941, the Act was amended to include workers in the agriculture business, the main industry on the island at that time and factories of any kind of product cultivated or processed within the jurisdiction of Puerto Rico. This act was repealed however in 1945, and a new law was approved.

The Puerto Rico Labor Relations Act of 1945 (PRLRA) is also known as the Act No. 130 of May 8, 1945. This Act, which creates the Puerto Rico Labor Relations Board, follows the format of the federal legislation known as the Wagner Act of 1935, with important modifications described below.<sup>13</sup> Although this law adopts most of the sections of the previous law, it establishes more detailed rules and procedures. It regulates labor relations in the private sector of Puerto Rico not covered by the federal law. In addition, this law applies to the agricultural industry as well as the local public corporations. In contrast to the previous law, this new act excluded supervisors from its coverage, established unfair labor practices for employers and unions, included as an unfair labor practice, for both parties, the violation of a collective bargaining agreement recognized, the right to strike, and allows union security clauses, in-

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<sup>13</sup> Galvin, *The Organized Labor Movement in Puerto Rico*, 92-94.

cluding close shop.

From the 1950s to the 1970s the local legislature continued with the regulation of labor. In fact, the Constitution of the Commonwealth of Puerto Rico, approved in 1952, played a key role in this regulation. Article II of the Constitution included the Bills of Rights of the People of Puerto Rico. Sections 15 through 18 of the Bill of Rights became the base of the labor law system in Puerto Rico.<sup>14</sup> Sections 17 and 18 recognize the rights of workers in the private sector and those who work for public corporations to organize and bargain collectively with their employer through representatives of their preference. They also recognize the right of such workers to strike, picket and engage in other union activities, except when such activities might endanger public health and security or the essential public services.

During the 1960s most of the labor management legislation approved was directed at public sector employees. For example, Act No. 134 of July 19, 1960 provides all the employees of the Commonwealth of Puerto Rico, including all government agencies and public corporations, the rights to create public sector employee associations in order to promote their social and economic progress. Act No. 139 of July 30, 1961, recognizes the same rights for the municipal employees of the Commonwealth of Puerto Rico. Both laws require the certification of the association by the Secretary of the Department of Labor and Human Resources of Puerto Rico.<sup>15</sup> These laws do not recognize the right to bargain collectively or to strike to public sector employees.

The most recent and important piece of legislation approved at the local level is Puerto Rico's Public Sector Labor Relations Act of 1998. This act was passed to provide local or state government

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<sup>14</sup> *Constitución del Estado Libre Asociado de Puerto Rico*. Senado de Puerto Rico, 1965.

<sup>15</sup> "Reglamento Enmendado del Secretario del Trabajo y Recursos Humanos Estableciendo el Procedimiento para Acreditar o Certificar Agrupaciones Bona-fide de Servidores Públicos al Amparo de las Disposiciones de la Ley Núm. 134 de 19 de julio de 1960 y de la Ley Núm. 139 de 30 de junio de 1961." Núm. 3594. (San Juan, PR: Approved on 30 March, 1988).

employees for the first time the right to organize and bargain collectively. This law also known as Act No. 45 of February 25, 1998, prohibits the right to strike to public sector employees and requires compulsory arbitration. It also regulates the union internal affairs, following some of the sections of the federal legislation known as the Labor-Management Reporting and Disclosure Act of 1959. The law requires unions to create constitutions and bylaws for union members as well as financial reports, among other things.

### **Protective Labor Legislation In Puerto Rico**

The protective labor legislation is directed at establishing the individual rights of workers in their relation with employers. According to Delgado (1989), the protective labor legislation established the minimum conditions of employment, or the rules and procedures that the employer must follow under individual contracts. Table 3: shows the employment terms and conditions covered by this group of laws. In general, its application is automatic. As a U.S. territory, a business in Puerto Rico that depends on one or more employees must comply with these laws, which includes federal and local laws and guidelines, regulations, and decrees emitted by specialized agencies in charge of enforcing the acts.<sup>16</sup>

By the mid 1910s, the Bureau of Labor of Puerto Rico had begun to promote the enactment of protective labor legislation in order to alleviate poor working and living conditions of workers in Puerto Rico with the support of a very weak, organized labor movement

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<sup>16</sup> Delgado. *Apuntes para el estudio de la Legislación Protectora del Trabajo en el Derecho Laboral Puertorriqueño*, 1-4.

