



THE EFFECT OF AGENCY FEES ON LABOR PEACE IN PUBLIC EMPLOYMENT RELATIONS

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SUMMARY

In less than a year, the U.S. Supreme Court will decide *Janus v. AFSCME Council 31* and determine whether public employees may be required to pay agency-fees to a labor union as a condition of employment. One of the legal defenses of agency-fee requirements contends that they promote “labor peace” among public employees, an important government interest. However, an analysis of two federal databases of strikes and work stoppages — one from the Bureau of Labor Statistics (BLS) and one from the Federal Mediation and Conciliation Service (FMCS) — finds that states requiring public employees to pay agency fees to labor unions experience greater labor unrest than “right-to-work” states in which agency-fee requirements are banned. The BLS dataset indicates government workers in states that allow agency-fee requirements go on strike at 27 times the rate of public employees in RTW states. Examination of the larger FMCS dataset confirms these findings, indicating that, while the average number of striking employees was essentially the same, public employees in agency-fee states went on strike at more than 17 times the rate of and for twice as long as government workers in RTW states. The same general trends hold when all strikes in both the public and private sectors are examined, though the disparity between the strike rates in RTW and agency-fee states is smaller. Additionally, analysis of Gallup survey data indicates that public employee engagement at work tends to be significantly higher in RTW states than in agency-fee states.

THE EFFECT OF AGENCY-FEES ON LABOR PEACE IN PUBLIC EMPLOYMENT RELATIONS

INTRODUCTION

When Congress passed the National Labor Relations Act (NLRA) in 1935, it gave labor unions wide latitude to require private sector employees to associate with and pay dues and fees to a union as a condition of employment. That leeway was diminished somewhat by the passage of the Taft-Hartley Act in 1947, but private-sector labor unions retained the ability to have workers fired for failure to pay union dues and fees.

Section 14B of the Taft-Hartley Act, however, permitted individual states to pass laws banning provisions in union collective bargaining agreements that require employees to join and financially support a labor union. Such legislation is commonly referred to as a “right-to-work” (RTW) law and prevents employees from being fired for refusing to join or financially support a union.

In the public sector, collective bargaining first began to take root when New York Mayor Robert Wagner authorized collective bargaining for city employees

by executive order in 1958.¹ Wisconsin became the first state to formally establish collective bargaining for public employees in 1959.² In 1962, an executive order by President John Kennedy established collective bargaining for federal employees, though the subsequent Civil Service Reform Act of 1978 protected the right of federal workers to refrain from joining and financially supporting a union.³

Today, most states, but not all, permit collective bargaining for some or all public employees.⁴

Another important labor trend has emerged in recent years as an increasing number of states adopt RTW laws. During the 20-year period from 1944 to 1963, 19 states passed RTW legislation or constitutional amendments. Only three passed RTW protections in the 48 years from 1964 to 2011.⁵

But the drought ended in the Midwest in 2011, when Wisconsin extended RTW protections to public employees, followed by Indiana’s passage of RTW legislation in 2012 and Michigan’s

adoption of an RTW law in 2013. Wisconsin extended RTW protections to private-sector employees in 2015. West Virginia passed an RTW law in 2016. Most recently, Kentucky and Missouri both adopted RTW legislation in early 2017, bringing the total number of current RTW states to 28, though unions are challenging Kentucky’s law in court and have called for a referendum on RTW in Missouri. Even some counties have begun passing local RTW ordinances.⁶

In some cases, RTW policies have advanced through the judicial system. In June 2014, the U.S. Supreme Court ruled in *Harris v. Quinn* that “partial-public employees” like state-subsidized home care aides cannot be constitutionally required to pay union dues or fees.⁷

Another case currently pending before the U.S. Supreme Court, *Janus v. AFSCME Council 31*, has the potential to extend RTW protections to all public employees nationwide.⁸

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In previous cases, the court has upheld the constitutionality of “agency shop” union security provisions, which obligate public employees to pay at least a representation fee to the union as a condition of employment.⁹ Unions generally calculate the fees annually, which typically range from about 60 to 90 percent of full dues and are intended to allow employees to avoid supporting the union’s political activity and expenditures unrelated to contract negotiation and administration.

One of the key arguments used to justify agency-fee requirements in public employment is that such provisions are necessary to ensure “labor peace.” In prior cases, most notably *Abood v. Detroit Board of Education*, the Supreme Court reasoned that government employers need to be able to agree to agency-fee provisions in union contracts in order to prevent the disruption of the efficient delivery of critical government services by public employee strikes and unrest.¹⁰

The plaintiff in *Janus*, Illinois state employee Mark Janus, is challenging these and other assumptions and asking the court to revisit its previous rulings on First Amendment grounds. Consequently, the issue of labor peace is again featured prominently.

In its brief urging the Supreme Court to deny Janus’ request to have his case heard, AFSCME Council 31 argues it is a “longstanding and accepted conclusion that fair-share [agency-fee] payments facilitate the State’s various recognized interests in fostering ‘labor peace’” and that “collection of the [agency] fees is justified by States’ strong interest in promoting labor peace through collective bargaining...”¹¹

Echoing these sentiments, the brief submitted by the Illinois Attorney General speculates that perhaps extending RTW protections to public employees would create “resentment between those employees who pay [agency] fees and those who do not” that may “[disrupt] the quality of the services provided by the State.”¹²

The question of whether agency fees promote labor peace is more empirical than legal, and yet surprisingly little study of the issue has so far taken place, despite the fact that RTW laws banning such requirements are now on the books in 28 states. If agency fees help public employers maintain labor peace, RTW states should be expected to have comparatively more labor unrest than non-RTW states. If, however, RTW states experience greater stability in public employment relations than their

non-RTW counterparts, it would seriously undermine the legal argument supporting agency-fee requirements for public employees.

To help answer this question, part one of this paper examines two federal databases of union strikes — one from the Bureau of Labor Statistics (BLS) and one from the Federal Mediation and Conciliation Service (FMCS) — to compare the degree of labor unrest in states with and without RTW laws, as measured by the frequency of union strikes and work stoppages. Since no comprehensive strike database exists, these two government datasets are the next best sources of strike activity to study. Both are large enough to provide a representative sampling of strikes in states around the country in both the public and private sectors and in RTW and agency-fee legal environments. The BLS database includes strikes involving more than 1,000 workers and is compiled by bureau staff from public news and media reports. The FMCS database includes strikes and work stoppages in which the agency has been involved.

In part two, this paper examines data collected by Gallup about public employee engagement at work to compare engagement in RTW and agency-fee states.

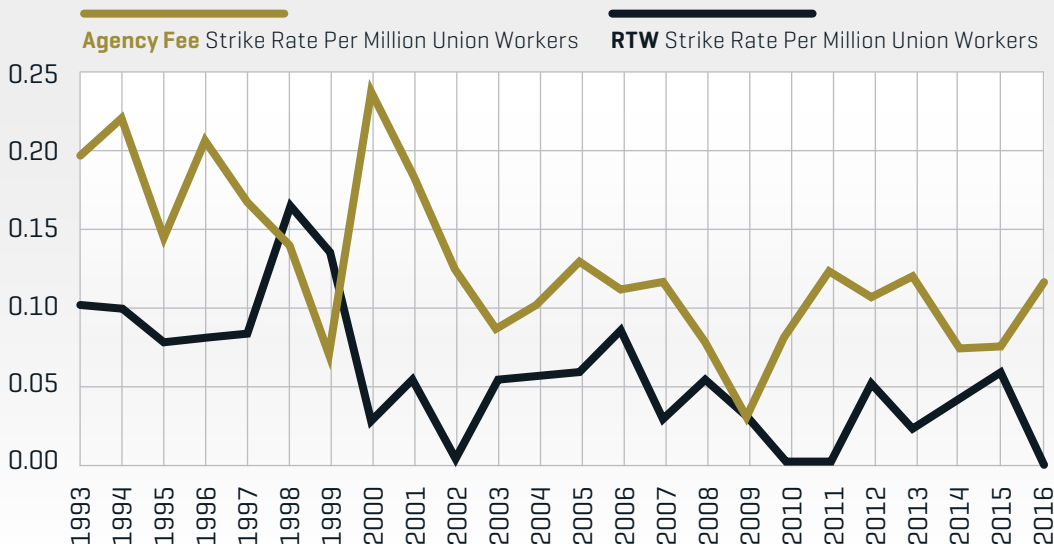
BUREAU OF LABOR STATISTICS DATABASE

The federal Department of Labor’s Bureau of Labor Statistics (BLS) maintains a database of strikes and work stoppages involving 1,000 or more workers since 1993, gathered from public news sources. Strikes by union-represented employees in both the public and private sectors are included in the database.

