The Paradox of Federal Sector Labor Relations: Voluntary Unionism Without Collective Bargaining Over Wages and Employee Benefits

Samuel Estreicher
NYU School of Law, samuel.estreicher@nyu.edu

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THE PARADOX OF FEDERAL-SECTOR LABOR RELATIONS: VOLUNTARY UNIONISM WITHOUT COLLECTIVE BARGAINING OVER WAGES AND EMPLOYEE BENEFITS

BY
SAMUEL ESTREICHER

I. INTRODUCTION

Unionism and collective bargaining in the federal sector present a paradox. Under federal-sector labor law, employees have a right to form unions and, in most cases, engage in some form of collective bargaining with their employing agency. Like almost all government employees,
federal employees have no right to strike. However, unlike labor relations in private companies and in many state and local governments, in most federal agencies there is no collective bargaining over wages or pensions, healthcare, and other major employee benefits because these matters are governed by federal statute or regulation. Moreover, employees are under no legal obligation to pay union dues or an agency fee to the union representative; all such payments are voluntary and cannot be made a condition of employment. Federal-sector unions are under a statutory duty to represent fairly all employees in the bargaining unit, whether or not they are union members or pay a fee of any kind. Federal employees also have significant rights by statute not to be discharged or disciplined without cause and the ability to contest a discharge or other significant discipline in an adjudication (with or without union representation) before an independent federal agency, the Merit System Protection Board, or if a discrimination claim is involved, the Equal Employment Opportunity Commission.

The paradox is why federal employees select union representation and in many cases voluntarily pay for such representation. Indeed, the paradox is so intriguing that Wisconsin Governor Scott Walker (perhaps ironically) referred to the federal sector as his model for cutting back public-sector bargaining rights in his state.

Before beginning to address the paradox, some data first. As Table 1

3. Federal employees have the right “to engage in collective bargaining with respect to conditions of employment through” an exclusively bargaining representative. Id. § 7102(2). “Conditions of employment” are “personnel policies, practices, and matters” that “affect[] working conditions.” Id. § 7103(a)(14). They do not include “wages and other matters pertaining to compensation of federal employees . . . .” Dep’t of Defense Dependent Sch. v. Fed. Labor Relations Auth., 863 F.2d 988, 988 (D.C. Cir. 1988). As the Supreme Court (per Scalia, J.) explained in Fort Stewart Schools v. Federal Labor Relations Authority, 495 U.S. 641, 649 (1988): “[T]he wages and fringe benefits of the overwhelming majority of Executive Branch employees are fixed by law, in accordance with the General Schedules of the Civil Service Act, see 5 U.S.C. § 5332, and are therefore eliminated from the definition of ‘conditions of employment’ by the third exception in § 7103(a)(14) . . . . which excludes ‘matters . . . specifically provided for by Federal statute.’ 5 U.S.C. § 7103(a)(14)(C).”
7. Governor Walker (R-WI) stated on NBC’s Meet the Press on February 27, 2015: “Well, our proposal is less restrictive than the federal government is today . . . . Barack Obama . . . presides over a federal government where most federal employees do not have collective bargaining for benefits, nor for pay. So what we’re asking for is something less restrictive than what the federal government has.” Robert Farley, Wisconsin Gov. Scott Walker Says Most Federal Employees Do Not Have Collective Bargaining for Benefits or Pay, POLITIFACT (Mar. 2, 2011, 10:56 AM), <www.politifact.com/truth-o-meter/statements/2011/mar/02/scott-walker/wisconsin-g/>. 
indicates, in 2014, 22.9 percent of employees in the federal sector (excluding employees of the U.S. Postal Service who can bargain over pay and employee benefits) were covered by collective bargaining agreements. We will call the percentage of employees covered by collective agreements the “union representation rate.” This compares favorably with the private-sector representation rate of 7.4 percent but is less than one-third of the postal-service representation rate of 68.2 percent and falls considerably short of the state-government (32.8 percent) and local-government (45.5 percent) representation rates.

