
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1278 Session of
2018

INTRODUCED BY EICHELBERGER, MARTIN, DiSANTO AND FOLMER,
OCTOBER 25, 2018

REFERRED TO LABOR AND INDUSTRY, OCTOBER 25, 2018

AN ACT

1 Amending the act of July 23, 1970 (P.L.563, No.195), entitled
2 "An act establishing rights in public employes to organize
3 and bargain collectively through selected representatives;
4 defining public employes to include employes of nonprofit
5 organizations and institutions; providing compulsory
6 mediation and fact-finding, for collective bargaining
7 impasses; providing arbitration for certain public employes
8 for collective bargaining impasses; defining the scope of
9 collective bargaining; establishing unfair employe and
10 employer practices; prohibiting strikes for certain public
11 employes; permitting strikes under limited conditions;
12 providing penalties for violations; and establishing
13 procedures for implementation," in definitions, further
14 providing for definitions, in employee rights, providing for
15 payments to employee organizations and resignation from
16 employee organization; in representation, further providing
17 for exclusive representation and providing for
18 recertification; in scope of bargaining, further providing
19 for membership dues deductions and maintenance of membership
20 and providing for collection of payments from nonmembers; and
21 making related repeals.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. Section 301 of the act of July 23, 1970 (P.L.563,
25 No.195), known as the Public Employe Relations Act, is amended
26 by adding clauses to read:

27 Section 301. As used in this act:

1 * * *

2 (20) "Nonmember" means a public employe in a collective
3 bargaining unit who is not a member of the employe organization
4 that serves as the exclusive representative for the collective
5 bargaining unit.

6 (21) "Independent bargaining" or "to bargain independently"
7 means to bargain between a public employer and a public employe
8 with respect to rates of pay, wages, hours of employment,
9 adjustment of grievances or other terms and conditions of
10 employment without the intervention of an employe organization,
11 bargaining agent or exclusive bargaining representative.

12 Independent bargaining shall not:

13 (i) grant any greater or lesser rights or privileges to
14 public employes who have chosen to represent themselves in a
15 unit with an exclusive representative than those public employes
16 in a unit without an exclusive bargaining representative; or

17 (ii) grant any greater or lesser duties or obligations for a
18 public employer to public employes who have chosen to represent
19 themselves in a unit with an exclusive bargaining representative
20 than those duties or obligations the public employer owes to
21 public employes in a unit without an exclusive bargaining
22 representative.

23 (22) "Affirmative consent" means a knowing, voluntary and
24 explicit agreement by a public employe to financially support an
25 employe organization, and waiver of the employe's right or
26 privilege not to do so. Affirmative consent shall be provided in
27 written form and signed by the public employe.

28 Section 2. The act is amended by adding sections to read:

29 Section 402. (a) A public employer shall notify, in
30 writing, all public employes in a collective bargaining unit

1 that there is no statutory obligation by nonmembers to make any
2 payments to the employe organization that serves as the
3 nonmember's exclusive representative. The notice shall specify
4 the following:

5 (1) A payment may not be made to the employe organization
6 unless the employe affirmatively consents to make the payment.

7 (2) A payment to the employe organization shall not be
8 necessary to maintain employment.

9 (b) The notice required under subsection (a) shall be given
10 annually and may be given by mailing a letter by first class
11 mail to the address of the employe organization or other means
12 deemed appropriate by the board.

13 (c) Prior to the hiring of a new public employe, the public
14 employer, when applicable, shall notify the applicant of the
15 following:

16 (1) Membership in the employe organization that serves as
17 the exclusive representative of the collective bargaining unit
18 is not a condition of employment with the public employer.

19 (2) The applicant may opt to be a nonmember by not giving
20 affirmative consent. As a nonmember, the applicant has no
21 statutory obligation to make a payment to the employe
22 organization.