FINDINGS: ALL STRIKES

- 1 The database records a total of 472 strikes occurring between 1993 and 2016. Of these, 52 strikes took place in RTW states while 420 took place in agency-fee states.
- 2 On average over the period, RTW states experienced 0.57 strikes per year for every million union workers, while agency-fee states experienced 1.28 strikes per year for every million union workers. Union workers in agency-fee states went on strike at 2.25 times the rate of union workers in RTW states.
- 3 Union workers in RTW states went on strike at a lower rate than union workers in agency-fee states in 22 of the 24 years in the database period.
- 4 Average strike duration in RTW states (41 days) was 86.36 percent longer than the average strike duration in agency-fee states (22 days).
- 5 However, strikes in agency-fee states idled twice as many employees on average (4,914) than strikes in RTW states (2,440 employees idled).

TOTAL STRIKE RATE BY STATE RTW STATUS (BLS)



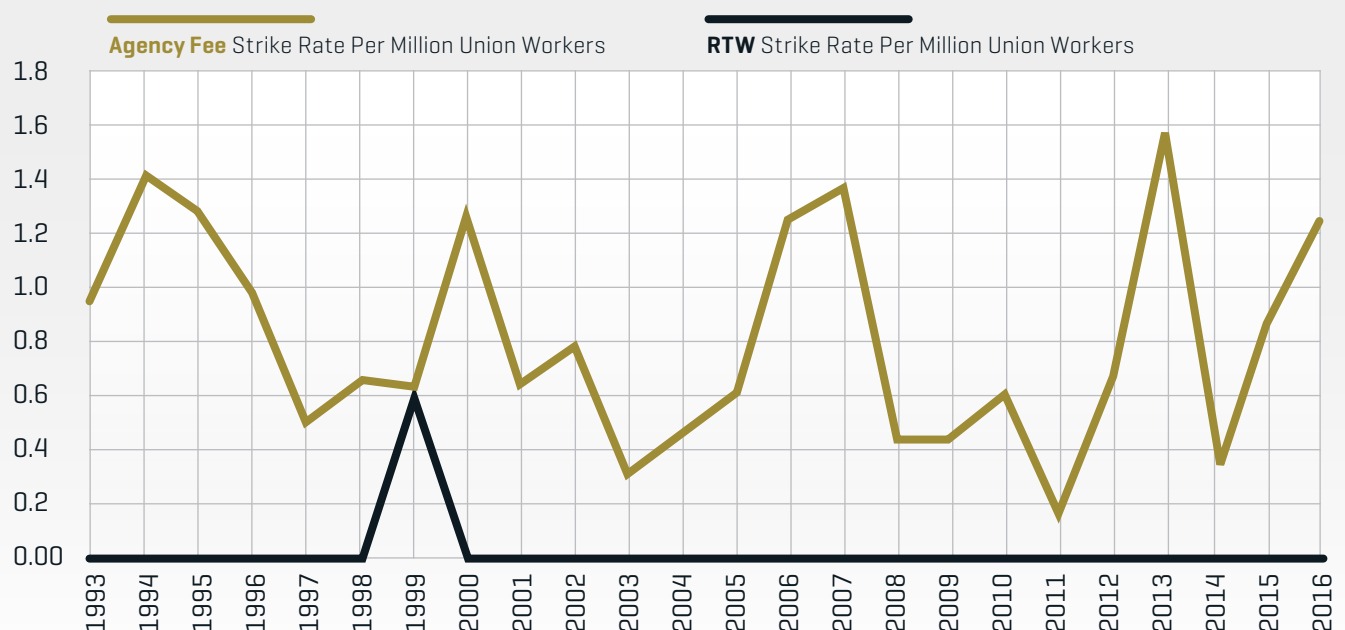
By these measurements, labor unrest in the form of strikes and work stoppages appears to be substantially more common in states that permit agency-fee provisions than in states banning such mandatory dues requirements.

The issue of labor peace at hand in Janus, however, pertains not to all union activity, but just to labor relations in public employment. An examination of only the public employee strikes listed in the BLS database further reinforces the above findings.

FINDINGS: PUBLIC EMPLOYEE STRIKES

- 1 The BLS database records a total of 122 strikes by state and local government employees between 1993 and 2016. Only one strike by public employees occurred in a RTW state while 121 occurred in agency-fee states.
- 2 On average from 1993-2016, RTW states experienced 0.03 public-sector strikes per year for every million union-represented government workers, while agency-fee states experienced 0.81 strikes per year for every million public-sector union workers. Government employees in agency-fee states went on strike at 27 times the rate of public employees in RTW states.
- 3 Public employees in RTW states went on strike at a lower rate than their counterparts in agency-fee states in all 24 years in the database period.

PUBLIC SEC. STRIKE RATE BY STATE RTW STATUS [BLS]



FEDERAL MEDIATION AND CONCILIATION SERVICE DATABASE

The Federal Mediation and Conciliation Service (FMCS) describes itself as “an independent agency whose mission is to preserve and promote labor-management peace and cooperation.”¹³ Part of the FMCS’s role is to help mediate between labor and management during strikes and work stoppages.

The FMCS maintains a database of all strikes and work stoppages with which it has been involved from 1984 to the present. Since passage of the Taft-Hartley Act in 1947, private-sector unions subject to the NLRA have been required to notify the FMCS before engaging in a strike or work stoppage.¹⁴ Though government employers and unions do not fall under the same comprehensive reporting requirement, the FMCS frequently provides mediation services as requested during public-sector labor disputes. In other words, the FMCS database should record all private-sector strikes and some public-sector strikes.

In addition to permitting measurement of the strike rate in RTW and agency-fee states, the FMCS database is large enough to give a reasonably accurate idea of the size and duration of strikes, though this data is somewhat less precise than the data on strike frequency. It’s easier to correctly report the fact that a strike occurred, for instance, than it is to accurately record the length of the strike and the exact number of employees involved, which may have fluctuated.

