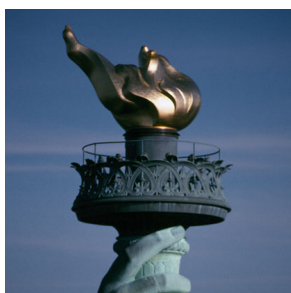


State Labor–Management Policy and the Texas Model



*Keeping unionism voluntary is beneficial,
but additional safeguards are now needed*

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Center for Economic Freedom & Growth
Texas Public Policy Foundation

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State Labor–Management Policy and the Texas Model

Keeping unionism voluntary is beneficial, but additional safeguards are now needed.

Not only has Texas created jobs at a stunning rate; it has also—pace critics like the New York Times’ Paul Krugman—created lots of good jobs. Indeed, the rest of the nation could turn to the Lone Star State as a model for dynamic growth, as a close look at employment data shows.

Wendell Cox, “The Texas Growth Machine”

Executive Summary

Even harsh and relentless critics of Texas public policies routinely acknowledge that the Lone Star State’s economic growth has long out-paced the national average, and not by a small margin. The data also show that employees of all skill levels, ranging from those with less than a high school education to advanced degree holders, benefit from Texas’ low cost of living and superior growth.

Texas is an employee-friendly state, and also a very low union-density state. But Organized Labor and its allies in Washington, D.C., and Austin remain convinced that they know what’s good for Texas employees. During the past decade, union officials have scored a series of private-sector organizing victories in Texas, typically by using “top-down” tactics geared more toward sapping employers’ will to resist unionization than toward mobilizing employee support. In the public sector, union officials have since the 1970s benefited from loopholes in the Texas law that, on its face, prohibits public officials from entering into collective bargaining arrangements with government unions. In areas of public employment in which this ban remains intact today, such as K-12 schools, union officers often collude with government managers to circumvent the law.

Public-sector union reforms that state senators and representatives ought to consider include prohibiting the automatic deduction of union dues from public workers’ paychecks and restoring the ability of local public safety officers to communicate directly with their employer on job-related matters by closing the police/fire loophole in Texas’ ban on “exclusive” union bargaining in the government sector. In the private sector, to help ensure Texas remains the prime location for employees seeking to raise their living standards and businesses eager to hire such employees, lawmakers should take several steps to

Recommendations

- Prohibit the automatic deduction of union dues from public workers’ paychecks.
- Eliminate all practices and repeal all provisions in Texas law that are inconsistent with Texas’ ban on exclusive union bargaining for public employees, such as the “exclusive consultation” loophole used by some school districts and provisions that allow collective bargaining of certain municipal employees
- Empower employees to go to court to seek injunctive relief against union officials and employers who violate Texas’ Right to Work law
- Prohibit employers from handing over employees’ names, addresses, and other personal information to union organizers
- Specify that union officials may not accompany government employees on inspections of private businesses without the consent of the owner unless the union is already established as front-line employees’ exclusive bargaining agent
- Eliminate the state minimum salary schedule for educators

combat top-down union organizing. To start with, the Legislature could prohibit companies from handing over employee personal information, except when they are required to do so in advance of a secret-ballot vote over unionization, to union organizers.

As more and more states act to curtail union special privileges and protect the freedom to work, Texans can't afford to remain complacent. It's the job both of ordinary citizens and of elected officials to make their state live up to its reputation as a bastion of freedom for the individual employee.

A Magnet for High-, Medium- and Low-Skilled Workers

As a study published by the Federal Reserve Bank of Dallas in late 2013 pointed out, Texas “has been the No. 1 destination of domestic migrants since 2006” (Orrenius, pp. 14-15). Although Texas' net domestic in-migration of roughly 54,000 people a year during the 1990s and the early 2000s was significantly smaller than the state's immigration from abroad, the net domestic inflow of “more than 150,000 people annually” from 2006 to 2012 actually exceeded the number of international migrants.

One remarkable fact about migration to Texas that is often overlooked is the diversity of the inflow in educational attainment as well as in other regards.

The Lone Star State is certainly a magnet for high-skilled employees. From 2007 to 2013, according to U.S. Census Bureau data, Texas' total population, aged 25-64, with at least a bachelor's degree education soared by nearly 18.9 percent, or 8.9 percentage points above the national average increase of 10.0 percent (see the Census American FactFinder, 2007 American Community Survey 1-Year Estimates and 2013 ACS 1-Year Estimates, “Educational Attainment,” Table S1501). Thanks largely to net domestic and international immigration, Texas' college-educated, working-age population grew more than all but two other states', in percentage terms. In absolute terms, Texas' college-educated, working-age population grew by 122,000 more than California's from 2007 to 2013, even though there had been 81 percent more college graduates, pre-retirement age, in the Golden State in 2007.

Texas' working-age population with only a high school diploma grew by 10 percent from 2007 to 2013, nearly quadruple the national average.

But census data shows that Texas is also a land of opportunity for lesser-educated employees. While the share of American 25- to 64-year-olds with at least a bachelor's degree has soared in recent decades, there are still far more people in their working years who hold a high school diploma, but haven't graduated from college: to be precise, 94.7 million vs. 51.7 million as of 2013. “Middle-educated” working-age adults, a contingent that is still growing, need good jobs just as much as their college-educated counterparts. Because the Lone Star State has plenty to offer, Texas' working-age population with a only high school diploma grew by 10.0 percent from 2007 to 2013, nearly quadruple the national average increase of 2.7 percent. Of the 50 states, only North Dakota had a higher percentage increase in “middle-educated” working-age adults.