8. The Postal Reorganization Act of 1970, Pub. L. No. 91-375, 84 Stat. 733 (codified at 39 U.S.C. §§ 1201-1209), created a hybrid scheme including federal private-sector labor law provisions for representation elections (§§ 1203-1204) and final, binding interest arbitration mechanism for the resolution of labor disputes without a statutory right to strike (§ 1207). The principal labor organizations are the American Postal Workers Union (APWU), AFL-CIO; the National Association of Letter Carriers (NALC), AFL-CIO; the National Rural Letter Carriers Association (NRLCA); and the National Postal Mail Handlers Union (Mail Handlers), a division of the Laborers’ International Union of North America, AFL-CIO. The APWU represents postal clerks, maintenance employees, motor vehicle operators and mechanics, and certain information technology and accounting services employees; the NALC represents city letter carriers; the NRLCA represents rural letter carriers; and the Mail Handlers represents mail handlers. Most represented employees work in the Postal Service’s mail processing facilities.

9. There is a basis for linking postal-service employees with other federal-sector employees because while the former can engage in full collective bargaining (albeit with compulsory interest arbitration in lieu of a statutory right to strike, see 39 U.S.C. § 1207(c)-(d) (2012)), they, too, work free of a union-security or agency-fee obligation, see id. §1209(a). If we were examining the free-rider effect alone, postal employees would be included, but because they can engage in economic bargaining, the “paradox” identified in this paper is less striking. The focus of this paper is on the phenomenon of voluntary unionism in the absence of economic bargaining rights. For the effect of state and local “meet and confer” laws that fall short of collective bargaining, see Richard B. Freeman, Herbert Ascherman Chair in Economics, Harvard University & Eunice S. Han, Nat’l Bureau of Econ. Research, Paper presentation at the Am. Econ. Ass’n meeting, Public Sector Unionism Without Collective Bargaining (Jan. 6, 2013), available at <https://dash.harvard.edu/bitstream/handle/1/12553710/82975005.pdf?sequence=1>.
Table 1: Federal Sector Union Membership and Representation Rates; Comparison with Other Sectors – 2014\textsuperscript{10}

<table>
<thead>
<tr>
<th></th>
<th>No. of Employees (thousands)</th>
<th>No. of Members (thousands)</th>
<th>Employees Covered by CBA (thousands)</th>
<th>% Employees Who Are Union Members (union membership)</th>
<th>% of Employees Covered by CBA (union representation rate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal (Non-postal)</td>
<td>2705.4</td>
<td>510.5</td>
<td>629.7</td>
<td>18.6</td>
<td>22.9</td>
</tr>
<tr>
<td>Postal</td>
<td>655.4</td>
<td>424.7</td>
<td>446.7</td>
<td>64.6</td>
<td>68.2</td>
</tr>
<tr>
<td>Private Sector</td>
<td>111,228.00</td>
<td>7639.0</td>
<td>8224.0</td>
<td>6.6</td>
<td>7.4</td>
</tr>
<tr>
<td>State Government</td>
<td>6264</td>
<td>1867.0</td>
<td>2056.0</td>
<td>29.8</td>
<td>32.8</td>
</tr>
<tr>
<td>Local government</td>
<td>10532.0</td>
<td>4412.0</td>
<td>4793.0</td>
<td>41.9</td>
<td>45.5</td>
</tr>
</tbody>
</table>

Because of the prevalence of union-security clauses (which require employees to pay union dues or their financial equivalent as a condition of employment) in states which have not outlawed such a provision,\textsuperscript{11} the percentage of union members among represented employees – termed here the union-membership rate – is typically a bit larger but not much more so than the union-representation rate in the private sector and states allowing union-security obligations.

This near equivalence between representation rate and membership rate is plainly not true of non-postal federal government employees where the difference between the rates is 4.3 percentage points, or 117,000 workers (and potential members). Yet it remains the case that a little over half of a million workers or four out of five represented non-postal federal government employees are union members.


