

# ENRD Union FAQs

## 1. Can lawyers at DOJ unionize?

Lawyers within ENRD may unionize. The right of federal employees to bargain is established in the Federal Service Labor Management Relations Statute ("the Statute"), which is codified at 5 USC Part 71 (more information [here](#)). The Statute itself gives federal employees the right to bargain.

The Statute has some exceptions. For example, members of the military may not unionize. 5 USC 7102(a)(2). The statute also expressly exempts certain agencies. *Id.* 7103(3). Lawyers are not barred from unionizing under the statute, nor is DOJ itself identified by the Statute as an agency that is prohibited from unionizing.

The Statute also confers on the President the discretion to exempt certain other agencies or agency components from the right to unionize if those agencies or components have a primary national security or intelligence function. See 5 USC 7102(b)(1). Various Presidents have exercised their right to further exclude certain agencies or components through executive orders. Most relevant for DOJ employees is [a 2002 EO](#) that expressly bars certain DOJ components from unionizing, including the Criminal Division and attorneys in US Attorney's Offices. The 2002 EO does not apply to ENRD as a whole or to any of its sections. As neither ENRD nor any of its components are barred from organizing, ENRD's lawyers, including those in the enforcement and crimes sections, may unionize.

## 2. What can we bargain over?

The Statute gives employees the right to bargain over their "conditions of employment." 5 U.S.C. 7102(2). Conditions of employment is further defined as "personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters (A) relating to political activities prohibited under subchapter III of chapter 73 of this title; (B) relating to the classification of any position; or (C) to the extent such matters are specifically provided for by Federal statute." *Id.* 7103(14).

Because DOJ employees' salary and health and retirement benefits are "specifically provided for by Federal statute," *id.*, we may not bargain over salary or health and retirement benefits. That said, the [National Treasury Employees Union](#)—the union we have chosen to represent us—can and does lobby on Capitol Hill for greater pay and benefits for federal employees.

Regardless, there are a range of other "conditions of employment" that are subject to bargaining. Telework, flexible scheduling, and remote work are primary examples. Moreover, while DOJ employees' base salary is set by law, other financial benefits, such as performance

awards, bar dues, student loan repayment programs, and transit reimbursements are subject to bargaining.

Other federal sector bargaining agreements reflect the broad range of issues subject to bargaining. You can download examples of collective bargaining agreements for the [IRS general counsel's office](#) (negotiated by NTEU) and [USDA's general counsel's office](#), as well as the [CFPB](#) (CFPB, unlike DOJ, can negotiate over salary). You can also find a [database](#) of all federal union contracts on OPM's website, where you can search for contracts, including contracts negotiated by NTEU, contracts that are specific to attorneys, and contracts of other unions within the Department of Justice.

**3. Can a collective bargaining agreement really create workplace policies that differ from those suggested by the President or OPM, or mandated by DOJ policy? (e.g., can we really get a different telework plan?)**

Yes. With some exceptions, a collective bargaining agreement does not supersede statutes or regulations. But collective bargaining agreements supersede agency and OPM policies and executive orders. See 5 U.S.C. 7117(a).

Thus, DOJ's new six-day-per-pay-period policy would not constrain our ability to bargain over telework, including achieving an agreement that requires less in-office telework than DOJ's current policy mandates. This is evidenced by other collective bargaining agreements—finalized after OPM's directive was issued in April 2023—that allow for greater flexibility than OPM's policy provides. Since April 2023, NTEU has negotiated agreements, and secured favorable decisions after negotiations reached an impasse (see FAQ 8, below), that provide much more flexibility than DOJ's new policy. For example, employees in USDA's general counsel's office and HHS employees recently secured agreements allowing up to 8 days of telework per pay period (i.e., one in-office day per week).

This is also clear from the DOJ policy itself. After establishing a six days per pay period in-person “baseline,” the Deputy Attorney General's in-person work memo says the following: “This [in-person work] baseline will be subject to any applicable collective-bargaining obligations. All components are expected to negotiate their policy revisions if required by their collective bargaining agreements.” DAG Lisa Monaco, September 26, 2023, “Implementing OMB Directive Regarding In-Person Work,” at 2.

Nor may an agency adopt a new policy that contradicts an existing collective bargaining agreement. In fact, it would be an unfair labor practice for DOJ to apply the new in-person work policy to workers who have an existing collective bargaining agreement providing for different in-office requirements. See 5 U.S.C. 7116(a)(7).

