

Testimony of Simon Campbell
President, Pennsylvanians for Union Reform (“PFUR”)

State Government Committee of the House of Representatives

“Paycheck Protection” legislative hearing

June 5, 2014

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Chairman Metcalfe, members of the esteemed Committee, my testimony about HB 1507 will be succinct. In its current form the bill would be at risk of being rejected by the courts upon inevitable Union challenge. We propose fixing the language and more sharply focusing the legislative intent.

Factual background

1. “Fair share fees” are given a legal definition in Act 84 of 1988 (71 P.S. § 575) which relates to school and state employees and Act 15 of 1993 (43 P.S. § 1102.1 et seq.) which relates to county and municipal employees.
2. These two statutes are referred to in the repeal section of HB 1507 (section 4). Act 84 of 1988 is referred to as Section 2215(c) of the Administrative Code of 1929; and Act 15 of 1993 is referred to as the Public Employee Fair Share Law.
3. In layman’s terms “fair share fees” means the compulsory agency-shop fees that a non-Union employee is forced to pay as a condition of his or her employment. It is a lower rate of dues than full Union member dues. The Right to Work initiative would make such mandatory payments illegal. The statutory definition is:

"FAIR SHARE FEE" shall mean the regular membership dues required of members of the exclusive representative less the cost for the previous fiscal year of its activities or undertakings which were not reasonably employed to implement or effectuate the duties of the employe organization as exclusive representative." Act 84 of 1988 (the definition in Act 15 of 1993 is identical)
4. The reason fair share fees is a lower rate of dues than full membership dues is because the U.S. Supreme Court has held that non-Union employees can only be compelled to pay for dues/fees relating to collective bargaining and contract administration costs.
5. The payroll deduction of fair share fees is covered by the aforementioned Acts 15 and 84; as opposed to the payroll deduction of full Union membership dues which is covered by the Public Employee Relations Act (Act 195 of 1970).
6. Payroll deduction of fair share fees is *mandatory* under Acts 15 and 84. Only the item itself (i.e. whether fair share fees exists in a contract) is negotiable between the public employer and the Union. By contrast, payroll deduction of full Union membership dues is *negotiable*.

Legal problems & proposed solutions

Problem: The definition of a “political contribution” is vague and subject to court challenge. Worse, it infers but doesn’t specify that fair share fees are political contributions. To specify such a thing would be to invite legal challenge.

Solution 1: Re-classify a “political contribution” as a “campaign contribution” and define it using the statutory definition of a “contribution” in the election code. 25 P.S. § 3241. In layman’s terms that means PAC money. Campaign contributions. No ifs, buts, ands or maybes. By using this narrow definition it helps bullet-proof this part of the legislation from challenge because the U.S. Supreme Court has already held that Unions do not have an affirmative right to use payroll deductions for such contributions. See *Ysursa v. Pocatello Ed. Assn.* - 07-869 (2009).

Solution 2: Have a new definition entitled “Membership dues” and define it by reference to that phrase in Act 195. There is no need to give it a definition beyond which already exists in law. In fact doing so would be risky because the Unions could argue in court that not all parts of Union dues contain money for political activities. The bill would then seek to render “campaign contributions” and “membership dues” as non-permissible deductions.

Question 1: Wouldn’t it be a problem to not define Union membership dues as political?

Question 2: Wouldn’t it be deemed discriminatory to disallow Union dues deductions as opposed to charitable contributions?

Answer 1:

No. It would be safer not to. In the court of public opinion it can be. But the bill needs to be tight legally. The question for lawmakers is not whether Union membership dues contain political money. The question for lawmakers is “Can the state prohibit the collection of Union membership dues (whatever it is used for) through payroll deduction?”

The answer to that question is “yes”. That has been true since 1970 when the Public Employee Act was passed into law. The current state of the law, not challenged in 44 years, is that school boards, counties and the state all have the legal right to say “no” to payroll deductions of Union membership dues during contract negotiations.

In other words it is already settled law that local governments are not obliged to collect this money. There is no “right” of the Unions to have it be collected in Pennsylvania. The general assembly merely empowered the two negotiating parties with the ability to negotiate it. Therefore the general assembly can equally prohibit the two parties from negotiating it.