<sup>17</sup> Gobierno de Puerto Rico, Departamento del Trabajo, Beneficencia y Corrección. *Negociado del Trabajo, Tercer Informe Anual del Negociado del Trabajo Dirigido a la Asamblea Legislativa de Puerto Rico* (San Juan, PR: Bureau of Supplies, Printing and Transportation, 1 January, 1915), 21; 105-106.; Gobierno de Puerto Rico, Departamento de Agricultura y Trabajo. *Negociado del Trabajo, Noveno Informe Anual del Negociado del Trabajo .dirigido a la Asamblea Legislativa y al Pueblo de Puerto Rico.*(San Juan, PR: Negociado de Materiales, Imprenta y Transporte. February 1923), 87-88.

**Table 3: List of terms and working conditions covered under the protective labor legislation approved in Puerto Rico from 1900 to 1999.**

Issues, Terms or Working Conditions	Number of Laws Covering Related Issues	Period in which the majority of the laws were approved
Insurance and Workers' Compensation (workers' compensation or state insurance fund for occupational injuries, state insurance fund for <i>non</i> -occupational injuries, unemployment insurance, employment insurance, health insurance, etc.)	86	1960-1979
Wages and Hours (payment, deductions, minimum wages, length of working day, overtime, meal period, holidays, etc.)	49	1900-1929
<i>Specialized Government Agencies</i>	17	1900-1929
Occupational Safety & Health	17	1930-1949
Veterans	17	1980-1998
Pension or Retirement for State Employees	13	1960-1979
Paid and Unpaid Leaves (maternity, sick, vacations, sports, military, jury, etc.)	12	1950-1969
Public & Private Employment Agencies	11	1950-1969
State Employees (regular and irregular employment)	9	1980-1998
Children or Minors Work	8	1900-1929* 1930-1949*
Christmas Bonus	7	1960-1979
Employment	6	1930-1949* 1970-1989*

Issues, Terms or Working Conditions	Number of Laws Covering Related Issues	Period in which the majority of the laws were approved
Discrimination	5	1970-1989
Termination (employment contract, probation period, involuntary separations, lay-off, severance pay, etc.)	5	1970-1989
Industrial Work at Home	3	1930-1949
Others (training, restrictions to employers, attorney's fees, temporary benefits, drug testing, etc.)	6	1950-1960* 1980-1998*
<b>Total</b>	<b>271</b>	

Sources: Federación Libre de Trabajadores. *The Tyranny of the House of Delegates of Porto Rico*. 1913. Quintero Rivera, A.G. *Lucha Obrera en Puerto Rico*. Centro de Estudios de la Realidad Puertorriqueña (CEREP), Puerto Rico, 197\_\_. Page 51-52. Annual Reports of the Governors of Porto Rico. 1901-1952. Washington, D.C.: U.S. Government Printing Office. 1901-1929. Fernández, Demetrio & Celia Romany. *Derecho Laboral. Casos y Materiales*. San Juan, P.R. Editorial de la Universidad de Puerto Rico. 1987. *Leyes del Trabajo*. Basado en el Título 29 de L.P.R.A. San Juan: Lexis Law Publishing de Puerto Rico. 1999. *Leyes de Puerto Rico Anotadas*. Títulos 3, 11, 21 y 29. Lexis Nexis of Puerto Rico Inc. Gobierno de Puerto Rico. Departamento de Trabajo, Beneficencia y Corrección. *Negociado del Trabajo. Informe Especial del Negociado del Trabajo Dirigido a la Asamblea Legislativa de Puerto Rico*. December 16, 1912. Bureau of Supplies, Printing and Transportation. 1913. Pages 103-104. Delgado Zayas, Ruy N. *Manual Informativo de Legislación Protectora del Trabajo de Puerto Rico*. San Juan, P.R. 1999. *Leyes del Trabajo*.