23 Section 403. (a) No collective bargaining agreement entered
24 into on or after January 1, 2019, may establish conditions for
25 when a public employe may join or resign from an employe
26 organization acting as the exclusive representative of a unit.

27 (b) A public employe may resign from an employe organization
28 at any time.

29 (c) Resignation shall become effective thirty days after the
30 date of mailing a letter by first class mail to the address of

1 the employe organization or other means deemed appropriate by
2 the board.

3 (d) A stamped receipt from a United States Post Office or
4 other evidence deemed appropriate by the board shall constitute
5 proof of mailing.

6 Section 404. (a) No membership dues or any portion thereof
7 may be deducted from the wages of a public employe, except on
8 receipt by the public employer of the affirmative consent of the
9 employe. Affirmative consent cannot be presumed. To be
10 effective, the affirmative consent must be freely given and
11 expressed in writing.

12 (b) Affirmative consent provided to public employers shall
13 include the following language:

14 I recognize that I have a First Amendment right to associate.
15 My rights provide that I am not compelled to pay an employe
16 organization as a condition of employment, and I do not have to
17 sign this waiver. However, I am hereby choosing to associate
18 with the herein named employe organization and affirmatively
19 consent to allow my employer to deduct payments to such employe
20 organization until such time as I choose to revoke this
21 authorization.

22 (c) The provision under subsection (b) shall be written in
23 bold and in all caps and shall be in a font that is equal to or
24 larger than any other font found in the text of the form. This
25 waiver shall be a standalone document and shall not be a part of
26 a document that serves additional purposes or has additional
27 provisions.

28 (d) An employe labor organization may present a public
29 employe with an affirmative consent form on the commencement of
30 employment, but not more often than annually thereafter. If any

1 information related to the waiver or the potential execution of
2 the affirmative consent is provided to any employe in any form,
3 representatives of the employer and any relevant union shall be
4 given the equivalent ability to provide information in the same
5 format to that employe.

6 (e) No deadline or any other like requirement may be placed
7 on the employe for the potential execution of the affirmative
8 consent.

9 (f) The following is prohibited in any communication or
10 action that is in any manner related to the potential execution
11 of the affirmative consent:

12 (1) Requiring any employe to attend a meeting with the
13 purpose of influencing the decision of an employe to execute or
14 not execute the affirmative consent.

15 (2) Requesting any employe to announce the employe's
16 decision to execute or not to execute the affirmative consent at
17 any particular place or time.

18 (3) Any communication by any means directed at an employe's
19 home.

20 (4) Any communication directed in any manner, direct or
21 indirect, to any person other than the employe himself or
22 herself or other employes of the same employer.

23 (5) The promise or provision of any inducement or thing of
24 value, other than a description of membership benefits in the
25 union in question.

26 (6) The threat of any negative action of any kind,
27 including, but not limited to, placement on a public list or
28 exclusion from any benefit, event or activity that is a part of
29 the employe's employment.

30 Section 3. Section 606 of the act is amended to read:

1 Section 606. (a) Representatives selected by public
2 employes in a unit appropriate for collective bargaining
3 purposes shall be the exclusive representative of all the
4 employes in such unit that have not chosen to independently
5 bargain to bargain on wages, hours, terms and conditions of
6 employment[: Provided, That any]. Any individual employe or a
7 group of employes shall have the right at any time to [present
8 grievances to their employer and to have them adjusted]
9 independently bargain without the intervention of the bargaining
10 representative. [as long as the adjustment is not inconsistent
11 with the terms of a collective bargaining contract then in
12 effect: And, provided further, That the bargaining
13 representative has been given an opportunity to be present at
14 such adjustment.]

15 (b) Public employes shall have the right to independently
16 bargain in the employes' relations with the public employer.

17 (c) No provision of any agreement between an employe
18 organization and a public employer or any other public policy
19 shall impose representation by an employe organization on public
20 employes who are not members of that organization and have
21 chosen to bargain independently. Nothing in any collective
22 bargaining agreement shall limit a public employe's ability to
23 negotiate with the employe's public employer or adjust the
24 employe's grievances directly with the employe's public
25 employer, nor shall a resolution of any such negotiation or
26 grievance be controlled or limited by the terms of a collective
27 bargaining agreement.