Far less numerous, and shrinking, is the group of working-age Americans who lack even a high school degree. There were roughly 20.8 million in 2007, and just over 19.8 million by 2013. But nearly 20 million people aged 25 to 64, the large majority of them willing and able to work, can't and shouldn't be written off. And in the Lone Star State, vast numbers continue to be integrated into the labor force every year. That's why Texas' working-age population with less than a high school education declined from 2007 to 2013 by only roughly a third as much as the nationwide drop of 4.8 percent.

Net migration to Texas is racially, ethnically, and educationally diverse. Domestic moves, rather than international immigration or disparate birth rates, overwhelmingly account for the fact that Texas' total

black population grew by 28.5 percent from 2003 to 2013, the greatest increase among the 16 states with black populations of at least a million as of 2003 (see the Census Bureau’s Statistical Abstract of the United States, 2004-2005 edition, Table 21, and American FactFinder, “Annual Estimate of Resident Population by Sex, Age, Race Alone or in Combination, and Hispanic Origin for the United States and the States,” 2013 Population Estimates, Table PEPASR5H). In contrast, California’s black population increased by just 3.2 percent over the same period, while New York’s edged up by just 0.6 percent, and Illinois’ fell by 1.3 percent.

Similarly, as a Dallas Morning News analysis published in May 2011 pointed out, Texas’ Census Bureau-reported Hispanic population growth of 42 percent from 2000 to 2010 was largely driven by the in-migration of “people of Hispanic descent from other states,” most notably California. The Lone Star State’s 71 percent growth in Asian population over the same period was more than half again as great as the national average, and also, to a great extent, the result of domestic migrants’ “looking for better schools and a suburban lifestyle,” according to Dr. Steve Murdock, director of the Hobby Center for the Study of Texas at Rice University and former U.S. Census Bureau director.

Minimum-Wage-Earners and Engineers Alike Fare Better in Texas

When confronted with such demographic evidence, diehard opponents of the Texas Model insist that if working Americans of all income levels are flocking to former President George W. Bush’s stomping ground, it must be because they don’t know what’s good for them. For example, in late 2013, journalist Tim Noah, now labor policy editor for Politico, wrote a lengthy article for the Washington Monthly in which he racked his brain over the question of why, year after year, far more Americans move out of states with nominally high per capita incomes such as Connecticut, New York, Massachusetts, and Maryland to states such as Texas with nominally lower income levels. “Why are Americans by and large moving away from economic opportunity rather than toward it?” Noah plaintively asked.

The answer is not complicated, as fellow journalist Michael Barone explained to Noah in a column published not long after the latter’s article, bossily entitled “Stay Put, Young Man,” first appeared. In Northeastern states and California, regions favored by Noah for their high taxes, heavy regulation of businesses, and pro-Big Labor workforce policies, Barone pointed out:

Opportunity does exist . . . for people with very high skill levels and for low-skill immigrants, without whom [several large] metro areas [in the Northeast and on the Pacific Coast] would have lost, rather than gained, population over the past three decades. But there’s not much opportunity there for people with mid-level skills who want to raise families. Housing costs are exceedingly high, partly, as Noah notes, because of restrictive land use and zoning regulations.

Texas and other relatively low-tax, low-regulation states where compulsory union dues and fees are prohibited by Right to Work laws may actually be economically advantageous for an even higher share of employees and their families than Barone suggested. The evidence can be found from a wide array of sources, including some that are quite unexpected.

For example, last February the web site of the national AFL-CIO featured a blog post by regular AFL-CIO NOW contributor Kenneth Quinnell citing a study by the National Low Income Housing Coalition (NLIHC), a big labor-friendly think tank that gets financial support from union officials and even invited AFL-CIO Vice President Arlene Holt Baker to address its 2012 convention. Obviously, the NLIHC can’t be plausibly accused of harboring a bias in favor of a Right to Work state like Texas!

The table in the study on which Quinnell focused in his blog post presented data showing that in Texas two minimum wage earners each working 40 hours a week would have to spend roughly 34 percent of their combined income to rent a two-bedroom apartment at the market rate. That’s not an easy life, but, according to the same table, it’s a far less difficult one than what the minimum wage earners’ counterparts frequently face in large-population states with labor policies more congenial to union officials.

In California, for example, where compulsory unionism is permissible in the private sector and actively encouraged by state policy in the public sector, two similarly situated minimum wage earners would have to spend 48 percent of their combined income to rent a two-bedroom apartment. In union-friendly New York and New Jersey, rent would consume more than half their income!

Of course, the relatively low cost of housing and other necessities in Texas benefits skilled and experienced employees as well as those who, at least for now, depend on low-paying jobs for income. For example, in a 2014 analysis for the WalletHub web site designed to “help nurses, particularly the newly minted of the bunch, lay down roots in areas that are conducive to both personal and professional success,” financial writer and editor John Kiernan identified Texas as the state with the “highest annual salaries, adjusted for cost of living” for nursing professionals. And the lure of very competitive salaries is undoubtedly an important reason why Houston ranks second among the 85 U.S. largest metropolitan areas for engineers per capita, as economic and demographic pundit Joel Kotkin recently noted.

Right to Work Texas’ Large, Growing Influence Over National Policy a Problem for Big Labor

If the principal purpose of the Organized Labor movement were to raise rank-and-file employees’ living standards, Texas would, as we have just seen, be one of the last states, if not the 50th, on the list of union organizing targets. But despite the rhetoric of top union executives about how “raising wages” is their mission, ample evidence suggests they have other goals in mind.

Last February, the AFL-CIO executive committee met for the first time in Texas, expressly with the aim of showing that the union hierarchy is, as a Houston Chronicle story on the meeting put it, “focusing on... organizing in Texas.”

As the second most populous state, and with a population growing far more rapidly than the U.S. as a whole, Texas already wields a lot of influence over national policy, and will surely wield even more in the future. Texas thus represents a significant problem for the ambitions of hundreds of national union officials who are trying to expand Organized Labor’s power in states outside of its historical strongholds.