\*Same number of laws approved in each period.

represented by the Free Federation of Labor.<sup>17</sup> In fact, with the creation of the Bureau of Labor in 1912, the passage of labor legislation increased markedly since 1913. The rapid increase of union activity in the private sector, the worsening work conditions in the labor force, and the increase of labor unrest, which resulted in violent strikes during the 1920s and 1930s led the government to rethink its strategy of improving the quality of Puerto Rico's work life through the enactment of protective labor legislation. By the mid 1920s, the Bureau of Labor of Puerto Rico was in charge of enforcing

ing about 32 local labor laws. During this decade, the legislature continued to pass laws directed at providing minimum work conditions for workers.<sup>18</sup>

According to the Annual Report of the Governor, by the end of the 1930s the island had enacted advanced social legislation, which included the minimum wage, compulsory workmen's accident compensation, the eight-hour work day, collective bargaining, and other laws directed at improving the social and economic conditions of workers.<sup>19</sup> Between 1938 and 1940, the Department of Labor increased its efforts to mediate labor management disputes and enforce labor laws, particularly the minimum wage for women, industrial safety and child labor.<sup>20</sup> The wage policy justified the economic development directed at creating employment at low wage levels that allowed the reduction of the unemployment rate.<sup>21</sup>

The 1940s brought other key legislative innovations to the Puerto Rican industrial relations system. The appointment of Rexford Guy Tugwell as governor of Puerto Rico in 1941 brought coordinated efforts between the executive and the legislative powers for the first time. The federal and local protective labor legislation already enacted began to be implemented vigorously.<sup>22</sup>

The government adopted a model of economic development targeted at promoting economic growth changing from an agri-

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<sup>18</sup> "Annual Report of the Governor of Puerto Rico. 1901-1920" (Washington, D.C.: U.S. Government Printing Office, 1920), 1920-1929.

<sup>19</sup> "Thirty-Seventh Annual Report of the Governor of Puerto Rico. Hon. Blanton Winship: 1937" (San Juan, PR: Bureau of Supplies, Printing and Transportation, 1937), 46.;

<sup>20</sup> "Thirty-Seventh Annual Report of the Governor of Puerto Rico. Hon. Blanton Winship: 1937", 27.; "Thirty-Ninth Annual Report of the Governor of Puerto Rico. Hon. Blanton Winship: 1939." (San Juan, PR: Bureau of Supplies, Printing and Transportation, 1939), 63; "Fortieth Annual Report of the Governor of Puerto Rico. Hon. William D. Leahy: 1940." (San Juan, PR: Bureau of Supplies, Printing and Transportation, 1940), 39.

<sup>21</sup> Miles. *Organized Labor Movement in Puerto Rico*, 132.

<sup>22</sup> "Annual Report of the Governor of Puerto Rico. 1940-1949" (San Juan, PR: Bureau of Supplies, Printing and Transportation. 1940-1949).

<sup>23</sup> Margarita Ostolaza Bey, "Puerto Rico: Síntesis de su Confromación en el Siglo 20: Aspectos Ideológicos, Políticos, Económicos y

cultural to an industrial economy during the 1950s and 1960s.<sup>23</sup> The creation of factories increased dramatically, particularly at the end of the 1950s and during the 1960s. The level of the employment increased markedly, and the government continued to approve protective labor legislation.

During the 1970s, the government decided to promote capital-intensive industries. The economy of the island was characterized by the presence of petrochemical, pharmaceutical, machinery, electrical and metal companies. These companies had less employees but better compensation and working conditions than other industries.<sup>24</sup> As shown on Table 4, the government approved its highest number of protective labor legislation during this period.

In addition, Table 4 shows that the approval of protective legislation continued in Puerto Rico in the 1980's and 1990's. One of the major economic challenges has become the diversification of an economy characterized by a movement from industrialization to service, which is less likely to be unionized.<sup>25</sup>

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<sup>24</sup> Francisco A. Scarano, *Puerto Rico. Cinco Siglos de Historia* (San Juan, PR: Mc Graw Hill, 1993), 746-747.