\textsuperscript{11} See 29 U.S.C. § 164(b) (2012).
employees pay union dues or agency fees on a voluntary basis.\(^{12}\)

This paper explores why 20 percent of federal government employees (excluding postal) are apparently willing to select a collective representative and pay an agency fee even though the representative cannot bargain over compensation and most employee benefits.\(^{13}\) Once a relationship with a union bargaining agent has begun, its continuation is less difficult to explain. Many federal-sector bargaining (hence, electoral) units are quite large because they were initially certified as agency-wide

\(^{12}\) See also infra Table 3. These figures are derived from the Current Population Survey (CPS) used by the U.S. Department of Labor. Because workers may have difficulty knowing whether in fact they are covered by collective agreement or are members of unions, these figures may overstate the representation and membership rates of employees. The limitations of CPS figures for calculating the number of non-union employees covered by collective agreement in the federal sector and other “right to work” jurisdictions are discussed in Barry T. Hirsch, An Anatomy of Public Sector Unions (Inst. zur Zukunft der Arbeit [Inst. for the Study of Labor] Discussion Paper No. 7313, 2013), available at <http://www2.gsu.edu/~ecobth/Hirsch_IZA_AnatomyPublicUnions_dp7313.pdf>.

There are a number of federal agencies (see President George W. Bush’s Exec. Order No. 13,252, 3 C.F.R. § 195 (2003)) and categories of employees (see 5 U.S.C. § 7112(b) (2012) (exclusions from appropriate bargaining units), id. § 7112(c)) excluded either by statute or executive order from collective bargaining authority; these workforces perhaps should be removed from the denominator in calculating union representation or membership rates. However, all labor laws, both in the government and private sectors, have exclusions from coverage, and it is difficult to assume the exclusions are significantly larger in the federal sector than in other sectors. The CPS data does not adjust for such exclusions.


A distinct category of federal employees work in the “non-appropriated fund” (NAF) sector because they are employed on the basis of non-appropriated funds such as user fees. NAF employees are subject to the FLRA, see 5 U.S.C. §§ 703(a)(2), 2105(c) (2012), and can seek to bargain for pay and working conditions because those terms are not set by federal law or regulation. See Fort Stewart Schools v. Fed. Labor Relations Auth., 495 U.S. 641 (1988) (agency required to bargain with union representing Department of Army school personnel over working conditions such as mileage reimbursement, paid leave, and salary increases. As the Court stated in Fort Stewart Schools: “Employees of schools established under [20 U.S.C.] § 241 are among a miniscule minority of federal employees whose wages are exempted from operation of the General Schedules. [Section] 241(a) provides that an agency establishing such a school may fix ‘the compensation, tenure, leave, hours of work, and other incidents of the employment relationship’ of its employees without regard to the Civil Service Act and rules.” 495 U.S. at 649 (internal quotation marks omitted). Most NAF employees reside in the Department of Defense (DOD). Approval or disapproval of NAF collective bargaining agreements, pursuant to 5 U.S.C. § 7114(c) (2012), is the responsibility of DOD’s Defense Civilian Personnel Advisory Service. See generally AM. FED’N OF GOV’T EMPS., NON-APPROPRIATED FUND COLLECTIVE BARGAINING GUIDE ECONOMIC PROPOSALS (2014), available at <http://www.afge.org/index.cfm?Page=CIS&DocumentId=4599>.
units by the Federal Labor Relations Authority (FLRA), or were combined over time by the FLRA to permit agency-wide bargaining. Employees can after a year revoke their authorization of a checkoff of union dues from their paycheck by filing an easily available form. However, they cannot readily exit from the bargaining relationship unless a rival union appears on the scene willing to shoulder the expense of an agency-wide contest.