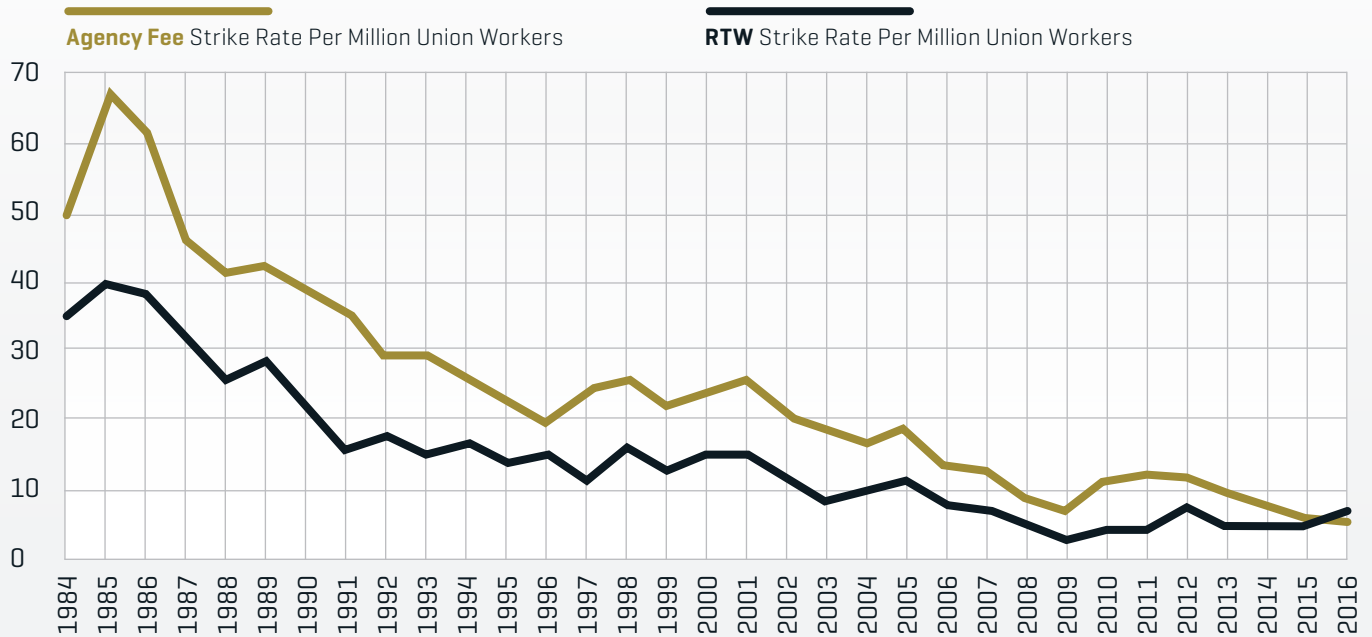
FINDINGS: ALL STRIKES

- 1 The FMCS database includes a total of 13,956 strikes occurring between 1984 and 2016. Of these, 1,890 strikes happened in RTW states, while 12,066 took place in agency-fee states.
- 2 On average over the database period, RTW states experienced 14.88 strikes per year for every million union workers, while agency-fee states experienced 24.84 strikes per year for every million union workers. Union workers in agency-fee states went on strike at 1.67 times the rate of union workers in RTW states.
- 3 Union-represented workers in RTW states went on strike at a lower rate than union workers in agency-fee states in 32 of the 33 years in the database period.
- 4 On average from 1984-2016, strikes in agency-fee states lasted for 50 days. With an average duration of 62 days, strikes in RTW states lasted 24 percent longer.
- 5 Strikes in agency-fee states idled an average of 466 workers, about 3.8 percent more than the 449 workers idled on average in RTW states.

See Data Chart on Page 6



TOTAL STRIKE RATE BY STATE RTW STATUS (FMCS)



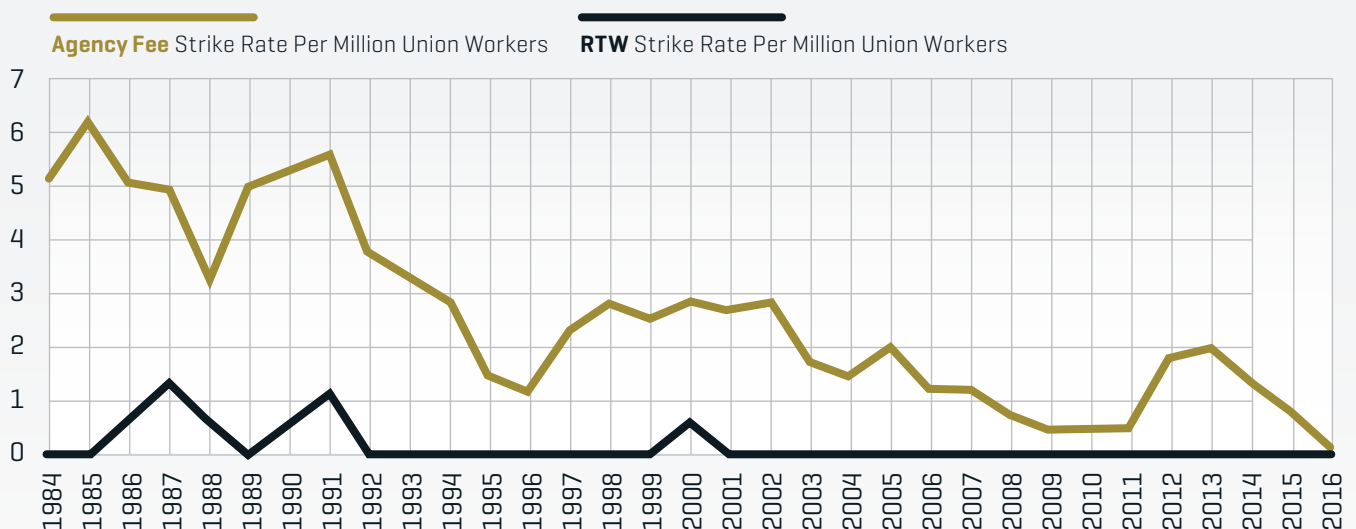
Though the difference in the total strike rate for RTW and agency-fee states as measured by the FMCS dataset is smaller than the difference indicated by the BLS dataset, it is still quite significant. The slightly smaller strike size in RTW states and significantly lower strike frequency more than offset the fact that strikes in RTW states tended to last longer than those in agency-fee states.

As with the BLS data, analyzing only public-sector strikes reveals an even starker disparity in the strike rate between RTW and agency-fee states.

FINDINGS: PUBLIC EMPLOYEE STRIKES

- 1 The FMCS database lists a total of 518 public-sector strikes. Of these, a mere eight strikes happened in RTW states while 510 occurred in agency-fee states. FMCS records list only a single public-employee strike that took place in an RTW state since 1992.
- 2 From 1984-2016, RTW states experienced an average of 0.15 strikes per year for every million union-represented public employees. Agency-fee states experienced, on average, 2.57 strikes per year for every million public-sector union workers. Public-sector workers in agency-fee states went on strike at a rate 17.13 times greater than the rate of their counterparts in RTW states.
- 3 Government workers in RTW states went on strike at a lower rate than public-sector employees in agency-fee states in all 33 years studied.
- 4 At 17.3 days, the average public-employee strike in agency-fee states lasted nearly twice as long as the average 8.8-day strike by public workers in RTW states.
- 5 At 943, the average number of employees idled in public-sector strikes in RTW states was a slight 2.39 percent higher than the agency-fee state average of 921.

PUBLIC SEC. STRIKE RATE BY STATE RTW STATUS [FMCS]



Again, it must be remembered that the differences in the results produced by the BLS and FMCS datasets stem from the fact that each record a different collection of strikes and work stoppages. However, both databases support the general conclusion that government workers in RTW states tend to go on strike significantly less frequently than public employees in agency-fee states.

In 2016, the international performance management consulting company Gallup, Inc., released the results of a seven-year study of public employees’ engagement at work. Based on the results of Gallup Daily tracking surveys conducted between 2009 and 2015, the report included measurements of public employee engagement in the 43 states with enough survey participants to meet the minimum sample size.

The report divided public employees into the following three categories:

“Engaged employees work with passion and feel a profound connection to their company. They drive innovation and move the organization forward.

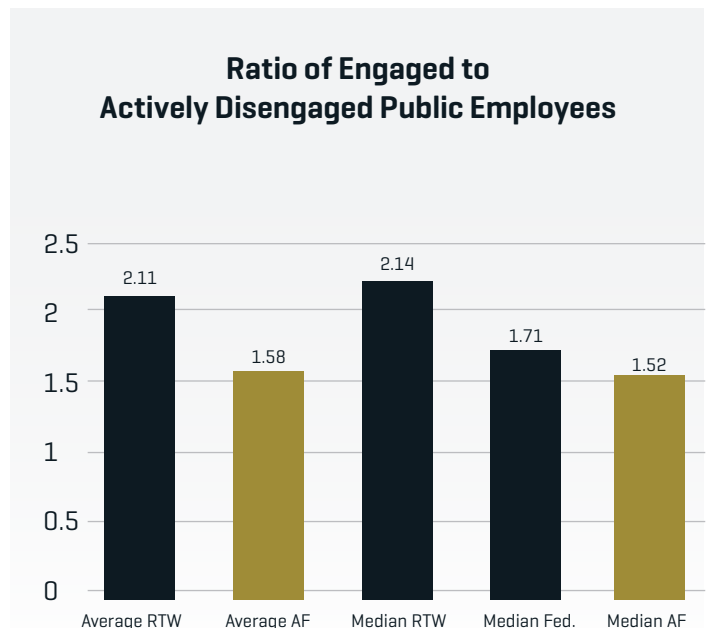
Not Engaged employees are essentially ‘checked out.’ They’re sleepwalking through their workday, putting time — but not energy or passion — into their work.

Actively Disengaged employees aren’t just unhappy at work; they’re busy acting out their unhappiness. Every day, these workers undermine what their engaged coworkers accomplish.”

Of the 43 covered states, 20 had RTW laws on the books and 19 permitted agency-fee requirements throughout the entirety of the survey period. The other four states — Indiana, Michigan, West Virginia and Wisconsin — either implemented RTW protections for some or all public employees for the first time part way through the survey period or had no legislation establishing either agency-fee requirements or RTW during the survey period. Unless otherwise noted, these four states are excluded for the purposes of this analysis.