Answer 2:

No. Current law (Act 195) does not expressly carve out an “allowable” negotiation for deductions to the Red Cross. The two different deductions do not start from the same legal point. Red Cross deductions might occur but, like PAC deductions, it doesn’t come from Act 195. The fact that in 1970 the general assembly carved out Union membership dues in Act 195 as something that the state had authority to oversee provides the basis to repeal it.

Think of it this way: The general assembly did not empower a school board in Act 195 to say “no” to payroll deductions for the Red Cross (i.e. if a school board says “no” to Red Cross deductions it won’t have anything to do with Act 195). But the general assembly did empower the school board to say “no” to Union dues deductions. And if the school board can say “no” via Act 195 then so can the state. In effect, the legal action is akin to telling a local political subdivision what it can negotiate; which is what is already occurring.

PFUR’s suggestion

Don’t invite legal problems. Don’t give the Unions any ability in court to say “that law says it repeals political contributions and then they took away our Union dues deductions, your Honor. Not all our Union dues are for political activities;” in addition to the Unions’ inevitable attack on the presently vague definition of political contributions.

REPEALING FAIR SHARE FEE DEDUCTIONS – THE PROBLEM

HB 1507 is overall designed to amend Act 195 of 1970. Yet then purports to repeal the deductions sections of two entirely different statutes; Act 84 of 1988 and Act 15 of 1993. How can Acts 84 and 15 be amended via an amendment to Act 195?

Surely the general assembly would need to specifically amend the statutory language in those statutes e.g. Act 84 of 1988:

“**If** the provisions of a collective bargaining agreement so provide, each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee.” (*i.e. the item itself is negotiable – a Right to Work issue*).

“To implement fair share agreements in accordance with subsection (b), the exclusive representative shall provide the public employer with the name of each nonmember who is obligated to pay a fair share fee, the amount of the fee that he or she is obligated to pay and a reasonable schedule for deducting said amount from the salary or wages of such nonmember. The public employer **shall deduct the fee** in accordance with said schedule and promptly transmit the amount deducted to the exclusive representative.” (*the payroll deduction is not negotiable*)

The biggest problem with HB 1507 is that the expression “political contributions” is its weak spot. The general assembly should more narrowly define exactly what it wishes to disallow. There is a huge difference between disallowing the negotiation of fair share fees itself (which would pass a Right to Work law) versus disallowing fair share fee *deductions*.

One Solution:

Add a third category to the Definitions section of the bill. Call it “Fair Share Fees” and refer to the existing statutory language of Act 84 and 15 for the definition. So instead of a vague expression “political contributions” there would be three definitions:

“Campaign contributions” defined by the election code definition of a contribution
“Membership dues” referenced in Act 195
“Fair share fees” defined in Acts 84 and 15.

The problem then however, with fair share fees, is that it doesn’t fit the proposed repeal language of HB 1507. That language, right now, says that “membership dues deductions and political contributions collected by the employer shall not be subject to bargaining”. The word fair share fees cannot be added to this language because fair share fee *deductions* are not currently subject to bargaining.

In other words this repeal section language would have to be changed to say something like “if fair share fees have been negotiated into the contract then the employer shall no longer be permitted to collect the money”.

A different solution

Don’t seek the repeal of fair share fee deductions. It’s the *least* political of all the monies collected. It risks muddying the waters with Right to Work. PFUR supports the elimination of fair share fees as a concept because we support Right to Work. But legislation designed to address only payroll deductions, and which is designed to primarily address political monies is perhaps better focused leaving the entire issue of fair share fees for another day.

OTHER ISSUES

1. PFUR does not support the carve outs for police and firefighter Unions.
2. PFUR believes the legislation needs a name inside it. A name that would define the public policy debate. The absence of a name has left to it being defined by advocates as ‘paycheck protection’ which is a name that has no bearing on the legislative intent.
3. The fact that payroll deductions occurs allows Union PACs to collect more campaign money, as un-itemized contributions, as compared to other PACs. The government is in the business of picking and choosing who is better able to influence elections by granting a special privilege to Union PACs. See UFCW attached.
4. Unions can still have auto collection of dues and PAC. It’s as simple as having their members give an auto deduction form to their bank instead of to the government. Please see attached.

Defining the jail time – a ‘bonusgate’ amendment

In the summer of 2011 shortly after taking office Governor Corbett agreed to collect PAC contributions for the major state Unions rather than refuse to agree to it. Today the Governor says he would sign legislation to make his own decisions illegal. PFUR is happy about that. It was always corrupt to agree that government resources could be used to help influence elections.