To add to the paradox of federal-sector unionism, unions generally are not able to obtain bargaining authority without winning a secret-ballot election. Under the National Labor Relations Act (NLRA), the principal statute governing labor relations in private companies, an employer can enter into a collective-relationship with a labor organization that is “designated or selected” by a majority of employees in an appropriate bargaining unit. The term “designated” refers to a majority showing by labor organization through signatures on a petition or authorization or a petition. Voluntary recognition by employers is relatively common in private firms. By contrast, under the Federal Service Labor-Management Relations Statute (FSLMRS), administered by the FRLA, an employer’s voluntary recognition of a majority union does not establish representational authority. The FSLMRS defines the “exclusive representative” as the labor organization which is “(A) certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 . . . or (B) was recognized by an appropriate bargaining unit.”


agency [as such a representative before the effective date of the FSLMRS] (i) on the basis of an election, or (ii) on any basis other than election” and continues to be so recognized. This text would seem to foreclose initial certification of an exclusive bargaining agent without an election, although the FRLA has recognized limited circumstances involving merger of agencies or labor organizations indicating no question as to who is the majority representative of the surviving unit or union. Thus, in the federal sector, employees have to vote for union representation in a secret-ballot election for an exclusive bargaining relationship to begin.

II. THE CHOICE WHETHER TO BE REPRESENTED BY A UNION

To consider why federal-sector employees vote for union representation, we utilize a conventional cost-benefit analysis. Unless the employee has some pre-existing commitment to unions, perhaps due to family influence or past experience, the employee will vote for union representation only if the benefits of such representation outweigh the attendant costs.

A. Benefits of Union Representation

We turn first to the benefits side of the equation. An important benefit unions can provide is a measure of due process on the job. Unrepresented federal employees have a statutory mechanism for challenging a discharge or serious discipline by filing an appeal with the Merit System Protection Board (MSPB), an independent agency that Congress created to protect the merit principles of the federal civil service system. The covered actions are removal, suspension for more than fourteen days, reduction in grade or pay, or furlough for thirty days or less. Employees eligible for such review must be non-probationary employees in the “competitive service” or “excepted service.”

19. See Dep’t of the Army, U.S. Army Aviation Missile Command, 56 F.L.R.A. 126 (2000); NAGE, SEIU, Local 5000 and VA, 52 F.L.R.A. 207 (1997). The FLMRS authorizes consolidation of preexisting units “with or without an election into a single larger unit if the [FLRA] considers the larger unit to be appropriate.” 5 U.S.C. § 7112(d).
21. It is unlikely that federal employees have a significantly different political perspective than other workers. Indeed, a 2010 Gallup poll found that federal employees, even if union-represented, are more likely to identify themselves as Republicans than state and local government employees or non-governmental employees. Within each sector, union-represented workers are more likely to view themselves as Democrats than non-represented workers. See Frank Newport et al., Democrats Lead Ranks of Both Union and State Workers, GALLUP (Mar. 24, 2011), <www.gallup.com/poll/16786/democrats-lead-rank>.
22. 5 U.S.C. §§ 7513(b), (d), 7701(a)(1)-(2). The covered actions are removal, suspension for more than fourteen days, reduction in grade or pay, or furlough for thirty days or less. Id. § 7512. Employees eligible for such review must be non-probationary employees in the “competitive service” or “excepted service.” Id. § 7511(a)(1).
employees have the option, which they generally exercise, to bypass the MSPB route and file a grievance under the “negotiated grievance procedure” (NGA) set forth in the collective bargaining agreement.

There are several advantages to the NGA route. One is that the union is an experienced advocate in the arbitral forum and provides representation that is at least as effective, and certainly less costly, than the lawyer who might have to be retained to ensure appropriate consideration of the claim in the MSPB process. A second benefit of the negotiated procedure is that it provides a single forum for nearly all of the claims the employee may have arising out of the adverse agency action; no other forum can hear both contractual grievances and statutory claims. Finally, the arbitral route is less risky than the administrative route at the MSPB because the arbitrator is jointly selected by, and needs to remain acceptable to both, the agency and the union, if the arbitrator hopes to be selected again in future cases. Interestingly, unlike the rule in the private sector and many state and local government laws, adverse arbitration awards generally can be appealed to the FLRA.

The collective bargaining agreement, though its scope is narrower than agreements in the private sector and many state and local governments where bargaining is permitted over wages and major employee benefits, still provides advantages that accrue to working in a union-represented facility. Even if, for example, we consider the constrained scope of bargaining involving TSA airport screeners, that agreement provides,

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23. Some employees are covered by other personnel systems. This includes employees of the Federal Aviation Administration, the Securities and Exchange Commission, health-care professionals in the VA, and overseas teachers of the Department of Defense Dependent Schools. These systems also allow the employee to elect between the negotiated procedure and the administrative remedy. See U.S. FED. LABOR RELATIONS AUTH., GUIDE TO ARBITRATION UNDER THE FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE 1-3 (2013).