FINDINGS: PUBLIC EMPLOYEE ENGAGEMENT

- 1 The average ratio of engaged to actively disengaged employees was 33.5 percent higher in RTW states (2.11-to-1) than in agency-fee states (1.58-to-1).
- 2 The median ratio of engaged to actively disengaged employees was 40.5 percent higher in RTW states (2.135-to-1) than in agency-fee states (1.52-to-1).
- 3 The median ratio of engaged federal workers to actively disengaged (1.71-to-1) was 12.5 percent higher than the ratio for agency-fee states (1.52-to-1). Federal employees also benefit from RTW protections.



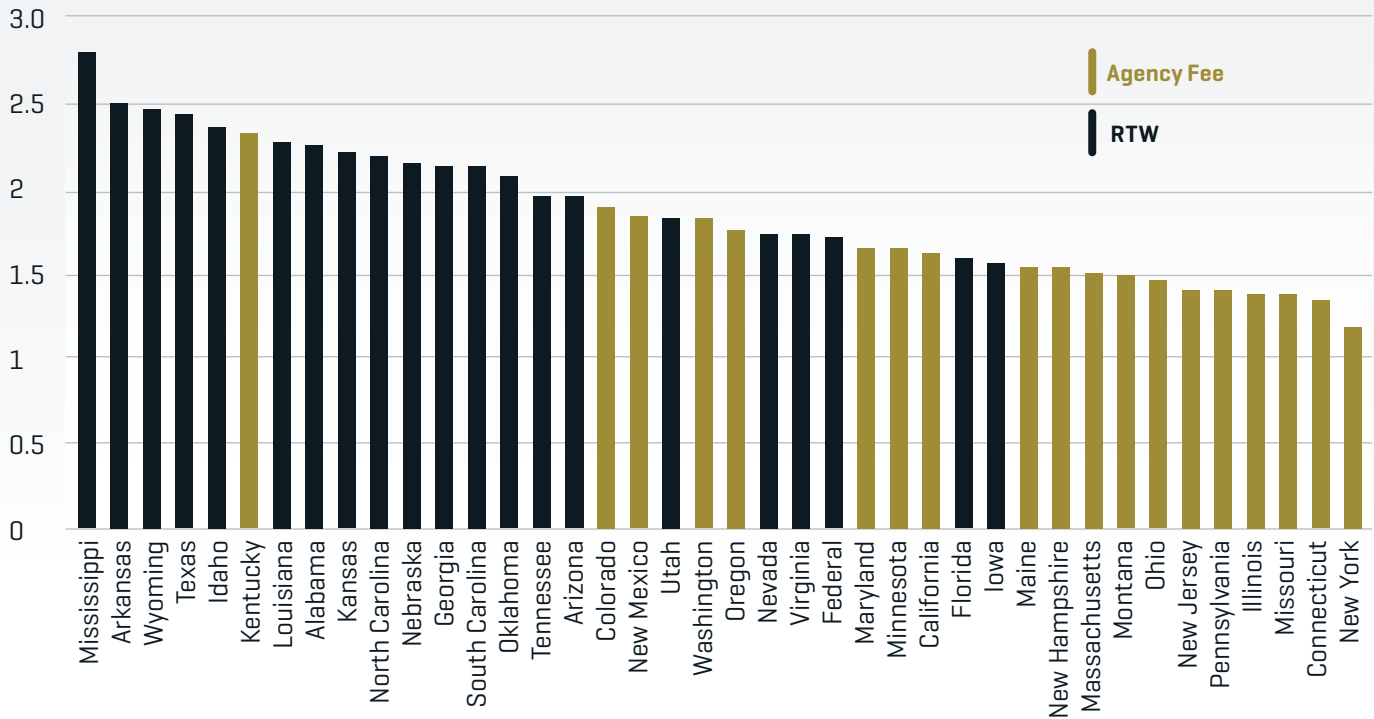
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Findings: **Public Employee Engagement**

- 4 Of the 10 states with the best ratio of engaged to actively disengaged employees, only one (Kentucky) had no RTW law in effect during the survey period. The other nine states — including Mississippi, Arkansas, Wyoming, Texas, Idaho, Louisiana, Alabama, North Carolina and Kansas — all had RTW laws on the books well before and completely through the survey period.
- 5 Every one of the 10 states with the worst ratio of engaged to actively disengaged employees — including New Hampshire, Massachusetts, Montana, Ohio, Pennsylvania, New Jersey, Missouri, Illinois, Connecticut and New York — permitted agency-fee requirements throughout the survey period.

Ratio of Engaged to Actively Disengaged Public Employees



In other words, government employees in RTW states were consistently more likely to be engaged and less likely to be actively disengaged at work than their counterparts in agency-fee states. This trend holds true even when comparing the number of engaged employees to not-engaged and actively disengaged employees combined.

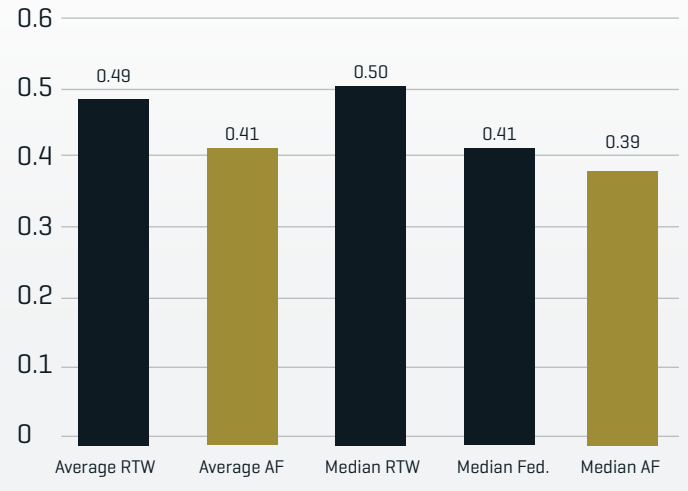
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Findings: Public Employee Engagement

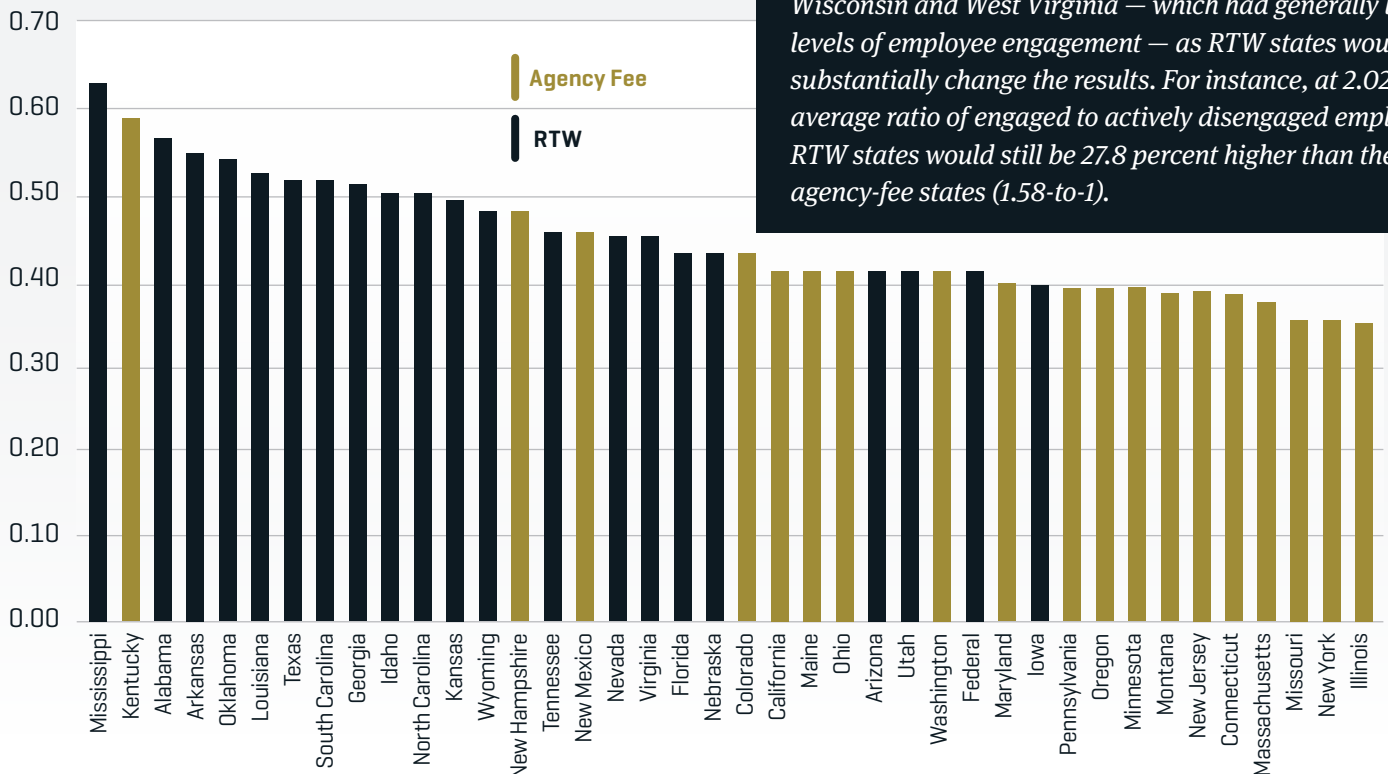
- 6 The average ratio of engaged to not-engaged and actively disengaged employees was 19.5 percent higher in RTW states (0.49-to-1) than in agency-fee states (0.41-to-1).
- 7 The median ratio of engaged to not-engaged and actively disengaged employees was 26.9 percent higher in RTW states (0.495-to-1) than the ratio in agency-fee states (0.39-to-1).
- 8 The median ratio of engaged to not-engaged and actively disengaged federal employees (0.41-to-1) was 5.1 percent higher than the ratio in agency-fee states (0.39-to-1).
- 9 Of the 10 states with the best ratio of engaged to not-engaged and actively disengaged employees, only one (Kentucky) had no RTW law in effect during the survey period. The other nine states — including Mississippi, Alabama, Arkansas, Oklahoma, Louisiana, Texas, South Carolina, Georgia and Idaho — all had RTW laws in effect throughout the survey period.