#### 4. What are the pros and cons of unionizing?

We see the primary benefits of unionization as voice and stability. Having a union would give ENRD attorneys a say on issues that directly impact us. ENRD attorneys would have a direct voice in what policies the union advocates for after the union is formed, but right now we anticipate that an ENRD attorney union would advocate to protect our attorneys' current timekeeping flexibility, while also potentially expanding the use of telework and exploring the adoption of remote work options, [alternative work schedules](#), and [credit-hour compensation](#) for overtime. We could raise any eligible issues that members are interested in during the bargaining process. Moreover, our union would have formal consultation rights with management for future decisions regarding "substantive change in any condition of employment." 5 U.S.C. § 7117(d)(1). And for those issues that are not subject to bargaining, we'd also be able to tap into NTEU's extensive lobbying and legal resources to advocate for us as well.

A collective bargaining agreement would prevent management from changing conditions that affect our lives on the turn of a dime, either because of changing management prerogatives or because political priorities have changed. As noted above (question 3), an agency cannot adopt a new policy that contradicts what is in an existing agreement. For instance, if we were to negotiate an in-office requirement of two days per week, a new administration could not simply require union members to be in three, four, or five days a week. Without a union, we have no such protections.

We understand that there are also potential downsides to unionizing. The most obvious one is the financial (see question 6), but we also recognize that there are other tangible costs in the form of time and energy expended administering the union and liaising with management (borne mostly by union leadership).

Perhaps the most common criticism of unions is that they can impede organizational productivity and innovation by making it harder for management to reward top performers and punish poor performers. Whether or not this proposition is true as a general matter, these concerns carry less weight in the public sector, where employee pay and separation is governed by statute.

We've also heard broader concerns that a union would constrain management discretion and introduce rigidity to our workplace. While a collective bargaining agreement would, by definition, place certain rights and policies outside of management's reach, the real question would be what our union chooses to advocate for, and how it interacts with management. Like other democratic institutions, unions are human organizations subject to the best and worst impulses of the people that they represent. In our experience, ENRD attorneys are self-motivated, reasonable, and committed to advancing our Division's work. We are confident that these characteristics will be reflected in our union's goals and practices. We aim to create a union that works in partnership with management to address important issues facing our division, not a stumbling block that obstructs our ability to effectively carry out our work.

Some have also voiced concerns that a single component might be ineffectual bargaining opposite DOJ as a whole. However, NTEU is well practiced at representing subdivisions of larger agencies, and the Statute requires management to negotiate with us in good faith. 5 U.S.C. § 7117(a)(1). Once a collective bargaining agreement is entered, it is legally binding on management; and violations of the agreement are enforceable, including through grievance procedures, arbitration, and other remedies. Any attempt to impose different contract terms would be an unfair labor practice.

#### **5. How could a union help protect us from Schedule F, or other priorities of an administration that is hostile to federal workers?**

“Schedule F” refers to the previous administration’s [Executive Order](#) that would have converted thousands—potentially tens of thousands—of civil service positions into employees that serve at the pleasure of the president. Employees converted to this status could lose their employment and certain union protections upon re-assignment, making them functionally at-will employees and therefore far easier to fire—and politicize. President Biden rescinded that Executive Order, but a future administration could revive it. This GAO [report](#) provides more information on Schedule F and its implementation at the end of the last administration.

Given the short time that it was in effect, many questions about Schedule F’s implementation were never addressed. Accordingly, it is not clear how reviving the prior administration order would affect ENRD attorneys. If DOJ attempted to classify some or all ENRD attorney positions as Schedule F, that could make it easier to fire us. That said, Schedule F is often used as a shorthand to describe broader concerns about a future administration politicizing the federal workforce. These concerns exist regardless of the details of future Schedule F or how DOJ would choose to implement it.

A union could help in the event of major personnel or civil service changes in a few ways. The first is by lobbying Congress on this issue on our behalf. More information on NTEU’s legislative and policy efforts around schedule F are available [here](#). Second, depending on the details of what the administration attempts to implement, the union may be able to help us contest its implementation at DOJ. The union would at a minimum be a resource for us in determining what our rights are and in providing information about its implementation that we may otherwise lack—and may be able to file a protest on our behalf if necessary. And finally, in the event a new administration were to attempt to erode protections for DOJ employees, NTEU could file a lawsuit on behalf of its members. For instance, when the last administration issued its EO on Schedule F, NTEU promptly filed a [lawsuit](#).