27. For a summary of those limitations, see Press Release, U.S. Transp. Sec. Admin., TSA Administrator Pistole’s Decision on Collective Bargaining (Feb. 4, 2011), available at <https://www.tsa.gov/news/releases/2011/02/04/tsa-administrator-pistole%20%E2%80%99s-decision-collective-bargaining> (“Should officers choose a union, Administrator Pistole would allow bargaining on limited, non-security issues relating to employment including shift bids, transfers and awards. Bargaining on any issues related to security would be strictly prohibited. For example, bargaining would not be allowed on security policies, procedures or the deployment of security personnel or equipment, pay, pensions and any form of compensation, proficiency testing, job qualifications or discipline standards.”).
inter alia, (1) procedures and principles governing the performance appraisal process, whereby employees “may grieve their final end-of-year performance rating” (Art. 1);\(^{28}\) procedures and eligibility for employee recognition awards (Art. 2);\(^{29}\) procedures and eligibility for leaves and comparable time (Art. 3);\(^{30}\) procedures for bidding on shifts and screening lines, trading of shifts, and transfers to other areas of covered facilities (Arts. 4-6);\(^{31}\) procedures for changing one’s status from full-time to part-time and vice versa (Art. 7);\(^ {32}\) a uniform allowance and rules for various special items (Art. 8);\(^ {33}\) process and eligibility for special assignments (Art. 9);\(^ {34}\) and break rooms, protective gear, nursing facilities, and union access (Art. 10).\(^ {35}\)

In other federal collective agreements, the parties negotiate over merit pay and promotion,\(^ {36}\) parking spaces and reimbursement of employee parking for use of private vehicles for agency purposes,\(^ {37}\) procedures for employer investigations of misconduct,\(^ {38}\) leave sharing, flexible work place\(^ {39}\) and telework policies,\(^ {40}\) and consideration of seniority in deciding which employees will be affected by staff reductions.\(^ {41}\)

If the parties cannot reach agreement, they can invoke a form of interest arbitration through the offices of the Federal Services Impasse Panel (FSIP), which is a unit of the FLRA.\(^ {42}\)

29. Id. art. 2.
30. Id. art. 3.
31. Id. arts. 4-6.
32. Id. art.
33. Id. art. 8.
34. Id. art. 9.
35. Id. art. 10.
38. See, e.g., U.S. Customs & Border Protection-NTEU agreement, supra note 36, arts. 21-22.
41. Id. art. 28.
42. Under 5 U.S.C. 7119(c)(5)(B)(iii) (“If the parties do not arrive at a settlement after assistance by the Panel [under subparagraph (A)] the Panel may . . . take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.”). FSIP decisions can be found at FSIP Decisions,
In addition to negotiating collective agreements, federal unions establish political action committees and play a role in articulating employee concerns in particular agencies and across the government, and in proposing and commenting on federal personnel policy developments, such as comparability pay adjustments, new overtime pay arrangements, and new wage garnishment procedures.

Finally, these unions provide various benefits for members only. The AFGE, for example, provides discounted prescription coverage, dental services, life insurance, and legal services including a free initial consultation.

**B. Costs of Union Representation**

We now turn to the costs of union representation. In the private sector, employees have to think long and hard about whether to be represented by a union because of likely employer opposition. Many commentators focus
on unlawful employer opposition – threats of retaliation or actual discharge or discipline of union supporters. This can be a factor. But there is also the influence of lawful employer opposition. For the individual non-union firm, a union represents the prospect of net additional costs because the union will likely seek a higher wage, more generous employee benefits, and buffers against employer discipline not present in the union’s absence. In what I have called “Gompers 101” in other writings,48 an effective union will try to neutralize these additional costs by imposing them, or presenting a likely prospect they will be imposed, on competitors in the same product market.

