

RIGHTS TRAMPLED:

UNCOVERING THE TRUTH ABOUT LOUISIANA TEACHERS' UNION CONTRACTS



By Sarah Harbison

“The Employee shall be entitled to full rights of citizenship which includes religious and political freedom.”

The United States and Louisiana Constitutions guarantee religious and political freedom to all citizens, but when it comes to Louisiana public school teachers and other school staff, that statement from the St. Helena Association of Educators Collective Bargaining agreement is more of a nice sentiment than a guarantee. An examination of collective bargaining agreements (CBAs) between state teachers' unions and local public school systems confirms that neither party—the school system nor the union—respects school employees' political freedoms. In fact, they curtail them.

Louisiana is one of 27 Right to Work states, which means that no person can be compelled, as a condition of employment, to join or not join, nor pay dues to, a labor union. Six Louisiana school systems (Jefferson Parish, St. Bernard Parish, St. Helena Parish, St. John Parish, St. Tammany Parish, and Vermilion Parish) and two New Orleans charter schools (Benjamin Franklin High School and Morris Jeff Community School) have CBAs in place.¹

These agreements, which govern the working relationship between public employees and their employers, are negotiated in secret and remain in place for years, sometimes decades. They are often renewed as a matter of course and without revision. Members and non-members alike are bound by them if their job title is included in the bargaining unit as defined by the agreement. In several cases, these agreements allow unions to usurp a school principal's authority to make choices about how a school is run and leaves decisions about duty scheduling, planning periods, and student discipline to the union. Worse, they curtail teachers' First Amendment rights by making it difficult to resign from the union or learn about competing organizations that provide similar benefits to school employees.

The Pelican Institute obtained current CBAs from each school system or school through public records requests. This brief report details the ways in which these agreements violate the First Amendment rights of those bound by them and guarantee their members privileges the unions work so hard to deny other Louisianians.



¹ Teachers and staff at Bricolage Academy, International High School, Rooted School, and Living School have also voted to unionize. As of August 2023, these unions have not yet adopted collective bargaining agreements.

Collective Bargaining and Public Sector Unions: The Basics

Federal and state laws provide a method for interested workers to hold a vote in their workplace to form a union and engage in collective bargaining on behalf of all workers in the group. The U.S. Department of Labor defines collective bargaining as “the mechanism or process for an organized group of workers and their employer to pursue mutual agreement over workplace issues.”² A collective bargaining agreement is the result of the negotiations between the workers and their employer and governs almost all matters relating to the job, including working conditions, salary, benefits, and grievances. All employees who are members of the bargaining unit as defined by the agreement are subject to the terms of the CBA, whether they joined the union or not.

Workers in both private and public employment can belong to unions. However, there are important differences between private sector and public sector collective bargaining. “The most important distinction between public and private bargaining...is that public management is responsive to political inducements, not the marketplace,” writes Philip K. Howard in his recent book, “NOT Accountable: Rethinking the Constitutionality of Public Employee Unions.”³

Whereas private union contracts are shaped by market forces and economic risks that keep both sides in check, governments enjoy a monopoly on some services and can't go out of business. Government representatives at the bargaining table, who are supposed to represent the interests of taxpayers, are not incentivized to refuse expensive or inefficient union demands.

Furthermore, public sector unions tip the scales by spending money to elect union-friendly politicians—the very same people with whom they will negotiate the CBA.



² *Unions 101*, U.S. Department of Labor, <https://www.dol.gov/general/workcenter/unions-101> (last visited Aug. 1, 2023).

³ Philip K. Howard, *NOT Accountable: Rethinking the Constitutionality of Public Employee Unions* (2023).

Similar Benefits for a Relative Bargain: Alternative Organizations

As a recruiting tactic, teachers' unions routinely tell teachers they are the only organization offering certain benefits. Provisions in the collective bargaining agreements reviewed for this paper ensure that the union message is the only one teachers will hear from the time they are hired. In St. Helena, St. John, and Vermilion Parishes, for example, the unions are granted time for recruitment purposes at faculty meetings and new teacher orientation. The union is also allowed to place a bulletin board in schools and use the inter-school mail service, including email, to distribute materials.