But over the past decade, Organized Labor has scored a series of significant victories that have raised their hopes for substantially expanding their footprint in Texas in the relatively near future.



Cleaning Companies Were ‘Reluctant To Discuss . . . Why They Had Agreed To Card Checks’

In the late summer of 2005, then-SEIU President Andy Stern, who had just led a breakaway of four unions from the AFL-CIO conglomerate, achieved a breakthrough in Houston when executives of the city’s four largest janitorial companies agreed to recognize an SEIU local affiliate as the “exclusive” bargaining agent of roughly 5000 of their employees. Acquiescing to the wishes of Stern and his lieutenants, the companies cut a deal with the union not to allow janitors to vote in secret-ballot elections prior to empowering union officials to negotiate wages, benefits, and work rules for all of their front-line employees, including those who opposed unionization.

Instead, the SEIU local would be granted exclusive negotiation privileges automatically once it had secured signed union “authorization” cards from a majority of the janitors at the four companies. As critics of so-called “card check” union organizing drives have long pointed out, whenever they occur, individual workers under the peering eyes of union organizers may be intimidated into signing not just themselves, but all of their nonunion fellow employees, over to exclusive union representation.

In addition to consenting to card check union recognition, the cleaning firm executives agreed to so-called “neutrality.” That is, they promised not to furnish employees with any information that might dissuade them from signing union cards, and to order managers not to speak out to employees regarding the possible downsides of unionization on their own initiative.

As New York Times labor reporter Steven Greenhouse observed in a November 2005 article concerning SEIU organizers’ then-recent triumph, from the time the deal was cut cleaning company officials had been “reluctant to discuss . . . why they had agreed to card checks” and to empower an arbitrator union officials had helped select to count the cards and certify the union.

But SEIU operatives were not so diffident. They did not hesitate to let Greenhouse know that the companies had agreed to help organize their employees because of pressures from building owners and pension funds, and because the service employees [union hierarchy] had threatened to pressure operations elsewhere, as it did with sympathy strikes in California, Illinois, New York and Connecticut.

Even as they boasted about enlisting the assistance of large janitorial firms to organize the workers who clean the offices at many of Houston’s prime corporate properties, SEIU chiefs claimed that unionization would greatly improve the janitors’ living standards. But if the SEIU had really come up with a sure-fire way of raising employees’ pay and benefits without undermining their job security that it could sell to those employees, why were union officials so reluctant to allow a secret-ballot vote over unionization?

The fact is there is no magic formula through which janitorial firms in the Houston labor market or any other can promptly and sharply raise the pay and benefits of their employees without cutting jobs and/or hours and while continuing to be able to offer their clients a competitive price for their services and turn a profit. Not for the SEIU hierarchy, or for anyone else.

As Houston Chronicle labor reporter L.M. Sixel casually acknowledged in a generally sympathetic account of the AFL-CIO executive committee’s meeting in Texas last February, even armed with a neutrality agreement from the big janitorial companies that they wouldn’t oppose a card-check campaign . . . it took the SEIU months to get a majority of the 4,700 janitors to sign cards saying they’d like to be represented.

Moreover, while the unionization drive was “initially successful,” the union had “a much rougher time when it negotiated its labor agreements. Raises were small, and benefits were scant.”

Given Texas SEIU officials' overall lack of success in securing higher pay and better benefits for janitors in the decade since their original organizing triumph in Houston (for example, according to Big Labor-friendly journalist Josh Edelstein's account, a month-long 2012 strike resulted in "25-cent hourly wage increases and the maintenance of workers' current health care plan"), it's not surprising that the union continues to count on top-down organizing tactics to expand its reach.

They have had some help in this area recently from President Obama's Labor Department, which gave a boost to union representatives by allowing them to accompany Occupational Safety and Health Administration (OSHA) inspectors on inspections of non-union work sites. This represented a sharp break from OSHA's previous practices under both Republican and Democratic administrations, which did not allow any third parties, including union officials—other than the employees' recognized exclusive bargaining agents, to tag along on safety inspections.

While the SEIU campaign of vilification and harassment against cleaning firm principals who continue to resist top-down organizing deals has yet to "kill" any cleaning firms (as a top union organizer once allegedly told a company executive the union wanted to do—see the Brett Jacobson article cited in the references for more information), it has certainly sent a clear message to cleaning firms that they face grave repercussions if they refuse to go along with Organized Labor demands that they support the unionization of their employees.

Hospital Warned: New Cancer Center 'Dead in the Water' Unless Union Gives its Okay

Texas cleaning firms and their front-line workers are just one of an array of targets Organized Labor has designated as part of its program to transform the Lone Star State.

Nurses and other employees in the ever-expanding health care industry have also been a principal focus of union campaigns in Texas. As of early last year roughly 4,000 nurses in Texas had been unionized by National Nurses United (NNU), a labor organization launched in December 2009 when the California Nurses Association (CNA) merged with several other health-industry unions.

The NNU owes its success in Texas overwhelmingly to neutrality agreements that it, its CNA precursor, and the SEIU have cut with Hospital Corporation of America (HCA), one of the nation's biggest hospital chains, and the Tenet Healthcare Corp., another massive health care services company that, like HCA, is based in Nashville, Tenn.

As Michael Lotito, a San Francisco-based management attorney with Jackson Lewis LLP, explained to the Wall Street Journal's Kris Maher in 2011, big companies like Tenet and HCA commonly agree to neutrality deals to avoid a negative union campaign, which can be damaging during initial public offerings or when companies are seeking regulatory approval for such things as hospital extensions.

