
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1312 Session of
1991

INTRODUCED BY COWELL, DeWEESE, DeLUCA, McNALLY, GIGLIOTTI,
COHEN, VAN HORNE, DERMODY, TRELLO, PISTELLA, KASUNIC,
KOSINSKI, LESCOVITZ, RITTER, HAYDEN, WOZNIAK, KUKOVICH,
LaGROTTA, HARPER, MICHLOVIC, VEON, COLAFELLA, FREEMAN,
BELFANTI, LEVDANSKY, CIVERA, GANNON, RAYMOND, R. C. WRIGHT,
BILLOW, LAUGHLIN, HUGHES, RICHARDSON, ITKIN, WAMBACH, EVANS,
BISHOP, LINTON, COLAIZZO, BELARDI, MELIO, CALTAGIRONE AND
PETRONE, MAY 6, 1991

REFERRED TO COMMITTEE ON LABOR RELATIONS, MAY 6, 1991

AN ACT

1 Requiring public employees who are not members of a collective
2 bargaining unit to contribute a fair share fee; establishing
3 payment, notice, objection and reporting procedures; imposing
4 penalties; and making repeals.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Public
9 Employee Fair Share Fee Law.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Bona fide religious objection." An objection to the payment
15 of a fair share fee based upon the tenets or teachings of a bona
16 fide church or religious body of which the employee is a member.

1 "Employee organization." An organization of any kind or any
2 agency or employee representation committee or plan in which
3 membership includes public employees and which exists for the
4 purpose, in whole or in part, of dealing with employers
5 concerning grievances, employee-employer disputes, wages, rates
6 of pay, hours of employment or conditions of work. The term does
7 not include any organization which practices discrimination in
8 membership because of race, gender, color, creed, national
9 origin or political affiliation.

10 "Exclusive representative." The employee organization
11 selected by the employees of a public employer to represent them
12 for purposes of collective bargaining pursuant to the act of
13 July 23, 1970 (P.L.563, No.195), known as the Public Employee
14 Relations Act.

15 "Fair share fee." The regular membership dues required of
16 members of the exclusive representative, less the cost for the
17 previous fiscal year of its activities or undertakings which
18 were not reasonably employed to implement or effectuate the
19 duties of the employee organization as exclusive representative.

20 "Nonmember." A public employer's employee who is not a
21 member of the exclusive representative but who is represented in
22 a collective bargaining unit by the exclusive representative for
23 purposes of collective bargaining.

24 "Public employer." All political subdivisions of the
25 Commonwealth. The term shall include "community college" as
26 defined in section 1901-A of the act of March 10, 1949 (P.L.30,
27 No.14), known as the Public School Code of 1949.

28 "Political subdivision." A city, county, borough,
29 incorporated town, township, institution district or any newly
30 created governmental unit.

1 "Statewide employee organization." The Statewide affiliated
2 parent organization of an exclusive representative, or an
3 exclusive representative representing employees Statewide, which
4 is receiving nonmember fair share payments.

5 Section 3. Fair share fee.

6 If the provisions of a collective bargaining agreement so
7 provide, each nonmember of a collective bargaining unit shall be
8 required to pay to the exclusive representative a fair share
9 fee.

10 Section 4. Procedure.

11 (a) Deduction by employer.--To implement fair share
12 agreements in accordance with section 3, the exclusive
13 representative shall provide the public employer with the name
14 of each nonmember who is obligated to pay a fair share fee, the
15 amount of the fee that he is obligated to pay and a reasonable
16 schedule for deducting the amount from the salary or wages of
17 the nonmember. The public employer shall deduct the fee in
18 accordance with the schedule and promptly transmit the amount
19 deducted to the exclusive representative.

20 (b) Annual notice.--As a precondition to the collection of
21 fair share fees, the exclusive representative shall establish
22 and maintain a full and fair procedure, consistent with
23 constitutional requirements, that provides nonmembers, by way of
24 annual notice, with sufficient information to gauge the
25 propriety of the fee and that responds to challenges by
26 nonmembers to the amount of the fee. The procedure shall provide
27 for an impartial hearing before an arbitrator to resolve
28 disputes regarding the amount of the chargeable fee. A public
29 employer shall not refuse to carry out its obligations under
30 subsection (a) on the grounds that the exclusive representative

1 has not satisfied its obligation under this subsection.

2 Section 5. Objection to fee.

3 (a) Grounds.--Within 40 days of transmission of notice under
4 section 4, any nonmember may challenge the fee based upon:

5 (1) The propriety of the fair share fee.

6 (2) Bona fide religious grounds.

7 (b) Procedure.--Any objection under subsection (a) shall be
8 made in writing to the exclusive representative and shall state
9 whether the objection is made on the grounds set forth in
10 subsection (a)(1) or (2).

11 (c) Challenge to propriety of fee.--When a challenge is made
12 under subsection (a)(1), the challenge shall be resolved, along
13 with all similar challenges, by an impartial arbitrator, paid
14 for by the exclusive representative and selected by the American
15 Arbitration Association or the Federal Mediation and
16 Conciliation Service pursuant to the Rules for Impartial
17 Determination of Union Fees promulgated by the American
18 Arbitration Association. The decision of the impartial
19 arbitrator shall be final and binding.

20 (d) Challenge based upon religious grounds.--When a
21 challenge is made under subsection (a)(2), the objector shall
22 provide the exclusive representative with verification that the
23 challenge is based on bona fide religious grounds. If the
24 exclusive representative accepts the verification, the
25 challenging nonmember shall pay the equivalent of the fair share
26 fee to a nonreligious charity agreed upon by the nonmember and
27 the exclusive representative. If the exclusive representative
28 rejects the verification because it is not based on bona fide
29 religious grounds, the challenging nonmember may challenge that
30 determination within 40 days from receipt of notification.

(e) Escrow account.--When a challenge is made under subsection (a)(1), the exclusive representative shall place 50% of each challenged fair share fee into an interest-bearing escrow account until the challenge is resolved by an arbitrator. When a challenge is made under subsection (a)(2), the exclusive representative shall place 100% of each challenged fair share fee into an interest-bearing escrow account until the challenge is resolved by an arbitrator.

Section 6. Reports.

Every Statewide employee organization required to submit a report under Title II of the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257, 29 U.S.C. § 401 et seq.) shall make available to the Secretary of Labor and Industry a copy of such report.

Section 7. Public records.

All materials and reports filed pursuant to this act shall be deemed to be public records and shall be available for public inspection at the Office of the Secretary of Labor and Industry during the usual business hours of the Department of Labor and Industry.

Section 8. Penalties.

(a) Violations by organization.--An employee organization which violates any provision of this act or fails to file any required report or affidavit or files a false report or affidavit commits a summary offense subject to a fine of not more than \$2,000.

(b) Violation by individuals.--An individual who willfully violates this act, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact commits a summary offense subject to a fine of not more than

1 \$1,000 or imprisonment for not more than 30 days, or both. Each
2 individual required to sign affidavits or reports under this act
3 shall be personally responsible for filing such reports or
4 affidavits and for any statement contained therein he knows to
5 be false.

6 Section 9. Repeals.

7 Sections 401 and 705 of the act of July 23, 1970 (P.L.563,
8 No.195), known as the Public Employe Relations Act, are repealed
9 insofar as they are inconsistent with this act.

10 Section 10. Effective date.

11 This act shall take effect immediately.