St. Tammany Parish's agreement stands out when it comes to suppressing competing messages. In addition to granting recruitment time at new teacher orientation and use of inter-school mail and email, it also prohibits other organizations from distributing literature, placing messages on the email system, having presentation time at orientation, using school facilities, or posting messages on a school bulletin board. Furthermore, the agreement requires that the school board provide the union with a list of new employees, presumably for recruitment purposes.

Contrary to what many teachers have been told, unions do not have a monopoly on teacher or staff benefits.

Many of the supposed benefits described in the collective bargaining agreements are enshrined in state law in [Louisiana's Teacher Bill of Rights](#).⁴ Furthermore, organizations like Association of American Educators and Associated Professional Educators of Louisiana offer liability coverage, professional resources, and legal services to teachers and staff for [less than \\$20 per month](#).⁵ If unions are providing valuable services their members want at a competitive price, they should not be afraid of losing members to competing organizations.

4 La. R.S. §17:416.18

5 *Alternatives to Union Membership*, <https://teacherfreedom.org/alternatives-to-union-membership/> (last visited Aug. 1, 2023).

Leaving the Union: *Janus* and Drop Windows

In the landmark 2018 decision *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, the U.S. Supreme Court held that the First Amendment requires an employee to provide “affirmative” consent “freely given” for payments to a union to be deducted from an employee’s check and used for political speech. The First Amendment interests at stake are too great for a public sector union, like the teachers’ unions, to presume that an employee is willing to waive their right to speak—or not to speak—by paying dues.

Americans for Fair Treatment found that the [National Education Association](#) (NEA) spends two dollars on politics for every dollar it spends representing its members.⁶ Likewise, the [American Federation of Teachers](#) (AFT) spends \$0.66 on politics for every dollar spent on representing its members.⁷ A portion of dues paid by Louisiana teachers who belong to either LAE or LFT (the state affiliates of the NEA and AFT, respectively) is spent on lobbying or in support of political candidates. According to OpenSecrets.org, the [NEA](#) contributed \$2.22 million to Democrat candidates and a mere \$24,000 to Republican candidates in 2022.⁸ The [AFT](#) donated \$2.2 million to Democrats and \$550 to Republicans in 2022.⁹ This lopsided political spending is despite the fact that [educators are equally likely to describe themselves as liberal versus conservative](#).¹⁰

*What if a Louisiana teacher does not wish to support the union’s political activities, such as AFT’s position on canceling student loan debt,¹¹ or NEA’s efforts to codify *Roe v. Wade*?¹² What if a teacher’s financial situation changes mid-year and he or she can no longer afford union dues? Or, what if he or she simply no longer wishes to be a union member? The right to resign from a union is guaranteed by the First Amendment and was recognized by the Supreme Court long before *Janus* was decided.¹³*

Unfortunately, teachers bound by collective bargaining agreements only have a very narrow window each year during which they may terminate membership. In St. John Parish, school employees may resign from the union only prior to September 1 of any school year. In Vermilion Parish, the drop date is August 1. Dues are collected monthly, and if a teacher leaves the parish during the year, the remaining portion of his or her annual union dues are deducted from his or her final paycheck. Employees in St. Bernard Parish who wish to resign must do so within the first 10 working days of the school year. St. Tammany Parish allows resignations during the month of July. Each of these drop windows falls during a time when teachers are preoccupied with preparing for the start of the academic year or are out on summer vacation. Failure to resign from the union within the specified drop window commits the employee to another year of membership and dues.

Although union members in St. John Parish are guaranteed in word “his/her constitutional rights concerning organizing, joining, and assisting the Association,” they are denied in deed the First Amendment freedom of association rights promised by *Janus* if they are unable to resign at any time.