A telling illustration of the kind of negative publicity health-care companies hope to avoid by cutting neutrality deals with Organized Labor was a TV ad campaign in New Haven, Conn., launched in early 2005. It was designed to pressure local politicians to block construction of a new \$14 million clinical cancer center by the Yale-New Haven Hospital unless the hospital first agreed to help SEIU Local 1199 officials organize its employees.

In late February 2005, New Haven Mayor John DeStefano (D) turned up the pressure when he publicly predicted, according to New Haven Register reporter Mary O'Leary, that the cancer center would be "dead in the water" unless the hospital cut a deal with the Local 1199 brass.

It's understandable that companies would want to avoid costly, time-consuming and unpleasant show-

downs with union organizers when all they want to do is improve their facilities' capacity to serve the sick and the injured. But unfortunately, the neutrality agreements forged by these firms have trampled even the limited rights of non-association with unions that employees enjoy under federal labor law.

Some of the worst cases of discrimination against employees who prefer to remain union-free have occurred in Tenet's two hospitals in El Paso, Providence Memorial Hospital (PMH) and Sierra Medical Center (SMC).

According to the National Right to Work Legal Defense Foundation, which assisted employees at PMH and SMC who did not wish to be represented by the NNU in a National Labor Relations Board (NLRB) case launched in 2012, the putative "neutrality" policy actually denied nurses opposed to unionization access to non-work areas at the hospital to make their case to their fellow employees while giving preferential access to union organizers.

A Right to Work news release stated that the "neutrality agreement gives union organizers wide-ranging access to employee break rooms, lounges, and other company facilities. On the other hand, Tenet refused to grant nurses who oppose unionization equal access to its facilities, going so far as to change workplace procedures to deny off-duty nurses access to company facilities."

A neutrality deal between HCA and the NNU regarding nurses at the company's Rio Grande Regional Hospital in McAllen resulted in even more egregious viewpoint discrimination against employees who prefer to remain union-free. The NNU secured monopoly-bargaining privileges after a one-sided election in which union organizers were given access to employees in the workplace, workers' home addresses, and other personal information, while gag rules limited what managers could say about the union.

Union organizers were given access to employees in the workplace, workers' home addresses, and other personal information, while gag rules limited what managers could say about the union.

But a tenacious group of nurses led by RN Victoria Lynn Glass refused to give up. They filed for an NLRB decertification election, and in July 2012 the union was voted out of the hospital. Even then, the neutrality bargain between HCA and the NNU remained in effect. In fact, union officials invoked it to subpoena Glass to "appear and testify under oath [before an arbitrator handpicked by union officials and the company] about the campaign to remove the union from her workplace. She was also directed to produce for union inspection all documents [that she and other independent-minded nurses] had created in their election campaign to oppose [unionization]."

Thanks largely to the legal efforts of Right to Work Foundation staff, Glass was able to avoid being interrogated about her legally protected activities, and NNU officials ultimately dropped their efforts to get the union reinstated at HCA Rio Grande. And in 2013, Tenet promised in an NLRB settlement not to "discriminate against anti-union employees [in El Paso] by denying them the right to reserve and use available meeting space at our facility, in accordance with established hospital procedures."

With Tenet and HCA still clearly in the NNU hierarchy's corner, even as they presumably exercise more care not to violate federal labor law too flagrantly as they seek to assist the union, seven Texas hospitals have currently recognized the union's Lone Star State affiliate, known as the National Nurses Organizing Committee NNU-Texas, as employees' exclusive bargaining agent. Last fall, NNU operatives seized upon apparent serious errors made by management at Texas Health Presbyterian Hospital in Dallas regarding the handling of Ebola patient Thomas Eric Duncan to suggest that many hospitals are indifferent to employee safety. To avoid being singled out for the real or imagined shortcomings in their responses to deadly epidemics such as Ebola, more and more health-care executives may decide over the next few years to cut neutrality deals with the NNU.

In Airline Industry, Pro-Compulsory Unionism Federal Policy Trumps Texas Law

Yet another Texas industry in which union organizers have made significant inroads in recent years is air transportation. Teamsters and Communications Workers of America (CWA) union officials have since 2010 successfully organized thousands of Texas passenger service agents and ground workers as part of multi-state campaigns involving tens of thousands of workers. And, unlike their counterparts focusing on janitors and nurses, Teamster and CWA organizers have not had to rely on neutrality arrangements with employers to accomplish their objectives in the airline industry.

Unlike other unionized employees in Texas, airline and railroad employees can be forced to fork over union fees to a union they don't want and haven't joined, or be fired for refusal.

Texas airline industry employees are typically more receptive to Organized Labor pitches than are their counterparts in the rest of the private sector largely because air transportation across the nation is heavily unionized. Before 2,800 Houston-area Continental Airlines fleet service workers, along with another 4,800 based outside of Texas, went union in early 2010, for example, the firm's pilots, flight attendants and mechanics were already under union contracts. (See reporter Carl Finamore's account, cited in the references.) Ramp agents might well have calculated that, if they didn't band with the Teamsters, union officials representing other categories of employees would divert a higher and higher share of the company revenues available for compensation into someone else's pocket.

Another special advantage in Texas for airline as well as railroad union officials is that employees in each industry are covered by the federal Railway Labor Act (RLA), rather than the NLRA, which governs labor-management relations for well over 90 percent of private-sector employees across the U.S.. Unlike the NLRA, the RLA supersedes Right to Work laws like those in Texas. That means, unlike other unionized employees in Texas, airline and railroad employees can be forced to fork over union fees to a union they don't want and haven't joined, or be fired for refusal.

Political Elections and Union Organizing Elections Are Fundamentally Dissimilar

While the organizing efforts in Texas over the past decade of janitors unions, nurses unions, airport ground workers unions, and several other private-sector unions have attracted considerable public attention, the core of the Organized Labor movement in the state has long been the government sector.