#### **6. How much would union dues be, and what would they fund?**

Union dues are based on a sliding scale, determined as a percentage of your income, and therefore would depend on your grade and step. Thus, when a member’s salary increases, either through annual increases, step increases, or promotions, their dollar amount of dues will

likely increase as well. As it currently stands, GS-15 employees would pay approximately \$25 per pay period. You can view the [dues chart for the IRS Chief Counsel bargaining unit](#), to see what an ENRD attorney union's dues might look like at various pay levels.

The amount for an ENRD union may differ from the IRS unit's dues because union dues are composed of both a national component and a local component. The national component is determined at NTEU's biannual member convention, and has not increased in decades. The local component is determined by the particular bargaining unit, and therefore will depend on the level our union chooses to set. Most units choose to set local dues at 15% of the national dues.

National dues pay for the administration of the union. It is important to note that national dues fund only activities related to federal employees. Our union, NTEU, only represents federal employees, and is focused on issues related only to federal employees, such as avoiding government shutdowns, avoiding Schedule F, and other priorities of federal employees. For more on some of their lobbying activities, see [here](#). Local dues stay within the chapter and are used by chapter leadership to support the day-to-day functioning of the bargaining unit, including social activities in the unit.

#### **7. Could I be penalized, punished, or fired for unionizing or participating in union activities?**

Federal law protects the rights of federal employees to organize and bargain. The Statute provides that “[e]ach employee shall have the right to form, join, or assist any labor organization or to refrain from such activity, freely and without penalty or reprisal, and each employee shall be protected in the exercise of such right.” 5 U.S.C. 7102. Similar protections extend to union-related activities once a union is certified. *See id.*; *id.* 7116(a).

To protect this right, agencies are also barred from any statement or conduct that interferes with federal employees' right to organize and bargain. *See U.S. Dep't of Transportation, FAA*, 64 FLRA 365, 370 (2009). Similarly, managers are barred from encouraging or discouraging membership in a union. *Id.* 7116(a)(1), (e).

Retaliation is uncommon in the federal sector. However, in the unlikely event that management seeks to retaliate or otherwise penalize an employee, NTEU dedicates resources to handling allegations of retaliation and representing employees who believe they have been the subject of retaliation, including, as necessary, by bringing claims against the offending manager in the appropriate forum (the Federal Labor Relations Authority, if the retaliation occurs prior to the certification of the union, or in arbitration, if there is an existing contract).

In any event, management will not automatically know which employees support the union. Managers do not have access to 1187 forms, and thus do not know who has elected to join the union; similarly, any union election would be by secret ballot. *Id.* 7111(a).

**8. What leverage would ENRD employees actually have in reaching a collective bargaining agreement with management? If no agreement is reached, would I be asked to strike?**

Federal employees are prohibited from striking. 5 U.S.C. § 7311(4); *see also* 5 U.S.C. 7103(a)(2). Our leverage comes from elsewhere. First, management is expressly required by the Statute to engage in good-faith bargaining. 5 U.S.C. § 7117(a)(1). Second, if no agreement is reached after such good-faith bargaining, the dispute is submitted to an independent body, the [Federal Service Impasses Panel](#). Although we aspire and expect to reach a voluntary agreement with management, the Panel may take whatever action it deems necessary to resolve the dispute, including the imposition of contract terms—which is not appealable. Finally, we have leverage based on our membership numbers and based on NTEU's relationships with Congress and members of the press.

**9. How long will it take to get a union organized and a contract negotiated?**

The timeline of this organizing effort depends on us. A majority of ENRD attorneys will need to sign [Form 1187s](#) before NTEU will file an election petition with the Federal Labor Relations Authority. This body's timelines in setting an election are variable, but it usually takes a month or two. Holding the election and certifying the results will take time as well. We aspire to have an election by October 2024.

If a union is certified, NTEU would seek to put in place an interim agreement while it negotiates a full-term contract. How long it will take to negotiate a full-term collective bargaining agreement will depend on a variety of factors, including the number of issues we want to put on the table and the willingness of our counter-parties to engage. NTEU aims to complete contract negotiations within a year, although in practice, reaching a contract can take anywhere from 12-18 months.

The best way to ensure timely union certification is by filling out your Form 1187 [here](#).