<sup>25</sup> Angeles Alvarado, "Sluggish Job Growth in Puerto Rico", *Caribbean Business*, 10 August 1995, 24.; Pablo Trinidad, "Decisiva la Retirada de las 936," *El Nuevo Día*, 11 March 1998, p. 5; Pablo Trinidad, "A Todo Galope el Costo de Vida," *El Nuevo Día*, 29 December 1998, p. 102.; Pablo Trinidad, "Economía Regresa al Crecimiento Desacelerado," *El Nuevo Día*, 5 March 2000, p. 9.; Daniel R. Garza, "Time for a New Plan," *Caribbean Business*, 30 September 30 1999, p. 26; Heidi Calero, "La Economía de la Isla ante el Nuevo Milenio," *El Nuevo Día*, 14 March 1999, p. 16-17.



**Table 4: Most important labor management legislation and protective labor legislation approved in Puerto Rico by decade, from 1900 to 1999**

Decade	Local Labor Management Laws Approved	Local Protective Labor Laws Approved
1900-1909	1	4
1910-1919	2	17
1920-1929	0	17
1930-1939	3	18
1940-1949	8	22
1950-1959	7	37
1960-1969	8	32
1970-1979	7	53
1980-1989	4	30
1990-1999	6	41
Total	46	271

Sources: Annual Reports of the Governor of Porto Rico. 1901-1929. Washington, D.C.: U.S. Government Printing Office. 1901-1929. Leyes del Trabajo. Basado en el Título 29 de L.P.R.A. San Juan: Lexis Law Publishing de Puerto Rico. 1999. Leyes de Puerto Rico Anotadas. Títulos 3, 11, 21 y 29. Lexis Nexis of Puerto Rico Inc. Gobierno de Puerto Rico. Leyes de Puerto Rico Anotadas. Títulos 3, 11, 21 y 29. Lexis Nexis of Puerto Rico Inc.

## **Measuring the Relationship between Protective Labor Legislation and Union Density in Puerto Rico**

### **Problem and Hypothesis**

The protective labor legislation establishes minimum conditions for workers in Puerto Rico. Employers in Puerto Rico are required

to comply with a wide range of federal and local protective labor laws. Local protective labor legislation covers a great variety of issues related to work conditions that, in the past, were obtained by labor unions through collective bargaining.

The purpose of the study is to show the increased intervention of the local government in the improvement of employee work conditions in Puerto Rico through protective labor legislation, compared with labor management legislation that established the rules and procedures to organize labor unions and to bargain collectively. According to the government substitution theory, increased government intervention directed at improving work conditions in Puerto Rico may explain, in part, the decrease in union density on the island. Under this theory, the protection of worker rights by the state may reduce worker interest in union protection. It is hypothesized that the cumulative number of protective labor legislation is negatively associated with union density in Puerto Rico.

## **Methodology**

In order to measure the possible relationship between the protective labor legislation and the decrease in union density in Puerto Rico, a descriptive analysis was conducted using the following statistics: frequencies cross tabulations and correlations. The variable of interest in this study was the frequency of protective labor legislation by each year. The frequencies and cross tabulations allowed the comparison of the number of protective labor legislation with other political and socio-economic indicators such as labor-management legislation approved each year, the period of the Puerto Rico legislative assembly, the Governor of Puerto Rico, the dominant local political ideology, the key industry, the major federal labor policies approved each year, the President of the United States, and the federal government dominant political ideology.

In order to measure the relationship between union density in Puerto Rico and the frequency of protective labor laws, a correlation analysis was conducted. The authors used the data available on union density and the cumulative number of laws ap-

proved on the island each year. The cumulative value was used because the legislation that was approved usually remained in force for years unless repealed, which is not a common occurrence. In addition, the data on cumulative protective labor legislation was phased for one, two, three, and four years because the change does not take place immediately. In addition, the analysis was divided into two periods: the first period covered the data available from 1900 to 1999 and the second period covered from 1970 to 1999.