This statement may seem puzzling to out-of-state Texas watchers and even residents who credit mainstream media accounts that the Lone Star State “prohibits” collective bargaining “by any public employees, including teachers.”

Apologists for authorizing union exclusivity in public-sector workplaces often inaptly compare the monopoly a union obtains by prevailing in an organizing election to an elected U.S. politician's authority to “represent” all the people in a state, a congressional district, or a state legislative district.

But the type of “representation” a U.S. senator furnishes to all the people in his or her state, including those who voted for other candidates or didn't vote at all, does not in any way interfere with constituents' freedom to push for policies that are opposed to those of the senator. If Jack Smith votes for Candidate A for U.S. Senate, but Candidate B is elected, Jack can continue to lobby the Senate to adopt policies that Candidate B opposes. Jack can also contribute to lobbying groups and hire spokespersons to block programs and causes that Candidate B, now his senator, favors.

Unfortunately, if Jack had been an employee voting against the installation of a union as his exclusive bargaining agent, and he had been on the losing side, he would not have retained analogous rights.

No citizens, no matter for whom they voted, ever have to rely on their U.S. senator or representative to press their claims. Therefore, the use of the political analogy to normalize exclusive union representation fails utterly. It is especially deficient with regard to the public sector, where the employer is also the sovereign government.

Federal courts have not as yet recognized how government union exclusivity sharply and unjustifiably curtails the First Amendment freedom of dissenting employees to petition their government. But attempts to justify this abusive system on the grounds that it is “democratic” disregard U.S. Supreme Court Justice Robert Jackson’s dictum, first stated in his landmark majority opinion in *Board of Education vs. Barnette* (1943), that a person’s “fundamental rights may not be submitted to a vote” and “depend on the outcome of no elections.”

There is, then, a strong basis in the Bill of Rights for Sec. 617.002 of the Texas Government Code, which states that an official of the state or a political subdivision of the state may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees.

There are also, as we shall see shortly, sound public-policy reasons for this Government Code provision. Unfortunately, one Local Government Code provision, Sec. 174.023, opens up a substantial loophole in the seeming prohibition on exclusive union representation in state and local public employment. This provision states:

On adoption of this chapter or the law codified by this chapter by a political subdivision to which this law applies, fire fighters, police officers, or both are entitled to organize and bargain collectively with their public employer regarding compensation, hours, and other conditions of employment.

Since this “Fire and Police Employment Relations Act” was first approved by the Texas Legislature a little more than four decades ago, 17 cities throughout the state have passed referenda giving the green light for exclusive union bargaining in fire departments and roughly 30 cities have similarly acquiesced to unionization of their police departments. For decades, elected officials in Houston, Dallas, Austin, San Antonio, and other major cities in Texas have been required to recognize public-safety union officials as the sole spokesperson for metropolitan firefighters and police. (Source: “What Is Collective Bargaining?”—a post on the Galveston Firefighters Association Local 571 website.)

Taxpayers Suffer Dearly, but Many Public Servants Benefit Little

As even casual observers of government labor relations grasp instinctively and as a study last year by American Enterprise scholars Andrew Biggs and Jason Richwine documented in detail, government employees across the country typically “receive greater compensation than similarly educated and experienced private-sector employees who work for large employers.” (See Biggs and Richwine, p. 15.)

The Biggs-Richwine study shows 30 states where state government compensation exceeds private-sector compensation of comparable employees by more than six percentage points. But there are zero states where the reverse is true. And exclusive union control over public employees exacerbates the damage to taxpayers.

To prevent the full cost of union contracts from being recognized by taxpayers in the short term, government union officials routinely seek to divert as high a share as possible of compensation into fringe benefits rather than wages and salaries. Consequently, as the Biggs-Richwine study also shows, in the U.S. as a whole, cash compensation of public employees is somewhat lower than cash compensation of comparable private-sector employees.

Extraordinarily expensive public-sector pensions, health insurance, retiree health insurance, paid time off, and other fringe benefits more than make up the difference. This is bad for taxpayers, but not necessarily good for public employees. As Biggs explained in a March 2014 commentary for the *Wall Street Journal*, due to the vesting provisions and “back-loaded” benefit formulas favored by government union officials long-term employees “receive [extraordinarily] generous benefits but government workers with shorter careers receive far less. Nearly half of government employees leave without any right to future pension benefits. Shorter-term employees would do better with a 401(k) or cash-balance plan, but public employee unions—dominated by long-career employees—oppose most pension reforms.”

Largely as a consequence of the local public-safety loophole in Texas’ ban on exclusive union bargaining in the government sector, firefighter and police compensation packages in the state’s large cities include many costly perks one might expect to see in a Los Angeles, Chicago, or New York union contract.

For example, a number of Dallas police officers who are still in their 40s are eligible either to retire or to “continue working at full pay while pension benefits they would have collected earn interest in special accounts instead.” The cost of this program is increasing so rapidly it is “endangering” Texas’ entire \$3.4 billion police and fire pension fund, according to a *Dallas Morning News* article last spring. Also last year, the *Houston Chronicle* reported that the Houston Fire Department had paid 928 employees a total of more than \$57 million over the previous six years “in termination pay, due when the employees retire or quit.” One recent retiree had claimed a check for \$177,000!

Labor Policy Reform Would Make Passage of Needed Statutory Changes Far Less Difficult

Because public-safety union officials and their allied politicians in seven of the state’s largest cities have successfully lobbied the Texas Legislature to codify their expensive and inefficient pension plans and benefits structures, banning exclusive union bargaining in police and fire departments would not automatically pave the way for all necessary cost-saving reforms. However, eliminating union officials’ monopoly power to negotiate with public-safety departments would inevitably also reduce their inordinate political clout, and thus facilitate statutory program changes.