Ratio of Engaged to Not Engaged+ Actively Disengaged Public Employees



- 10 Each of the 10 states with the worst ratio of engaged to not-engaged and actively disengaged employees — including Pennsylvania, Oregon, Minnesota, Montana, New Jersey, Connecticut, Massachusetts, Missouri, New York and Illinois — permitted agency-fee requirements during the survey period.

Ratio of Engaged to NE+AD Public Employees



The difference between RTW and agency-fee states is significant enough that even counting Indiana, Michigan, Wisconsin and West Virginia — which had generally lower levels of employee engagement — as RTW states would not substantially change the results. For instance, at 2.02-to-1, the average ratio of engaged to actively disengaged employees in RTW states would still be 27.8 percent higher than the ratio in agency-fee states (1.58-to-1).



ANALYSIS AND CONCLUSION

Neither the BLS nor the FMCS databases provide complete records of all strike activity. However, they provide two representative samples useful for measuring broader trends.

When all strikes in RTW states are compared to all strikes in agency-fee states, the results are clear: Employees in states where agency-fee requirements are permitted go on strike at a significantly higher rate than workers in RTW states where mandatory dues provisions are illegal. While, overall, strikes tend to last somewhat longer in RTW-states, strikes in agency-fee states tend to be slightly larger.

This already-noteworthy disparity widens dramatically when the analysis is confined to strikes by public-sector employees, with BLS data indicating government workers in agency-fee states strike at 27 times the rate of workers in RTW states. The FMCS dataset confirms this conclusion, indicating that, while average strike size was effectively the same, public employees in agency-fee states went on strike more than 17 times as often and for twice as long as government workers in RTW states.

Several factors could explain the difference in strike rates. One possible explanation is that RTW states tend to be more likely to legally prohibit or penalize public employee strikes. For instance, of the 12 states that specifically permit public employees to go on strike, only one — Louisiana — is an RTW state.¹⁵ On the other hand, some agency-fee states like New York and Washington that prohibit public employee strikes still experience them with some regularity. Further, this would not explain the disparity in private-sector strike rates, since strikes by private employees in both RTW and agency-fee states are uniformly governed by the NLRA. Even if the reason RTW states experience less labor unrest among public employees is due

to state laws penalizing strikes, it would only indicate that states and public employers have other means at their disposal for ensuring labor peace that are less restrictive of First Amendment free speech and association rights than compelling public employees to pay union dues or fees under a union security provision.

Another possible factor could be that unions in RTW states are more hesitant to engage in high-pressure activity that could fracture their membership and cause them to lose dues-payers. If the continued payment of dues by all of its members can be taken for granted, aggressive union leadership or a vocal union minority can lead an entire bargaining unit into a strike with little to lose. If, however, employees wishing to continue serving the public can resign their membership and cross a picket line without consequence, union leadership may choose to employ strikes more judiciously.

Whatever the explanation, the data present no reason to believe agency-fee requirements for government employees deter strikes and work stoppages in the public sector.

Similarly, public employee engagement at work tends to be significantly higher in RTW states than in states that permit agency-fees. States with the highest levels of public employee engagement were almost all RTW, while all states with the lowest levels of government worker engagement permitted agency-fee requirements. Federal employees, who benefit from RTW protections, also tend to be somewhat more engaged at work than their counterparts in agency-fee states. While government unions posit that allowing workers to stop financially supporting the union may lead to resentment from their dues-paying co-workers, it may well be the case that forcing some employees to pay agency-fees against their will is the greater cause of employee resentment and disengagement.

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It is important to acknowledge that, for the purposes of this analysis, the relationship between agency-fee states and high-strike rates and employee disengagement is purely correlative, not causal. Regardless, the results are so lopsided that even fairly substantial unaccounted-for dynamics or inaccuracies in the data likely would not change the conclusion.

Furthermore, it must be remembered that, to be justified, the infringement of public employees' First Amendment rights that results from having to pay agency fees must serve a compelling state interest. Even if there was simply no detectable difference between labor peace in RTW and agency-fee states, there would be no justification for permitting the infringement of First Amendment rights perpetrated by agency-fee requirements. In fact, contrary to what government unions and their political allies contend, non-RTW states that condition public employment upon the payment of union dues or fees experience substantially higher levels of labor unrest than RTW states in which public employees are empowered to choose for themselves whether to financially support a union. This evidence indicates that, should the Supreme Court decide to extend RTW protections to all public employees in *Janus*, it may do so without fear that its actions will measurably disrupt "labor peace."

STRIKES

1. The Bureau of Labor Statistics strike database is titled, “Work stoppages involving 1,000 or more workers, 1993-2016.” Last updated on Feb. 15, 2017. Accessed Oct. 24, 2017.
http://www.bls.gov/wsp/monthly_listing.htm
2. The Federal Mediation and Conciliation Service strike database is available in Microsoft Excel file format on the FMCS website under “Work Stoppage Data.” Accessed Oct. 24, 2017.
<https://www.fmcs.gov/resources/documents-and-data/>
3. Data about union representation by state was obtained from www.UnionStats.com, a project of Barry Hirsch (Andrew Young School of Policy Studies, Georgia State University) and David MacPherson (Department of Economics, Trinity University). They describe the website as, “an Internet data resource providing private and public-sector labor union membership, coverage, and density estimates compiled from the monthly household Current Population Survey (CPS) using BLS methods.”
4. The timeline used to calculate each state’s RTW status during the years of the database periods was primarily obtained from the National Right to Work Committee’s “Right to Work States Timeline.” Accessed on Oct. 24, 2017. <https://nrtwc.org/facts/state-right-to-work-timeline-2016>
5. Both the BLS and FMCS databases include records of strikes that spanned multiple states in both RTW and agency-fee legal environments. For the purposes of this report, these strikes are not included in the totals or analysis.
6. The BLS database includes a 2016 strike that occurred in Michigan, then an RTW work state, that is nonetheless counted as an agency-fee strike for the purposes of this report. While Detroit public school teachers went on strike in early May 2016, after Michigan passed RTW, the collective bargaining agreement between the Detroit Public School District and the Detroit Federation of Teachers (DFT) in effect at the time of the strike continued to require nonmember teachers to pay agency-fees to the union. Though it took effect in March 2013, Michigan’s RTW law did not apply to union contracts in effect at the time of the law’s passage. DFT’s collective bargaining agreement was in effect from July 1, 2012 — before passage of Michigan’s RTW law — until June 30, 2016, two months after the union’s strike concluded. A copy of the relevant union contract is available online here:
<http://bit.ly/2yNLBzr>
7. The FMCS database records some strikes initiated late in 1983, but does not record all strikes for that year. The strikes for 1983 are excluded from this report’s totals and analyses, as are strikes listed for the partial year 2017.
8. Like the FMCS database, the BLS database includes information about the duration of the strikes and the number of affected workers. While this information is included for all strikes, it is not included for public-sector strikes since the database records only a single public employee strike in a RTW state, making any meaningful comparison of average strike duration or number of workers idled in RTW and agency-fee states impossible.
9. The 518 public-sector strikes from the FMCS database include strikes by state, municipal, school district and public higher education employees. Strikes by federal employees, employees of regulated utilities, government contractors and public hospitals are not included in the total or subsequent analysis.