### **Data**

For the purpose of the analysis, a detailed inventory of protective labor legislation passed in Puerto Rico from 1901 to 1999 was created using *Laws of Puerto Rico Annotated*. In particular, Title 3, *Executive*; Title 11, *Workers Compensation*, Title 21, *Municipalities* and Title 29, *Labor*. The study also used the Annual Reports of the Governor of Puerto Rico for the legislature during the first half of the century and the Annual Reports of the Department of Labor and Human Resources of Puerto Rico from 1912 to 1993, among other references. The inventory included the protective labor legislation passed in Puerto Rico to provide workers in the private and public sector better working conditions, such as working hours, minimum wage, workers compensation for accidents, unemployment, discrimination on employment, fringe benefits, occupational safety and health, and termination rights. The acts created to regulate labor management relations, labor unions, and employee associations were separated from the protective labor legislation.

Most of the data on union density used for the purpose of this study came from statistics provided by the Department of Labor and Human Resources of Puerto Rico. Some of the estimates of union density from early years were obtained from the Annual Reports of the Governor of Puerto Rico. Unfortunately, the government only collected data regularly from 1965 to 1996, and even then the series has some missing years.

## Results

According to the analysis, the cumulative number of protective labor legislation from 1900 to 1999 is 271 laws, or 85.5% of total labor law. In contrast, the Labor Management Legislation has a cumulative number of 46, or 14.5 %. The decade in which the Puerto Rico Legislative Assembly approved the highest number of protective labor legislation was from 1970 to 1979, which was 53 laws, or 19.8 %. Controlling for the total years in power, Governor Rafael Hernández-Colón (from the Popular Democratic Party) approved the highest number of protective labor legislation with 56 laws, or 21% of total labor law. He was Governor of Puerto Rico from 1973 to 1976 and from 1985 to 1992.

A general categorization was created for local political ideologies in order to identify the ideology that promoted the highest number of protective labor legislation.<sup>26</sup> According to the analysis, the autonomists approved the highest number of laws having 174 laws or 64.7%. The annexationists, who approved 81 laws, or 30.1%, followed the autonomists. The annexationists/autonomists and the independents together approved the other 14 laws or 5.2%.

At the federal level, the analysis reflects that during the administration of President Truman (Democrat) the island passed the highest number of protective labor legislation, 33 laws, or 12.3%. The percentages of protective labor laws approved on the island did not reflect a dominant political ideology on the federal level since the percentages were so close, under the Democrats 50.1% of the laws were approved and under the Republicans 49.8 %. The study also analyzed the number of protective labor legislation approved

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<sup>26</sup> These categories were used in general terms by the authors. The authors used the results of the political elections in Puerto Rico and the majority in the legislature to create the four categories: autonomist, annexationist, annexationist/autonomist and independence. The authors recognize that development of the political parties in the island reflects some socio economic changes in tendencies and priorities in each category over time.

on the island that coincided with the approval of major federal labor policy.<sup>27</sup> The cross tabulation showed that with the approval of the Clayton Act of 1914 and the Taft Hartley Act of 1947, the island approved 12 laws, the highest number of protective labor laws compared to the other major federal labor policy.

The number of protective labor legislation approved according to key industry on the island was also analyzed.<sup>28</sup> According to Marqués (1993), between 1900 and 1946, the key industry on the island was agriculture. During this period, only 66, or 24.5%, of the protective labor laws were approved. From 1947 to 1999, manufacturing became the key industry in Puerto Rico. In this period, a total of 203, or 75.5%, protective labor laws were passed on the island.

The analysis of the first period showed very low correlation between the two variables, however, the analysis of the second period showed a significant correlation of  $-.852$  (at 0.01 level - 2 tailed). Moreover, the significant correlation increased to  $-.859$  when the cumulative number of protective labor legislation was phased for four years. Table 5 shows the correlations for each period.

**Table 5: Correlations between Union Density and Cumulative Protective Labor Legislation from 1900 to 1999**

Variables	Correlation with Union Density from 1900-1999	Correlation with Union Density from 1970-1999
Cumulative Protective Labor Legislation	.154	-.852**
Cumulative Protective Labor Legislation Phased 1 Year	.148	-.840**

<sup>27</sup> Harry C. Katz and Thomas A. Kochan, "Overview of Major Developments in U.S. Labor Policy," *An Introduction to Collective bargaining & Industrial Relations*. 2<sup>nd</sup> ed. (Boston: Irwin Mc Graw-Hill, 2000), 50-51. For this purpose, the authors used their list of major U.S. labor laws.