Moreover, local officials could do a great deal to reduce the bloat in Texas’ public-safety payrolls if they were simply able to assert control over overtime costs. In San Antonio, for example, the average annual base salary for a fire employee is \$63,094, but average gross pay is nearly \$30,000 higher due to overtime and “supplemental pays.” If the city had a free hand to schedule employees to work when and where they were needed, taxpayer costs for non-salary compensation could be sharply reduced.

Unfortunately, the public-safety loophole in Sec. 173.023 of the State Code is not the only loophole lawmakers have punched in Texas’ seven-decade-old ban on monopolistic unionism in the government sector. Sec. 146.003 of the Local Government Code specifically authorizes public employers in municipalities with populations of 1.5 million or more to “enter into a mutual agreement” regarding wages, salaries, rates of pay, hours of work, and other terms and conditions of employment with a union “recognized . . . as the sole and exclusive bargaining agent for all covered employees . . .” This loophole only affects Houston at this time, although San Antonio and Dallas could pass the 1.5 million threshold in the future.

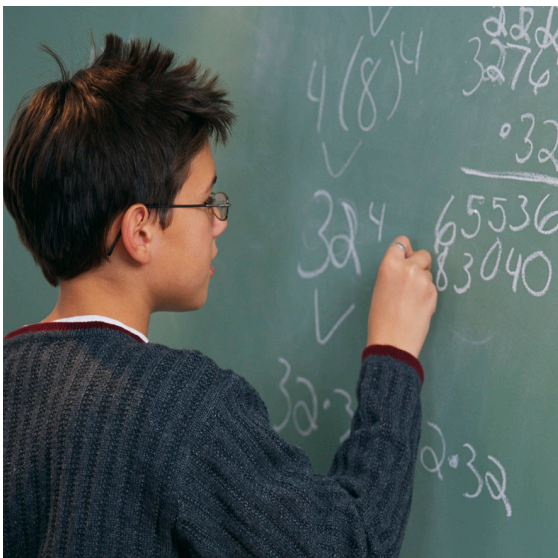
The only significant topics over which Houston’s municipal union bosses may not bargain with public employers are pensions and “pension-related matters.” The current “meet and confer” agreement between the City of Houston and the Houston Organization of Public Employees union (jointly affiliated with AFSCME and the SEIU) runs to more than 100 pages and includes an array of special privileges for the union, including automatic deduction of PAC contributions from employee paychecks.

In government agencies other than local public-safety departments and all municipal departments of large cities, exclusive union bargaining is, as we have seen, formally banned in Texas. And it is reasonable to ask how this ban affects the cost and the quality of the government services outside of public safety, of which public education is by far the largest.

Texas Schools Outperform U.S. Average

It is fair to estimate that, when Texas' low cost of living is taken into consideration, its per-pupil spending is roughly equivalent to the national average.

What do the Lone Star State's taxpayers get in return for \$74 billion a year that, according to the Census Bureau's "Annual Surveys of State and Local Government Finances," Texas and its localities spend on public schools? To get a clear idea, you need to look at more than just aggregate standardized test scores. Chicago-based satirist and commentator David Burge explained why in two entertaining and informative posts in March 2011 on his *Iowahawk* blog:



“[T]he lion’s share of state-to-state variance in test scores is accounted for by differences in ethnic composition.” Burge also wrote. “Minority students—regardless of state residence—tend to score lower than white students on standardized tests, and the higher the proportion of minority students in a state the lower its overall test scores tend to be.”

He continued that “this has nothing to do with innate ability or aptitude. Quite to the contrary, I believe the test gap between minority students and white students can be attributed to differences in socioeconomic status. . . . What-

ever the combination of reasons, the gap exists, and its mathematical sophistry to compare the combined average test scores in a state like Wisconsin (4 percent black, 4 percent Hispanic) with a state like Texas (12 percent black, 30 percent Hispanic).”

A second common pitfall for anyone who wishes to make interstate comparisons of school performance is to cite SAT or ACT scores. As Burge pointed out in a March 5, 2011 post, the share of high school students taking these standardized tests varies dramatically from state to state, making it very difficult to compare results fairly. But this is not a problem with regard to the results of the National Assessment of Educational Progress (NAEP). In years when NAEP’s are offered, the vast majority of 4th and 8th grade public school students in every state take the test and are scored.

In May 2014, the National Center for Education Statistics made public the average statewide 2013 NAEP math and reading scores for 4th and 8th grade whites, Hispanics, blacks and Asian/Pacific Islanders. Average 8th grade math scores for Texas whites (300), Hispanics (281), blacks (273), and Asian/Pacific Islanders (319) were higher than the national averages for their racial/ethnic groups (294, 272, 263, and 306, respectively) in all four cases. Fourth grade Texas math scores were similarly above the national averages for each of the racial/ethnic groups by anywhere from four to 14 points.

Unlike Texas students’ 2013 math scores, their reading scores for the same year were not all above the national average, but for the most part they were. Average Texas reading scores for 8th grade whites, blacks and Asian/Pacific Islanders were above the national average by 3-5 points, whereas Hispanic scores were

one point below the national average. And Texas 4th grade reading scores were also above the national average for every racial/ethnic group except Hispanics, who again were just one point below the average.

Texas schools not only outperform the national average, but also outperform many of the states with the highest per-student spending, including Alaska, Connecticut, New Jersey, New York, and Vermont—none of which are Right to Work states. Texas equals or outperforms all five of these states in fourth grade reading scores for every racial/ethnic group, and outperforms or compares favorably in eighth grade reading, fourth grade math, and eighth grade math.