However PFUR believes that on the issue of PAC deductions the bill needs to specify not just the fact that it would be illegal, but also define the jail time that the elected officials and Union officials would face if they agreed to collect PAC contributions in violation of the new law.

As such, PFUR would like to see the bill amended such that Governor Corbett and Wendell Young IV both serve jail time if they ever do it again.

Respectfully,

Simon Campbell
President, Pennsylvanians for Union Reform

SCHEDULE I
CONTRIBUTIONS AND RECEIPTS
Detailed Summary Page

Name of Filing Committee or Candidate	Reporting Period
1776 PAC (UFCW)	From: <u>1/1/2013</u> To: <u>5/6/2013</u>

1. Unitemized Contributions Received - \$ 50.00 or Less Per Contributor	
TOTAL for the Reporting Period (1)	\$ 70,591.84

2. Contributions Received - \$ 50.01 To \$250.00 (From Part A and Part B)	
Contributions Received From Political Committees (Part A)	\$ 0.00
All Other Contributions (Part B)	\$ 0.00
TOTAL for the Reporting Period (2)	\$ 0.00

3. Contributions Received Over \$250.00 (From Part C and Part D)	
Contributions Received From Political Committees (Part C)	\$ 0.00
All Other Contributions (Part D)	\$ 0.00
TOTAL for the Reporting Period (3)	\$ 0.00

4. Other Receipts, Refunds, Interest Earned, Returned Checks, Etc . (From Part E)	
TOTAL for the Reporting Period (4)	\$ 1,203.06

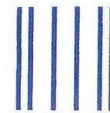
Total Monetary Contributions and Receipts During this Reporting Period (Add and enter amount totals from Boxes 1,2,3 and 4; also enter this amount on Page1, Report Cover Page, Item B.)	\$ 71,794.90
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Name _____

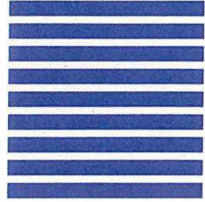
Address _____

City _____

Please check if above is new address



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 912 PLYMOUTH MEETING, PA

POSTAGE WILL BE PAID BY ADDRESSEE

**UNITED FOOD AND
COMMERCIAL WORKERS, LOCAL 1776**
WALTON CAMPUS
3031A WALTON RD STE 201
PLYMOUTH MEETING PA 19462-9704



UFCW Local 1776 Authorization form for PAC Membership and Contribution

I hereby authorize _____ to deduct (check one)
(name of employer)

- 50¢ \$1 \$2 \$3 \$4 \$5 Other \$ _____

per week from my paycheck. Such amount will be transmitted to the UFCW Local 1776 PAC at such time and in such manner as may be agreed upon by _____ and UFCW Local 1776.
(name of employer)

A commitment of at least one year is the usual way to begin this donation program.
I understand that this authorization is voluntarily made and that the amount suggested as a contribution is a guideline and that I may contribute more or less than this amount by any lawful means, other than this checkoff, or may refuse to contribute, and that the making of contributions to the UFCW Local 1776 PAC is not a condition of membership in the Union or of employment with the employer and that I have a right to refuse to sign this authorization and to not contribute to the UFCW Local 1776 PAC without reprisal.
I understand that my contribution will be used for political purposes, including the support of candidates for state and local office. I expressly reserve the right to revoke this authorization in writing at any time.
I also understand that contributions or gifts to the UFCW Local 1776 PAC are not deductible as charitable contributions for federal tax purposes.

Signature _____ Date _____

Name (please print) _____ S.S. No. _____

Address _____

Home Phone _____ E-mail _____

SAMPLE AUTO DEDUCTION FORM - PERSONAL BANK ACCOUNT
GOVT. UNION DUES AND PAC MONEY

Dear Bank,

I am a customer of yours and I need to have some money deducted from my checking account on a weekly/monthly basis. I want you sent it to my Union. Here is my Union's bank information:

[Information provided by Union officials]

Rumor has it that banks perform all kinds of deductions from customers' accounts. Mortgage payments, bill payments, etc. all occur automatically.

I have every confidence that you will be able to perform this task as efficiently as the government.

Please know that my Union bosses would be grateful if you could perform this service for free because the taxpayers of Pennsylvania graciously perform it for free.

Sincerely yours,

Customer name