The perspective of the average employee is not often very different from that of the firm. Even if the employee may otherwise support union representation, the employee is going to worry about the adverse consequences for the firm. A rational employee has to evaluate the effectiveness of the union bargaining agency against the risks that bargaining gains or the policies of the union will undermine job security and firm profitability.

In the federal sector, by contrast, the employer-opposition factor is virtually non-existent. While few federal agencies affirmatively welcome the constraints on managerial flexibility involved in a collective bargaining agreement, they are not likely to seek to incur the political risks of a long drawn-out battle with the organizing union. This is certainly true in Democratic administrations but is also the case during most Republican administrations.49

In addition to the political factor, the federal agency, like nearly all public employers, does not face product-market competition. There are few substitutes for most government services and the federal agency faces a


quite limited risk that the union’s gains at the bargaining table will lead to cuts in appropriations for the agency.50 Indeed, because the federal government does not permit, in most cases, collective bargaining over compensation and most employee benefits, the costs of an agreement are often not large and, in any event, not readily apparent to the public.51

Aside from these factors, which tend to dull the willingness of the federal agency to fight a unionization campaign, employees have strong statutory civil-service protections against unfair discharge or other discipline. It may be an overstatement but there is some force to the general perception of non-probationary federal civil service employees that their jobs are secure for the entirety of their careers.52

Union representation also entails payment of union dues or an agency fee. Table 2 in panel A compares median and average annual union dues in so-called “right to work” jurisdictions which outlaw union-security clauses and jurisdictions where such clauses are enforceable.53 Panel B indicates the annual union dues charged by the leading unions representing federal employees. With the exception of the air traffic controllers union54 and craft locals of the NFEE, federal-sector unions apparently charge lower dues than what unions charge in other sectors of the economy.


51. Cf. JOHNSON & LIBECAP, supra note 43, at 139 (“[T]he federal wage bill is spread across all taxpayers, and it accounts for only a small part of total federal expenditures. In 1988, expenditures for wages and salaries at the federal level, including defense, were around 11 percent of total expenditures. The corresponding figure for state and local governments was around 35 percent.”).

52. There is a double edge to this reasoning because what promotes employee comfort with the decision to vote for union representation also furthers the perception that unionization may not be worth the candle.

53. The data in panel A are taken from JAMES SHERK, THE HERITAGE FOUND., BACKGROUNDER NO. 2987, UNIONS CHARGE HIGHER DUES AND PAY THEIR OFFICERS LARGER SALARIES IN NON-RIGHT-TO-WORK STATES 4 tbl. 1 (2015), available at <http://tfh_media.s3.amazonaws.com/2015/pdf/BG2987.pdf>. Sherk’s figures are calculated from the LM-2 reports that labor organizations with at least one private-sector member must file under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 431-432 (2012). He essentially divided total dues income by the total membership reported on the unions’ disclosure forms. Because unions have different categories of members some of whom do not pay regular dues, Sherk’s table 2 reports somewhat higher figures for union dues per paying member. SHERK, supra at 5 tbl. 2.

The data in panel B are taken from LM-2 reports where available. I found that despite several attempts, data on some unions was simply not retrievable from Office of Labor-Management Standards Online Public Disclosure Room, U.S. DEP’T OF LABOR, <www.unionreports.gov> (last viewed Nov. 23, 2015). I then rely on inquiries with federal-sector union lawyers, information available on various union websites, and UNIONFACTS.COM <https://union facts.com> (last viewed Nov. 23, 2015) (the latter purporting to rely on LM-2 reports).