‘Collective Bargaining’ is Barred, ‘But the [Union] Becomes the Voice of District Staff’

The above average performance of Texas students in light of average spending is impressive. Even more impressive—and more relevant to the question at hand—is how well Texas students perform relative to their counterparts in the highest spending, union controlled states. It is likely that Texas’ ban on exclusive union bargaining for public school employees provides more flexibility in addressing the actual needs of students and their parents, along with deploying resources where they are most needed.

However, there is still a significant challenge that Texas faces in this area that is holding the state back from performing even better. That’s because, for decades, local education officials in Texas, especially in the state’s most populous jurisdictions, have voluntarily yoked themselves to union constraints similar to those prevailing in states with pro-Organized Labor statutes.

In fact, despite public school collective bargaining’s putative illegality, school districts in Austin, Dallas, El Paso, San Antonio, and south San Antonio have adopted “exclusive consultation” policies that allow only one designated organization to meet and confer with the school board about educational issues and employment conditions. Even though the school board is supposed to make all final decisions, the decisions often closely resemble what teacher union officials have advocated. In a 2012 article for the Austin Chronicle, unionization advocate Richard Whittaker explained how this system works well for Education Austin, an affiliate of both the National Education Association (NEA) and the American Federation of Teachers (AFT) unions:

Once every four years, AISD [Austin Independent School District] names an exclusive consultation representative. This being Texas, “collective bargaining” is not allowed, but the representative organization becomes the voice of district staff to the administration on issues like contract discussions and employment conditions.

Texas school districts’ employment policies routinely impose the same “single salary schedules” that are pervasive in states where teachers are overwhelmingly unionized. “Single salary schedules” base teachers’ pay entirely or almost entirely on 1) how much seniority they have and 2) whether they hold no advanced degree, one, or more than one, regardless of the degree’s (degrees’) relevance to the job. Performance ratings and how easy or difficult it would be to find another teacher equally qualified to teach the same subject(s) at the same grade level(s) may not be considered in setting pay. When it comes to educators who have proven themselves to be especially effective and/or are well qualified for otherwise hard-to-fill teaching positions, the single salary schedule effectively constitutes a maximum salary schedule. Unlike the minimum salary schedule for classroom teachers and full-time school librarians, counselors, and registered nurses provided for in Sec. 153.1021 of the Texas Administrative Code, which affects very few if any educators because school districts have long offered salaries that are well above the minimum, de facto pay ceilings in single-salary schedules undoubtedly lower the pay of many of the Lone Star State’s teachers.

It is less difficult for school officials in Texas than it is for school districts in states where teacher union

officials wield more power to reward superior teachers and teachers with unusual skills with higher pay regardless of their seniority, but the difference is mostly at the margin. For example, the Dallas and Houston school districts recently revamped their teacher salary structures, moving away from automatic pay increases for teachers who earn advanced degrees. Texas policy makers at the state level may reasonably be asked what they intend to do to help accelerate the reform process.

Recommendations: Legislators Can Curtail Both Private- and Public-Sector Union Abuses

In its 2015 session, the Texas Legislature has the opportunity to take a number of labor policy-related actions that could protect and build upon the Texas Model for sustaining economic dynamism and income growth. Both private- and public-sector union abuses need to be addressed.

To be sure, the NLRA and the RLA, the two federal laws governing private-sector labor-management relations in the U.S., preempt a wide range of state action in this area of economic life. Consequently, state elected officials' ability to protect business employees and owners from the type of top-down union organizing campaigns that have targeted Texas janitorial, health care, and other employees in recent years is somewhat limited. And Texas long ago took the single most important step a state can take to protect the individual private-sector employee's freedom of choice decades ago when it approved a Right to Work law. What else could Texas do?

Government Union Chiefs Should Collect Their Own Dues

As is evident from the experience of Texas' K-12 public schools, even government union officials who lack statutory exclusive bargaining privileges often wield inordinate power in the policy making process. To help level the playing field for taxpayers, students and other citizens who depend on public services, and independent-minded employees whose interests are often at odds with those of government union officials, several states have in recent years prohibited the automatic deduction of union dues from public workers' paychecks.

The statutes now on the books in states like Wisconsin, Michigan, North Carolina and Alabama do not limit in any way the ability of members of government unions and other public employees to pay dues to their labor organization or to contribute to union PACs. But the statutes do require public union officials to make their own arrangements with union members regarding dues collections, rather than rely on the public employer to deduct union dues automatically out of employee paychecks.

The experience of these states in the relatively short time that the bans on automatic payroll deduction have been in effect suggests that, in many cases, once their employer ceases taking their union dues out of their paycheck at taxpayers' expense, and they have to take active measures to continue bankrolling their union, public employee union members conclude the organization does not merit their financial support after all. In fact, in a recent open letter to the board of directors of the NEA-affiliated Alabama Education Association teacher union, former AEA President Paul Hubbert admitted that "the challenge" posed by its loss of "payroll deduction" is a key reason the union is now in "immediate danger" and faces a "crisis."

Another benefit of eliminating automatic deduction of union dues is that it would lessen the ability of unions like AFSCME and SEIU to use funds collected from public sector employees in funding their private-sector unionization drives. Without these funds, Texas would be unlikely to see as many campaigns to impose "exclusive" union bargaining in private-sector workplaces.

Yet another reform legislators ought to consider would close the "exclusive consultation" loophole certain teacher union officials have concocted to get around Texas' ban on exclusive union bargaining in public education by prohibiting school boards from consulting solely with officials of a single teacher organization (inevitably a union) when reviewing employment policies.

Protect Workers Against Corporate Campaigns

In addition, lawmakers could make it significantly easier for employees to exercise their freedom of choice under Texas' Right to Work law by empowering them to go to court to seek injunctive relief against union officials and employers who violate the law, as well as to recover any and all damages, including lost pay and attorney's fees, resulting from violations or threatened violations. Most state bans on forced union dues now on the books empower freedom-loving employees to go to court themselves to vindicate their Right to Work, but in Texas today only "an enforcement officer" of the state may go to court to seek a restraining order, a permanent injunction, or civil penalties against violators of the law. (See Secs. 101.121 and 101.122 of the Texas Labor Code.)