6 NEA: *Where Do Your Union Dues Go?*, <https://americansforfairtreatment.org/resources-and-data/nea-where-do-your-union-dues-go/> (last visited Aug. 1, 2023).

7 AFT: *Where Do Your Union Dues Go?*, <https://americansforfairtreatment.org/resources-and-data/aft-where-do-your-union-dues-go/> (last visited Aug. 1, 2023).

8 National Education Assn., <https://www.opensecrets.org/orgs/national-education-assn/totals?id=D000000064> (last visited Aug. 1, 2023).

9 American Federation of Teachers, <https://www.opensecrets.org/orgs/totals?id=D000000083&cycle=A> (last visited Aug. 1, 2023).

10 *Educator Political Perceptions: A National Survey*, Education Week Research Center, <https://epe.brightspotcdn.com/be/2b/1bc98850470e9fecf8f8085a3284/educator-political-perceptions-education-week-12-12-2017.pdf> (last visited Aug. 1, 2023).

11 American Federation of Teachers, TWITTER, (February 28, 2023), <https://twitter.com/AFTunion/status/1630561937061736449>

12 *Leave Reproductive Decisions to Individuals*, <https://www.nea.org/advocating-for-change/action-center/take-action/leave-reproductive-decisions-individuals> (last visited Aug. 1, 2023).

13 See, e.g., *Scofield v. NLRB*, 394 U.S. 423, 430 (1969); cf. *Pattern Makers’ League of N. Am., AFL-CIO v. NLRB*, 473 U.S. 95, 105 (1985).

School Choice for Me but Not for Thee

For decades, Louisiana’s public schools have failed most of their students. The Louisiana Department of Education reported that in the 2022-2023 school year, only 33% of Louisiana public school students performed at or above proficient levels.¹⁴ Because of these realities and to better meet the individual needs of their children, many parents have sought enrollment in other public or private schools, but financial and other barriers pose a real challenge. State lawmakers set out to meet this need last year, considering bills that would have expanded school choice through the creation of education savings accounts (ESAs), as other states have recently done. ESAs enable families to access public funds that would have otherwise supported their children’s education in a public school and use those funds to pay for private school tuition or a customized educational plan using state-approved education service providers.

The Louisiana legislature passed two ESA bills for students with disabilities and struggling readers during the 2022 legislative session; both bills were vetoed by the governor (who was twice endorsed by the Louisiana Federation of Teachers).¹⁵ The [Louisiana Federation of Teachers](#)¹⁶ and the Louisiana Association of Educators^{17, 18} were vocal opponents as the bills made their way through the legislative process. In 2023, the Louisiana House of Representatives passed two ESA bills over opposition from the unions but neither made it to the full Senate.

Otherwise, public school choice for Louisiana families is only available to parents who wish to move their child from a failing school to a higher performing public school. However, CBAs at two Louisiana school systems grant union members who are parents the opportunity to select a different school that fits their children.

Bargaining unit members in St. Bernard and Vermilion Parishes are granted the right to place their children in schools outside of the districts where they live. Proponents of school choice believe that a child’s zip code shouldn’t determine their destiny. Unions seem to agree, but only if *they* bestow parents with that choice.



14 *Elementary and Middle School Performance*, Louisiana Department of Education, <https://louisianabelieves.com/docs/default-source/test-results/2022-state-leap-2025-mastery-summary.xlsx> (last visited Aug. 1, 2023).

15 *LFT endorses John Bel Edwards for governor*, Louisiana Federation of Teachers, <http://la.aft.org/press/lft-endorses-john-bel-edwards-governor> (last visited Aug. 1, 2023); and *Runoff election 2019: Governor*, Louisiana Federation of Teachers, <http://la.aft.org/publications-and-reports/runoff-election-2019-governor> (last visited Aug. 1, 2023).