PUBLIC EMPLOYEE ENGAGEMENT

10. Gallup's 2016 report by managing partner Jon Clifton is entitled, "State of Local and State Government Workers' Engagement in the U.S." The full report is not available online, but is provided by Gallup upon request. A summary of the report and request form are available online at:
<http://news.gallup.com/reports/193067/state-local-state-government-workers-engagement-2016.aspx>
11. Gallup excluded the seven states with fewer than 300 public employees participating in their surveys from the results.
12. While the median engagement rate and active disengagement rate for federal employees (29 and 17 percent, respectively) are not noted on any report tables, they are included in the text of the report for comparison purposes. The median not engaged rate of 54 percent is inferred.
13. Indiana state employees received, in effect, RTW protections in 2005 when then-Gov. Mitch Daniels abolished collective bargaining for state workers via executive order. The rest of Indiana's public employees received RTW protections when the legislature passed a RTW law in 2012. Michigan's right-to-work law took effect in March 2013. However, litigation kept RTW protections from applying to state employees until July 2015. Locally, many unions negotiated extended collective bargaining agreements with public employers before the RTW law took effect that preserved agency-fee requirements for many years. The application of agency-fee requirements in such extended contracts was struck down in court in July 2017. Wisconsin's Act 10 passed in March 2011, granting RTW protections to public employees. Legal challenges, however, prevented the full implementation of the law until July 2014. West Virginia law was silent on collective bargaining rights, agency-fee requirements, and RTW protections for public employees until the state passed a RTW law in 2016, after the close of the survey period. Presumably, some public employees worked under an agency-fee obligation and some did not during the survey period, depending on the existence and terms of union collective bargaining agreements negotiated with willing local government employers.
14. The margin of error per state in Gallup's report ranges from ± 2.2 to ± 8.0 points.

1. DiSalvo, Daniel. “The Trouble with Public Sector Unions.” *National Affairs*, Issue No. 5. Fall 2010.
<http://www.nationalaffairs.com/publications/detail/the-trouble-with-public-sector-unions>
2. Anderson, Tim. “Fight over Future of Collective Bargaining Laws Has Just Begun.” Council of State Governments. Accessed on Oct. 24, 2017.
http://www.csg.org/pubs/capitolideas/GrowthandProsperitySpecialEdition/collectivebargaining_hottopic.aspx
3. Presidential Executive Order 10988. “Employee-Management Cooperation in the Federal Service.” Jan. 17, 2962.
<https://www.flra.gov/system/files/webfm/FLRA%20Agency-wide/50th%20Anniversary%20EO%2010988/Executive%20Order%2010988.pdf>
5 U.S. Code § 7102 provides, “Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.”
4. Sanes, Milla and John Schmitt. “Regulation of Public Sector Collective Bargaining in the States.”
Center for Economic and Policy Research. Mar. 2014.
<http://cepr.net/documents/state-public-cb-2014-03.pdf>
5. National Right to Work Committee. “Right to Work States Timeline.” Accessed on Oct. 24, 2017.
<https://nrtwc.org/facts/state-right-to-work-timeline-2016/>
6. Mooney, Kevin. “Is Right to Work Coming to Northeast? Delaware Councilman Introduces Ordinance.” *The Daily Signal*. Oct. 10, 2017.
<http://dailysignal.com/2017/10/10/is-right-to-work-coming-to-northeast-delaware-councilman-introduces-ordinance/>
7. *Harris v. Quinn*, 134 S. Ct. 2618 (2014). http://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf
8. National Right to Work Legal Defense Foundation. “*Janus v. AFSCME*: A Case to Protect Public Employees’ First Amendment Rights.” Accessed Oct. 23, 2017. <http://www.nrtw.org/Janus/>
9. *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977).
<https://supreme.justia.com/cases/federal/us/431/209/case.html>
Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v. Hudson, 475 U.S. 292 (1986).
<https://supreme.justia.com/cases/federal/us/475/292/case.html>
10. In *Abood*, the court reasoned, “The governmental interests advanced by the agency-shop provision in the Michigan statute are much the same as those promoted by similar provisions in federal labor law... The desirability of labor peace is no less important in the public sector...” In *Hudson*, the court confirmed and expanded on its prior ruling, noting, “...the government interest in labor peace is strong enough to support an ‘agency shop’...”
11. *Mark Janus v. American Federation of State, County, Council 31, et al.* “Brief in Opposition for Respondent American Federation of State, County, and Municipal Employees, Council 31.” Supreme Court of the United States, Case No. 16 -1466. Aug. 11, 2017.
<http://www.scotusblog.com/wp-content/uploads/2017/09/16-1466-AFSCME-BIO.pdf>
12. *Mark Janus v. American Federation of State, County, Council 31, et al.* “Brief in Opposition for Respondents Lisa Madigan and Michael Hoffman.” Supreme Court of the United States, Case No. 16 -1466. Aug. 11, 2017.
<http://www.scotusblog.com/wp-content/uploads/2017/09/16-1466-BIO-madigan-and-hoffman.pdf>
13. Federal Mediation and Conciliation Service. “About Us.” Accessed Oct. 24, 2017.
<https://www.fmcs.gov/aboutus/>
14. Section 8(d)(3) of the National Labor Relations Act.
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15. Sanes, Milla and John Schmitt. “Regulation of Public Sector Collective Bargaining in the States.”
Center for Economic and Policy Research. Mar. 2014. <http://cepr.net/documents/state-public-cb-2014-03.pdf>

Appendix A: Bureau of Labor Statistics Summary Data, All Strikes

Year	RTW Union Representation	% of Union Workers in RTW States	Non-RTW Union Representation	% of Union Workers in Non-RTW States	RTW Strikes	% of Strikes in RTW States	RTW Strike Rate Per Million Union Workers	Non-RTW Strikes	% of Strikes in Non-RTW States	Non-RTW Strike Rate Per Million Union Workers
1993	3,946,415	21.2%	14,699,966	78.8%	4	12.1%	1.014	29	87.9%	1.973
1994	4,030,234	21.4%	14,812,244	78.6%	4	10.8%	0.992	33	89.2%	2.228
1995	3,755,603	20.5%	14,590,724	79.5%	3	12.5%	0.799	21	87.5%	1.439
1996	3,762,711	20.7%	14,395,408	79.3%	3	9.1%	0.797	30	90.9%	2.084
1997	3,622,642	20.2%	14,300,364	79.8%	3	11.1%	0.828	24	88.9%	1.678
1998	3,632,741	20.3%	14,285,590	79.7%	6	23.1%	1.652	20	76.9%	1.400
1999	3,701,286	20.4%	14,480,988	79.6%	5	33.3%	1.351	10	66.7%	0.691
2000	3,646,086	20.3%	14,298,048	79.7%	1	2.9%	0.274	34	97.1%	2.378
2001	3,717,291	20.8%	14,160,791	79.2%	2	7.1%	0.538	26	92.9%	1.836
2002	3,598,576	20.6%	13,903,060	79.4%	0	0.0%	0.000	17	100.0%	1.223
2003	3,600,857	20.6%	13,847,510	79.4%	2	14.3%	0.555	12	85.7%	0.867
2004	3,502,226	20.5%	13,585,081	79.5%	2	12.5%	0.571	14	87.5%	1.031
2005	3,431,056	19.9%	13,792,306	80.1%	2	10.0%	0.583	18	90.0%	1.305
2006	3,478,445	20.6%	13,381,740	79.4%	3	16.7%	0.862	15	83.3%	1.121
2007	3,581,317	20.8%	13,662,024	79.2%	1	5.9%	0.279	16	94.1%	1.171
2008	3,634,569	20.5%	14,126,018	79.5%	2	15.4%	0.550	11	84.6%	0.779
2009	3,456,171	20.4%	13,447,432	79.6%	1	20.0%	0.289	4	80.0%	0.297
2010	3,485,096	21.4%	12,804,433	78.6%	0	0.0%	0.000	11	100.0%	0.859
2011	3,428,251	21.1%	12,852,766	78.9%	0	0.0%	0.000	16	100.0%	1.245
2012	3,780,020	23.8%	12,125,885	76.2%	2	13.3%	0.529	13	86.7%	1.072
2013	4,445,703	27.8%	11,570,468	72.2%	1	6.7%	0.225	14	93.3%	1.210
2014	4,439,629	27.5%	11,702,809	72.5%	2	18.2%	0.450	9	81.8%	0.769
2015	4,937,743	30.0%	11,495,067	70.0%	3	25.0%	0.608	9	75.0%	0.783
2016	4,723,539	29.0%	11,541,034	71.0%	0	0.0%	0.000	14	100.0%	1.213