54. For NATCA, dues are set at 1.5 percent of annual salary. NFEE reports annual dues income suggesting $653 per member. See Compare AFGE, NATCA, NFEE & NTEU by the Numbers, FEDSMILL (Dec. 3, 2014), <www.fedsmill.com/compare4>. 
Table 2: Federal Sector Union Dues; Comparison with Other Sectors

<table>
<thead>
<tr>
<th>Panel A: Right-to-work Jurisdictions</th>
<th>Average Annual Dues ($)</th>
<th>Median Annual Dues ($)</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union-security jurisdictions</td>
<td>458</td>
<td>352</td>
<td></td>
</tr>
<tr>
<td></td>
<td>587</td>
<td>421</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel B: American Federation of Teachers, AFL-CIO</th>
<th>Average Annual Dues ($)</th>
<th>Median Annual Dues ($)</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Education Assn./Calif, Teachers Assn, Full-time teachers: 827 (482 non-chargeable) including NEA and CTA dues</td>
<td>337.86 (55.62 non-chargeable)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>American Postal Workers Union, AFL-CIO</td>
<td>505.68 for career employees (including both per capital and local dues)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

57. E-mail from APWU representative to author (Sept. 17, 2015) (on file with author).
<table>
<thead>
<tr>
<th>NTEU Chapter 173</th>
<th>13.91 biweekly (or 361.66) or GS-1, Step 1 to 23.41 biweekly (or 608.66) for GS-13, Step 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFGE, DOL form LM-2</td>
<td>LM-2 reports 19.5 monthly (or 239.40) to 20.80 monthly (or 249.60) AFGE website reports $ 14-16 per pay period</td>
</tr>
<tr>
<td>AFGE Local 704 (EPA employees)</td>
<td>11.25 biweekly (or 292.50) for GS-1 to 15.25 (or 396.50) for GS-12 and above 272.60</td>
</tr>
</tbody>
</table>

In sum, for the employee considering a vote for union representation, the benefits are modest but not trivial, the direct financial cost is about $250 a year, and there is little risk that union policies or actions will jeopardize the employee’s job security.

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59. Dues & Eligibility, AM. FED’N OF GOV'T EMPS., https://www.afge.org/Index.cfm?page=HowToBecomeaMember (last viewed Nov. 24, 2015). This does not appear to include dues payments to AFGE Councils.


61. As Fredna White, president of AFGE Local 1822 and a medical administration specialist for the Department of Veterans Affairs, put it: “Why go out and get an attorney when we will provide you with one and offer you additional benefits for only $12 a pay period?” Laura Koss Feder, Dues Blues: Nonpaying Workers Irk Federal Unions, N.Y. TIMES, Nov. 24, 1996, § 3, at 11, available at <www.nytimes.com/1996/11/24/business/dues-blues-nonpaying>.

62. Federal-sector dues may be lower than otherwise might be the case for several reasons. First, because of the size of many federal sector bargaining units, see supra note 14, unions can achieve economies of scale in the delivery of their services at a relatively low cost per represented employee.


In addition, federal employees representing an exclusive representative have a statutory right to “authorized official time” for purposes of contract negotiation and administration. 5 U.S.C. § 7131 (2012). This can be quite significant. During fiscal year 2011, while unions “represented 1,202,733 non-Postal civil service bargaining unit employees,” such employees “spent a total of 3,395,187 hours performing representational duties on official time.” This amounted to 2.82 hours per bargaining unit employee for the year. See Official Time Statistics for Fiscal Year 2011, U.S. OFFICE OF PERS. MGMT., <https://www.opm.gov/policy-data-oversight/labor-management-relations/reports-on-official-time/#url=stats2011> (last viewed Nov. 24, 2015). In Bureau of Alcohol, Tobacco and Firearms v. Federal Labor-Relations Authority, 464 U.S. 89 (1983), the Supreme Court held that the FLRA did not have authority under § 7131 to require an agency to pay a per diem allowance and travel expenses for unit employees engaged in a representational function.
III. THE CHOICE WHETHER TO PAY UNION DUES OR AN AGENCY FEE

Table 3 sets forth what might be termed the “free rider effect” – the percentage of employees covered by a collective bargaining agreement who voluntarily pay union dues or an agency fee. About one-fifth of represented non-postal federal employees do not pay for the costs of union representation. This is a higher degree of free riding than we see in the postal sector but it is lower than one would expect given the fact that unions have a statutory duty of fair representation (DFR) to all employees in the unit, union security clauses are not enforceable, and any dues-checkoff authorization can be revoked after one year.