16 *Week 2 in the Legislature*, Louisiana Federation of Teachers, <http://la.aft.org/legislation/week-2-legislature-0> (last visited Aug. 1, 2023).

17 Louisiana Association of Educators, FACEBOOK, (April 20, 2022), <https://www.facebook.com/louisianaassociationofeducators>

18 Louisiana Association of Educators, FACEBOOK, (March 28, 2022), <https://www.facebook.com/louisianaassociationofeducators>

Release Time: Taxpayer Funded Lobbying

Release time is time spent conducting union business—lobbying, attending conferences, or negotiating CBAs—for which the member is granted paid time away from the job he or she was hired to do. In other words, it's a form of taxpayer funded lobbying.

In the case of teachers, who are public employees hired to educate children, CBAs guarantee that they receive paid time away from the classroom to conduct business for the benefit of a private union.

Pelican sent public records requests to each of Louisiana's school districts asking for the number of hours of release time they permit. Of the parishes with collective bargaining agreements, only Vermilion Parish reported that union members used release time. Vermilion Parish responded that the union used between 9 and 12 of 35 total release days provided for in the CBA for the 2021–22 school year. Neither St. Helena nor St. John Parish school systems responded to repeated requests for this information as required by law.¹⁹



Reduction in Force Policies

Louisiana state law (R.S. 17:81.4) provides that all public school system reduction in force (or layoff) policies adopted for use in dismissing teachers and school leaders shall be based solely upon demand, performance, and effectiveness, as determined by the state's performance evaluation requirements. Any reduction in force shall be instituted by dismissing the least effective teacher within each targeted subject area or area of certification first, and then proceeding by effectiveness rating until the reduction in force has been accomplished.

Most of the collective bargaining agreements reviewed provide a process for reduction in force. In most cases, the agreements provide that the least effective employees are laid off first. However, in St. John Parish, where only 19% of students are performing at or above proficient levels, teacher effectiveness is considered secondary to a teacher's racial, ethnic, or gender group.²⁰ This means that the performance or effectiveness of a teacher in helping kids learn is valued less than the teacher's race, ethnicity, or gender when it comes to deciding which teachers remain in the classroom.



¹⁹ St. Tammany Parish and St. Bernard Parish responded that they had no record of release time requests; Jefferson Parish responded that union officials in that parish are employed by the union and not the school board.

²⁰ *Elementary and Middle School Performance*, Louisiana Department of Education, <https://louisianabelieves.com/docs/default-source/test-results/2022-state-leap-2025-mastery-summary.xlsx> (last visited Aug. 1, 2023).

Recommendations for Reform

Organizations like unions should exist for the benefit of their members, not the other way around. Teachers who believe that they are adequately represented by the union and agree with the ways in which their dues are spent have the right to remain members. Conversely, teachers who do not believe that their needs are being met, disagree with the way the union speaks on their behalf, or who simply no longer wish to remain members must be given the right to drop their membership at any time.

Lawmakers can restore public employees' First Amendment rights and ensure all children in Louisiana can attend a school that fits by:

- Allowing union members to end their membership and stop dues payments at any time.
- Requiring employers to provide employees with an annual notice of their First Amendment right to join—or not join—a union and pay dues.
- Allowing union members to submit their dues authorization or membership resignation directly to their employer, rather than through the union.
- Requiring the employer to verify the authenticity of the dues authorization or membership resignation.
- Require unions to undergo retention elections when collective bargaining agreements expire to determine whether a majority of bargaining unit members still want a union.
- Passing universal education savings accounts.
- Ensuring that teachers and school employees can hear from all organizations that provide benefits to teachers.
- Require unions to provide members with an annual accounting of dues that informs them about the candidates, policies, legislation, or political parties their dues support.

These common-sense changes can strike an appropriate balance that protects the First Amendment speech and associational rights of teachers who wish to belong to a union and those who do not, as well as the interests of taxpayers and the children whose future depends on having quality public schools.