Appendix B: Bureau of Labor Statistics Summary Data, Public-Sector (PS) Strikes

Year	RTW PS Union Representation	% of PS Union Workers in RTW States	Non-RTW PS Union Representation	% of PS Union Workers in Non-RTW States	PS Strikes in RTW States	% of PS Strikes in RTW States	RTW Strike Rate Per Million Union Workers	PS Strikes in Non-RTW States	% of PS Strikes in Non-RTW States	Non-RTW Strike Rate Per Million Union Workers
1993	1,856,907	22.7%	6,305,517	77.3%	0	0.0%	0.000	6	100.0%	0.952
1994	1,851,335	22.6%	6,340,509	77.4%	0	0.0%	0.000	9	100.0%	1.419
1995	1,743,836	21.8%	6,242,723	78.2%	0	0.0%	0.000	8	100.0%	1.281
1996	1,726,069	22.0%	6,103,610	78.0%	0	0.0%	0.000	6	100.0%	0.983
1997	1,619,040	21.1%	6,048,996	78.9%	0	0.0%	0.000	3	100.0%	0.496
1998	1,703,645	21.8%	6,111,056	78.2%	0	0.0%	0.000	4	100.0%	0.655
1999	1,668,366	20.9%	6,297,942	79.1%	1	20.0%	0.599	4	80.0%	0.635
2000	1,660,671	20.8%	6,314,927	79.2%	0	0.0%	0.000	8	100.0%	1.267
2001	1,707,132	21.4%	6,268,235	78.6%	0	0.0%	0.000	4	100.0%	0.638
2002	1,755,096	21.6%	6,376,842	78.4%	0	0.0%	0.000	5	100.0%	0.784
2003	1,728,197	21.1%	6,456,507	78.9%	0	0.0%	0.000	2	100.0%	0.310
2004	1,776,049	21.8%	6,355,065	78.2%	0	0.0%	0.000	3	100.0%	0.472
2005	1,719,634	20.8%	6,542,169	79.2%	0	0.0%	0.000	4	100.0%	0.611
2006	1,759,322	21.5%	6,413,114	78.5%	0	0.0%	0.000	8	100.0%	1.247
2007	1,835,070	21.9%	6,538,259	78.1%	0	0.0%	0.000	9	100.0%	1.377
2008	1,885,544	21.7%	6,790,648	78.3%	0	0.0%	0.000	3	100.0%	0.442
2009	1,860,034	21.4%	6,817,455	78.6%	0	0.0%	0.000	3	100.0%	0.440
2010	1,846,696	22.0%	6,559,277	78.0%	0	0.0%	0.000	4	100.0%	0.610
2011	2,025,376	24.4%	6,283,767	75.6%	0	0.0%	0.000	1	100.0%	0.159
2012	2,040,446	25.3%	6,021,121	74.7%	0	0.0%	0.000	4	100.0%	0.664
2013	2,262,092	28.7%	5,632,008	71.3%	0	0.0%	0.000	9	100.0%	1.598
2014	2,198,049	27.7%	5,725,089	72.3%	0	0.0%	0.000	2	100.0%	0.349
2015	2,344,450	29.2%	5,678,252	70.8%	0	0.0%	0.000	5	100.0%	0.881
2016	2,187,030	27.9%	5,639,476	72.1%	0	0.0%	0.000	7	100.0%	1.241

Appendix C:

Federal Mediation and Conciliation Service Summary Data, All Strikes

Year	RTW Union Representation	% of Union Workers in RTW States	Non-RTW Union Representation	% of Union Workers in Non-RTW States	RTW Strikes	% of Strikes in RTW States	RTW Strike Rate Per Million Union Workers	Non-RTW Strikes	% of Strikes in Non-RTW States	Non-RTW Strike Rate Per Million Union Workers
1984	3,964,287	19.9%	15,967,232	80.1%	138	14.8%	34.811	797	85.2%	49.915
1985	3,866,338	20.0%	15,491,783	80.0%	153	12.8%	39.572	1041	87.2%	67.197
1986	3,896,609	20.2%	15,381,240	79.8%	149	13.6%	38.238	950	86.4%	61.764
1987	3,696,279	19.4%	15,354,677	80.6%	120	14.5%	32.465	707	85.5%	46.045
1988	3,930,634	20.4%	15,310,685	79.6%	102	13.8%	25.950	635	86.2%	41.474
1989	3,850,530	20.1%	15,347,034	79.9%	110	14.3%	28.567	661	85.7%	43.070
1990	3,754,522	19.7%	15,303,319	80.3%	84	12.2%	22.373	603	87.8%	39.403
1991	3,846,730	20.5%	14,887,049	79.5%	63	10.7%	16.378	526	89.3%	35.333
1992	3,882,106	20.9%	14,657,964	79.1%	68	13.8%	17.516	426	86.2%	29.063
1993	3,946,415	21.2%	14,699,966	78.8%	62	12.6%	15.710	432	87.4%	29.388
1994	4,030,234	21.4%	14,812,244	78.6%	70	15.2%	17.369	392	84.8%	26.465
1995	3,755,603	20.5%	14,590,724	79.5%	52	13.3%	13.846	340	86.7%	23.302
1996	3,762,711	20.7%	14,395,408	79.3%	58	16.3%	15.414	298	83.7%	20.701
1997	3,622,642	20.2%	14,300,364	79.8%	44	10.9%	12.146	358	89.1%	25.034
1998	3,632,741	20.3%	14,285,590	79.7%	58	13.2%	15.966	381	86.8%	26.670
1999	3,701,286	20.4%	14,480,988	79.6%	47	12.6%	12.698	326	87.4%	22.512
2000	3,646,086	20.3%	14,298,048	79.7%	55	13.6%	15.085	349	86.4%	24.409
2001	3,717,291	20.8%	14,160,791	79.2%	55	12.9%	14.796	372	87.1%	26.270
2002	3,598,576	20.6%	13,903,060	79.4%	40	12.3%	11.116	284	87.7%	20.427
2003	3,600,857	20.6%	13,847,510	79.4%	30	10.0%	8.331	269	90.0%	19.426
2004	3,502,226	20.5%	13,585,081	79.5%	34	12.7%	9.708	233	87.3%	17.151
2005	3,431,056	19.9%	13,792,306	80.1%	37	12.3%	10.784	264	87.7%	19.141
2006	3,478,445	20.6%	13,381,740	79.4%	28	13.5%	8.050	179	86.5%	13.376
2007	3,581,317	20.8%	13,662,024	79.2%	26	12.9%	7.260	176	87.1%	12.882
2008	3,634,569	20.5%	14,126,018	79.5%	20	13.5%	5.503	128	86.5%	9.061
2009	3,456,171	20.4%	13,447,432	79.6%	9	8.7%	2.604	95	91.3%	7.065
2010	3,485,096	21.4%	12,804,433	78.6%	17	10.8%	4.878	140	89.2%	10.934
2011	3,428,251	21.1%	12,852,766	78.9%	15	8.8%	4.375	155	91.2%	12.060
2012	3,780,020	23.8%	12,125,885	76.2%	31	18.5%	8.201	137	81.5%	11.298
2013	4,445,703	27.8%	11,570,468	72.2%	22	17.3%	4.949	105	82.7%	9.075
2014	4,439,629	27.5%	11,702,809	72.5%	21	18.8%	4.730	91	81.3%	7.776
2015	4,937,743	30.0%	11,495,067	70.0%	23	24.2%	4.658	72	75.8%	6.264
2016	4,723,539	29.0%	11,541,034	71.0%	33	33.7%	6.986	65	66.3%	5.632