<sup>28</sup> René Marqués-Velasco, *Nuevo Modelo Económico para Puerto Rico*, 8. For the purpose of this part of the analysis the authors used this categorization.

Variables	Correlation with Union Density from 1900-1999	Correlation with Union Density from 1970-1999
Cumulative Protective Labor Legislation Phased 2 Years	.139	-.849**
Cumulative Protective Labor Legislation Phased 3 Years	.135	-.856**
Cumulative Protective Labor Legislation Phased 4 Years	.130	-.859**

\*\* Correlation is significant at the 0.01 level (2 tailed).

## Discussion

Over the years, the cumulative number of protective labor legislation has increased markedly. According to the data collected, a small proportion of total labor laws, 22.9%, have been repealed during the 20<sup>th</sup> century. The results of the study show increased intervention on the part of the local government to improve the working conditions of employees in Puerto Rico through protective labor legislation.

The government substitution theory establishes that increased government intervention targeted at improving work conditions in Puerto Rico may explain, in part, the decrease in union density. Under this theory, the protection of workers' rights by the state may reduce workers' interest in union protection. The results of the study show that the cumulative number of protective labor legislation has a significant negative relationship with union density in Puerto Rico from 1970 to 1999.

A close look at the contents of protective labor legislation approved in Puerto Rico covers a wide range of working conditions traditionally obtained by labor unions through collective bargaining. The increased number of protective labor legislation over the

years is clear. In fact, a small group of protective labor legislation was repealed during the twentieth century. Moreover, most of those laws repealed were substituted by a similar piece of legislation. According to the correlation coefficient, there is a significant and negative correlation between the cumulative number of protective labor legislation and the decline in union density in Puerto Rico from 1970 to the end of the 1990s. The results are consistent with the government substitution theory, which explains that government intervention through public policy may explain, in part, the decline in union density.

## **Conclusion**

The marked decline in union density in Puerto Rico from the 1970s may be partially explained by the increased intervention of the government providing better working conditions through the enactment of protective labor legislation.

Whether government intervention was targeted at improving the socio-economic conditions of workers was a response to pressure from different special interest groups or was to reduce the power of unions in Puerto Rico cannot be proved in this study. There is a possibility, however, that any or a combination of these reasons may be correct, depending on a variety of factors such as the period of time, the state of the economy, and the government socio-economic strategy. For example, the results show that most protective legislation was approved under the autonomist ideology. The Popular Democratic Party under the administration of Luis Muñoz-Marín adopted an aggressive campaign in order to implement the socio-economic strategy directed at changing from an agrarian economy to a manufacturing economy between 1946-1964. Moreover, the governor who approved the most protective labor legislation, controlling for the total years in the position, was governor Rafael Hernández Colón, also from the Popular Democratic Party. He was Governor of Puerto Rico during the peak time of the development of manufacturing industry: 1972-75; 1980-84 and 1985-1988. These facts coincide with the change in government economic

strategy from agriculture to manufacturing during the late 1940s and the 1990s. In order to attract foreign investment, the government emphasized the lower labor costs in Puerto Rico compared to the United States. Since most research states that unions increase labor costs through the negotiations of higher wages, benefits, and other working conditions, the government of Puerto Rico may have contributed partially to the debilitation of unions in Puerto Rico in order to maintain its competitive advantage throughout the increased protective labor legislation.

### **Limitations and Implications for Further Research**

The main limitation of this study is the availability of the data on union density and reported labor disputes. Unfortunately, the Department of Labor and Human Resources of Puerto Rico does not collect data on union density yearly. As a result, there is some missing data. In addition, the data collected on labor disputes represents only the reported labor disputes at the Bureau of Conciliation and Arbitration Services at the Department of Labor and Human Resources of Puerto Rico. As a result, the numbers may underestimate the level of conflict.

In addition to the limitation of the data, this analysis does not represent a definitive causal relationship between labor legislation and the health of unions in Puerto Rico. Further analysis is needed to establish such relation. This study does show, however, the importance of labor public policy on the industrial relations system in Puerto Rico. Besides the variables used in other studies, local protective labor legislation must be part of any study related to the decrease in union density in Puerto Rico.



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