To protect private-sector workers against abusive corporate campaigns, legislators could also codify and expand upon a significant 2012 court decision issued by a panel of federal judges on the 11th Circuit Court of Appeals. In *Mulhall v. Unite Here Local 355*, a 2-1 panel majority found that the operator of a dog racetrack and casino located in Hollywood, Fla., potentially gave union officials "things of value" and thus violated federal labor law when it handed over names, addresses, and other employee personal information to union organizers as part of a so-called neutrality deal. The *Mulhall* decision, argued and won by Right to Work Foundation attorney Bill Messenger on behalf of Florida groundskeeper Martin Mulhall, was challenged by union lawyers at the U.S. Supreme Court, but in late 2013 the High Court, after having heard oral arguments in the appeal, opted to allow the 11th Circuit ruling to stand without issuing its own decision.

Mulhall is now a binding precedent only in states located in the 11th Circuit, and other circuits have found employers may under neutrality deals legally turn over employee personal information and other things of value like access to the workplace for union organizing activities and supervisors' silence regarding the potential downsides of unionization. But the Texas Legislature could voice its agreement with *Mulhall* by prohibiting companies from handing over employee personal information, except when they are required to do so in advance of a secret-ballot vote over unionization, and other things of value to union organizers. Barring employers from cutting neutrality deals would greatly diminish union officials' ability to enlist their aid in top-down organizing drives.

To be sure, Organized Labor would almost certainly attempt to overturn a Texas statute codifying *Mulhall* on federal preemption grounds, but it is far from clear union lawyers would prevail.

A second step the Texas Legislature could take would be to adopt a law specifying that union officials may not accompany OSHA staff or other government employees on inspections of private businesses without the consent of the owner unless the union is already established as front-line employees' exclusive bargaining agent. Since there is no apparent federal statutory basis for the Obama Administration's recent decision to allow union officials who are trying to organize a business to accompany OSHA inspectors paying it a visit, Texas lawmakers can credibly assert the authority to stop this practice within their state.

Finally, clarifying Sec. 42.072 of the Texas penal code could help shield employees who do not wish to be unionized from being harassed and intimidated by union organizers. Sec. 42.072 prohibits stalking, defined as deliberately engaging in conduct that "causes the other person or a member of the other person's family or household to be placed in fear of bodily injury or death or fear that an offense will be committed against the other person's property"

Unfortunately, a number of union officials have either tacitly or explicitly asserted they and their agents have a right under federal labor law to stalk employees and supervisors of targeted businesses, even if that causes them to fear for their persons or property. For example, a form letter concocted and regularly used by construction union chiefs states that unless independent contractors provide them with constantly updated information on job locations, union agents have the right to "follow . . . supervisors and employ-

ees.” Such “monitoring activity” is protected by the NLRA and, therefore, “not a violation of any [state] stalking laws,” insist construction union officials. (See Nick Bjork’s Oregon Daily Journal of Commerce article cited in the references for more information.)

The fact is, federal courts have ruled that states may prohibit activity aimed at organizing a union that would otherwise be protected by the NLRA if the “regulated conduct” touches interests that are “deeply rooted in local feeling and responsibility” By clarifying Sec. 42.072 to state that union agents have no special right to knowingly instill fear in other persons, legislators could make it far easier to prosecute violations of Texas’ stalking law that occur in the course of union corporate campaigns.

No State or Local Public Official ‘May . . . Enter Into a Collective Bargaining Contract’

State elected officials have substantially more capacity to rein in union excesses in the public sector than they do in the private sector. Texas’ policies in this area are superior to those of most other states. The Texas Right to Work law prohibits forced union dues and fees for public, as well as for private-sector employees. And while Texas’ ban on monopolistic collective- bargaining contracts in public employment is, as we have seen, far from comprehensive, the Lone Star State’s government unionization rate of roughly 20 percent is significantly lower even than in most Right to Work states.

In order to ensure that employees’ personal freedom is defended to the greatest extent possible, legislators should seek repeal of all provisions in Texas law that are inconsistent with Sec. 617.002 of the Labor Code, which states, to repeat, that an official of the state or a political subdivision of the state may not enter into a collective bargaining contract with a labor organization regarding wages, hours, or conditions of employment of public employees.

The NLRA and the RLA infringe on the freedom of the vast majority of Texas’ private-sector employees to decide for themselves whether they prefer to negotiate with their employers individually or collectively, and the state’s lawmakers can do nothing at this time to guarantee their ability to bargain freely. But legislators in Austin can restore the ability of local public-safety officers to communicate directly with their employer on job-related matters by repealing Sec. 174.023 of the Local Government Code. Similarly, the ability of Houston’s municipal employees to bargain individually can be protected by eliminating Sec. 146.003 from the Local Government Code.

Additionally, the Legislature should eliminate the minimum salary schedule for educators from Sec. 21.402, Education Code. A salary schedule in state law encourages districts to treat educators like “interchangeable widgets,” to borrow a phrase from U.S. Education Secretary Arne Duncan, instead of professional employees, and hinders the ability of districts to reward educators for excellence.

Conclusion

By implementing the labor-policy changes discussed here, Texas legislators could help ensure that the Lone Star State remains the land of opportunity for employees and entrepreneurs from around the country as well as throughout the world. As more and more states act to curtail union special privileges and protect the freedom to work, Texans cannot afford to remain complacent. They must do everything they can to hold union officials accountable under the same laws as other citizens and end all labor-relations policies that set up barriers to private-sector employment and compensation growth and the efficient and effective provision of public services. ★

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