Appendix D:

Federal Mediation and Conciliation Service Summary Data, Public-Sector [PS] Strikes

Year	RTW PS Union Representation	% of PS Union Workers in RTW States	Non-RTW PS Union Representation	% of PS Union Workers in Non-RTW States	PS Strikes in RTW States	% of PS Strikes in RTW States	RTW Strike Rate Per Million Union Workers	PS Strikes in Non-RTW States	% of PS Strikes in Non-RTW States	Non-RTW Strike Rate Per Million Union Workers
1984	1,488,869	21.4%	5,457,021	78.6%	0	0.0%	0.000	28	100.0%	5.131
1985	1,445,994	20.9%	5,474,597	79.1%	0	0.0%	0.000	34	100.0%	6.211
1986	1,513,715	21.4%	5,560,216	78.6%	1	3.4%	0.661	28	96.6%	5.036
1987	1,494,676	20.9%	5,671,029	79.1%	2	6.7%	1.338	28	93.3%	4.937
1988	1,644,064	22.0%	5,841,005	78.0%	1	5.0%	0.608	19	95.0%	3.253
1989	1,642,962	21.6%	5,971,484	78.4%	0	0.0%	0.000	30	100.0%	5.024
1990	1,640,231	21.3%	6,051,207	78.7%	1	3.0%	0.610	32	97.0%	5.288
1991	1,721,159	22.1%	6,074,797	77.9%	2	5.6%	1.162	34	94.4%	5.597
1992	1,739,868	22.2%	6,100,719	77.8%	0	0.0%	0.000	23	100.0%	3.770
1993	1,856,907	22.7%	6,305,517	77.3%	0	0.0%	0.000	21	100.0%	3.330
1994	1,851,335	22.6%	6,340,509	77.4%	0	0.0%	0.000	18	100.0%	2.839
1995	1,743,836	21.8%	6,242,723	78.2%	0	0.0%	0.000	9	100.0%	1.442
1996	1,726,069	22.0%	6,103,610	78.0%	0	0.0%	0.000	7	100.0%	1.147
1997	1,619,040	21.1%	6,048,996	78.9%	0	0.0%	0.000	14	100.0%	2.314
1998	1,703,645	21.8%	6,111,056	78.2%	0	0.0%	0.000	17	100.0%	2.782
1999	1,668,366	20.9%	6,297,942	79.1%	0	0.0%	0.000	16	100.0%	2.541
2000	1,660,671	20.8%	6,314,927	79.2%	1	5.3%	0.602	18	94.7%	2.850
2001	1,707,132	21.4%	6,268,235	78.6%	0	0.0%	0.000	17	100.0%	2.712
2002	1,755,096	21.6%	6,376,842	78.4%	0	0.0%	0.000	18	100.0%	2.823
2003	1,728,197	21.1%	6,456,507	78.9%	0	0.0%	0.000	11	100.0%	1.704
2004	1,776,049	21.8%	6,355,065	78.2%	0	0.0%	0.000	9	100.0%	1.416
2005	1,719,634	20.8%	6,542,169	79.2%	0	0.0%	0.000	13	100.0%	1.987
2006	1,759,322	21.5%	6,413,114	78.5%	0	0.0%	0.000	8	100.0%	1.247
2007	1,835,070	21.9%	6,538,259	78.1%	0	0.0%	0.000	8	100.0%	1.224
2008	1,885,544	21.7%	6,790,648	78.3%	0	0.0%	0.000	5	100.0%	0.736
2009	1,860,034	21.4%	6,817,455	78.6%	0	0.0%	0.000	3	100.0%	0.440
2010	1,846,696	22.0%	6,559,277	78.0%	0	0.0%	0.000	3	100.0%	0.457
2011	2,025,376	24.4%	6,283,767	75.6%	0	0.0%	0.000	3	100.0%	0.477
2012	2,040,446	25.3%	6,021,121	74.7%	0	0.0%	0.000	11	100.0%	1.827
2013	2,262,092	28.7%	5,632,008	71.3%	0	0.0%	0.000	11	100.0%	1.953
2014	2,198,049	27.7%	5,725,089	72.3%	0	0.0%	0.000	8	100.0%	1.397
2015	2,344,450	29.2%	5,678,252	70.8%	0	0.0%	0.000	5	100.0%	0.881
2016	2,187,030	27.9%	5,639,476	72.1%	0	0.0%	0.000	1	100.0%	0.177

Appendix E:

Gallup Data, Public-Sector Employee Engagement by State

State	Engaged	Not Engaged	Actively Disengaged	Ratio of E to NE+AD Employees	Ratio of E to AD Employees	RTW
Mississippi	39%	48%	14%	0.63:1	2.79:1	Yes
Arkansas	35%	50%	14%	0.55:1	2.50:1	Yes
Wyoming	32%	54%	13%	0.48:1	2.46:1	Yes
Texas	34%	52%	14%	0.52:1	2.43:1	Yes
Idaho	33%	52%	14%	0.50:1	2.36:1	Yes
Kentucky	37%	47%	16%	0.59:1	2.31:1	No
Louisiana	34%	50%	15%	0.52:1	2.27:1	Yes
Alabama	36%	48%	16%	0.56:1	2.25:1	Yes
North Carolina	33%	51%	15%	0.50:1	2.20:1	Yes
Kansas	33%	52%	15%	0.49:1	2.20:1	Yes
Nebraska	30%	56%	14%	0.43:1	2.14:1	Yes
South Carolina	34%	50%	16%	0.52:1	2.13:1	Yes
Georgia	34%	51%	16%	0.51:1	2.13:1	Yes
Oklahoma	35%	48%	17%	0.54:1	2.06:1	Yes
Tennessee	31%	52%	16%	0.46:1	1.94:1	Yes
Arizona	29%	56%	15%	0.41:1	1.93:1	Yes
Colorado	30%	54%	16%	0.43:1	1.88:1	No
New Mexico	31%	51%	17%	0.46:1	1.82:1	No
Utah	29%	55%	16%	0.41:1	1.81:1	Yes
Washington	29%	55%	16%	0.41:1	1.81:1	No
Indiana	27%	57%	15%	0.38:1	1.80:1	Mixed
Oregon	28%	56%	16%	0.39:1	1.75:1	No
Virginia	31%	51%	18%	0.45:1	1.72:1	Yes
Nevada	31%	51%	18%	0.45:1	1.72:1	Yes
Maryland	28%	54%	17%	0.39:1	1.65:1	No
West Virginia	28%	55%	17%	0.39:1	1.65:1	Mixed
Minnesota	28%	55%	17%	0.39:1	1.65:1	No
California	29%	53%	18%	0.41:1	1.61:1	No
Wisconsin	27%	56%	17%	0.37:1	1.59:1	Mixed
Florida	30%	51%	19%	0.43:1	1.58:1	Yes
Iowa	28%	54%	18%	0.39:1	1.56:1	Yes
Maine	29%	52%	19%	0.41:1	1.53:1	No
New Hampshire	32%	46%	21%	0.48:1	1.52:1	No
Massachusetts	27%	55%	18%	0.37:1	1.50:1	No
Montana	28%	54%	19%	0.38:1	1.47:1	No
Ohio	29%	51%	20%	0.41:1	1.45:1	No
Pennsylvania	28%	52%	20%	0.39:1	1.40:1	No
New Jersey	28%	53%	20%	0.38:1	1.40:1	No
Missouri	26%	55%	19%	0.35:1	1.37:1	No
Illinois	26%	56%	19%	0.35:1	1.37:1	No
Michigan	28%	52%	21%	0.38:1	1.33:1	Mixed
Connecticut	28%	52%	21%	0.38:1	1.33:1	No
New York	26%	52%	22%	0.35:1	1.18:1	No
Federal	29%	54%	17%	0.41:1	1.71:1	Yes



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