28 (d) There shall be not more than one exclusive bargaining
29 representative designated by the board pursuant to the
30 provisions of this act as the representative of the public

1 employees in an appropriate collective bargaining unit.

2 (e) No provision of any agreement between an employe
3 organization and a public employer or any other public policy
4 shall impose any wages or conditions of employment for members
5 of an employe organization that are linked or contingent on
6 wages or conditions of employment to public employes who are not
7 members of an employe organization.

8 Section 4. The act is amended by adding a section to read:

9 Section 608. (a) The board shall conduct periodic
10 recertification elections using a secret ballot vote among the
11 public employes in a collective bargaining unit to determine if
12 the majority of the employes desire to continue representation.

13 (b) The board shall conduct recertification elections on
14 expiration of a collective bargaining agreement, but not less
15 than every three years.

16 (c) To meet the recertification requirement, continuation of
17 the employe organization's status as the representative shall be
18 avored in a secret ballot election conducted by the board by
19 more than fifty per cent of the public employes in the
20 collective bargaining unit.

21 (d) If public employes vote to end representation under
22 subsection (c), the current representative's duties, including
23 collection of dues, fees and grievance arbitration, shall
24 terminate, provided that the collective bargaining agreement
25 shall remain in effect with respect to wages, hours and
26 conditions of employment.

27 (e) If public employes do not recertify the public employes'
28 current representative under subsection (c), public employes in
29 the unit may certify a new representative in accordance with
30 this section so long as the public employes are not included

1 with a substantially similar or affiliated representative to the
2 decertified representative for two years from the date of
3 decertification.

4 (f) The board shall assess and collect a fee from each
5 representative participating in an election conducted under this
6 section for the purpose of paying for the election as follows:

7 (1) For a bargaining unit of one to one hundred members, a
8 fee of two hundred dollars (\$200).

9 (2) For a bargaining unit of one hundred one to two hundred
10 fifty members, a fee of three hundred fifty dollars (\$350).

11 (3) For a bargaining unit of two hundred fifty-one to five
12 hundred members, a fee of five hundred dollars (\$500).

13 (4) For a bargaining unit of five hundred one to one
14 thousand members, a fee of seven hundred fifty dollars (\$750).

15 (5) For a bargaining unit of one thousand one to three
16 thousand members, a fee of one thousand five hundred dollars
17 (\$1,500).

18 (6) For a bargaining unit of more than three thousand
19 members, a fee of two thousand dollars (\$2,000).

20 Section 5. Section 705 of the act is amended to read:

21 Section 705. Membership dues deductions and maintenance of
22 membership are proper subjects of bargaining with the proviso
23 that as to the latter, the payment of dues and assessments while
24 members, may be the only requisite employment condition[.],
25 provided that on and after January 1, 2019, maintenance of
26 membership shall not be a proper subject of bargaining and no
27 collective bargaining agreement entered into on or after January
28 1, 2019, may contain the provision.

29 Section 6. The act is amended by adding a section to read:

30 Section 706. A public employer may not collect through a

1 wage deduction any form of payment from a nonmember to an
2 employe organization.

3 Section 7. Repeals are as follows:

4 (1) The General Assembly declares that the repeals under
5 paragraph (2) are necessary to effectuate the addition of
6 sections 301(20), 402 and 706 of the act.

7 (2) The following acts and parts of acts are repealed:

8 (i) Section 2215 of the act of April 9, 1929
9 (P.L.177, No.175), known as The Administrative Code of
10 1929.

11 (ii) The act of June 2, 1993 (P.L.45, No.15), known
12 as the Public Employee Fair Share Fee Law, is repealed.

13 Section 8. This act shall take effect in 30 days.