One explanation for this lower than expected free-rider effect may be that some employees fear that the union’s DFR works differently in practice than in theory. If the employee puts an affirmative value on being able to utilize the negotiated grievance procedure if disciplined or unhappy with a job assignment, the employee may believe that the effectiveness of that option will depend on the energy and initiative union stewards and other representatives demonstrate in how they investigate the case and whether the union will, ultimately, invoke arbitration.

Having a union representative also may aid the employee at the pre-discipline stage, where the employer is engaged in an investigation that the employee “reasonably believes . . . may result in disciplinary action against the employee . . . .” The employee has a statutory right to be represented by the union at such investigations.

A second factor may be peer pressure. Because the union or its supporters may be involved in soliciting the initial dues-checkoff authorization from the employee, the employees who want to “free ride” will not be able to do so in secret. And to be able to revoke a checkoff authorization at the year’s end, the employees may be required by the collective bargaining agreement to notify the union. Employees may not even be aware of, or may not recall, their statutory right to revoke a prior dues-checkoff authorization or when they must do so to prevent deductions for another year.

In the postal sector, the unions have negotiated a contractual right to

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63. Recall that CPS coverage data regarding government employees who are not union members working in “right to work” jurisdictions may be problematic. See supra note 12.
64. 5 U.S.C. § 7114.
66. See supra note 15. Form 1188 expressly states that a copy of the document is “forwarded by the payroll office to the labor organization in accordance with the arrangement between the agency and the labor organization.”
address employees in any orientation program for new career or non-career employees. This increases acceptability of the union and peer pressure.

In the end, however, there is the influence of moral suasion or solidarity. Some people have an affirmative preference to share the costs of an institution that is operating as a responsive agent and is clearly benefiting them and their colleagues. This is surely the case in the postal sector and in other settings across the country where union security clauses are not enforceable. In the absence of a union-security clause, unions have to work harder to attract and retain membership. This is not a bad thing, but it does require the expenditure of union resources, and some people will simply insist on a free ride. All other things being equal, the union may be a good deal less effective in representing employees than it otherwise would be if fully financed.

Table 3: The Free Rider Effect in the Federal Sector, 2014

<table>
<thead>
<tr>
<th></th>
<th>No. of Employees (thousands)</th>
<th>(A) No. of Members (thousands)</th>
<th>(B) Employees Covered by CBA (thousands)</th>
<th>% of Employees Covered by CBA Who Pay Union Dues or Agency Fees, or (A)(B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal (Nonpostal)</td>
<td>2705.4</td>
<td>510.5</td>
<td>629.7</td>
<td>.810</td>
</tr>
<tr>
<td>Postal</td>
<td>655.4</td>
<td>424.7</td>
<td>446.7</td>
<td>.955</td>
</tr>
<tr>
<td>Private Sector</td>
<td>111,228.00</td>
<td>7639.0</td>
<td>8224.0</td>
<td>.928</td>
</tr>
<tr>
<td>State government</td>
<td>6264</td>
<td>1867.0</td>
<td>2056.0</td>
<td>.908</td>
</tr>
<tr>
<td>Local government</td>
<td>10532.0</td>
<td>4412.0</td>
<td>4793.0</td>
<td>.920</td>
</tr>
</tbody>
</table>


IV. CONCLUSION

Federal-sector unionism is a paradox. Despite the outlawry of union-security provisions and strikes, sharp limits on the scope of collective bargaining (outside the U.S. Postal Service and airport air traffic controllers), and the absence of card-check certification, a good number of federal employees join unions and pay dues. The union membership rate is lower than in state and local governments but considerably higher than in the private sector. Somewhat fewer employees pay dues than are covered by collective agreements but the free-rider effect is smaller than one would expect. The federal sector suggests a model of relatively low-stakes unionism and collective bargaining that perhaps should be considered as an alternative by labor organizations and policymakers. The federal-sector model may, however, require certain features that are not readily replicable in the private sector: the absence of a right to strike in favor of some measure of interest arbitration as a deadlock-breaking device, an absence of employer opposition, and statutory employment protections.