



Testimony of Danielle R. Acker Susanj
Executive Vice President, The Fairness Center
Public Hearing on HB 950
Before Pennsylvania House Labor & Industry Committee
The Honorable Jason Dawkins, Majority Chair
The Honorable Ryan E. Mackenzie, Republican Chair

April 25, 2023

Chairman Dawkins, Republican Chairman Mackenzie, and this Honorable Committee:

My name is Danielle Acker Susanj; I am Executive Vice President at the Fairness Center, a public interest law firm representing those hurt by public-sector union officials. Our firm has represented scores of public employees who objected to being forced to be a union member or to provide financial support to a union. I submit this written testimony to represent their positions and give these public servants a voice.

My testimony addresses the provision of the proposed constitutional amendment, HB 950, that appears to authorize mandatory union membership for public employees. Specifically, the proposed language protects agreements between unions and employers that require “membership in an organization as a condition of employment.”

I write to address two implications, discussed further below, of permitting public employers and unions to take away an employee’s choice whether or not to be a union member. First, this Committee should be aware that such a provision is likely unconstitutional as applied to public employees. Second, this provision would actually remove a right public employees have under current Pennsylvania law.

First, we have represented many public employees who object to being required to be card-carrying union members. Courts have recognized that forcing public employees to be union members in order to be hired or remain employed would violate the United States Constitution—yet this provision appears to allow unions and employers to do just that.

As this Committee is no doubt aware, the Supremacy Clause of the United States Constitution, Article VI, Paragraph 2, gives the United States Constitution precedence over state constitutions. A provision authorizing a requirement of union membership for public employees would be at serious risk of being struck down as unconstitutional under the First Amendment to the United States Constitution.

Multiple federal courts, sitting in Pennsylvania, have recognized that public employees cannot be forced into union membership against their will. As the United States Court of Appeals for the Third Circuit has stated, “[t]he First Amendment affords public-sector employees the freedom not to associate with a labor organization.” *Otto v. Pa. State Educ. Ass’n*, 330 F.3d 125, 128 (3d Cir. 2003).

Similarly, as Judge Sylvia Rambo wrote more recently in one of our clients' cases, the Supreme Court's 2018 decision in *Janus v. AFSCME, Council 31* "clearly would prohibit an employer from forcing non-union members to join a union as a precondition to their accepting public employment." *Kabler v. United Food & Com. Workers Union, Loc. 1776 Keystone State*, No. 1:19-CV-395, 2020 WL 1479075, at *3 (M.D. Pa. Mar. 26, 2020).

Second, this amendment appears to *remove* one of the few rights that individual public employees can exercise today under Pennsylvania's Public Employee Relations Act (PERA). Current state statutes protect public employees' choice to participate or not to participate in organizing activities. Today, PERA provides public employees with "the right to refrain from any or all such activities," including "join[ing]" an employee organization. 43 P.S. § 1101.401. Additionally, PERA prevents both unions and public employers from "restraining or coercing employees" in the exercise of that right to refrain, among other rights. 43 P.S. § 1101.1201. This proposed amendment appears to undermine these two statutory provisions, overriding a right Pennsylvania's public employees have today.

Our clients have filed numerous federal lawsuits to protect their rights to freedom of speech and association under the First Amendment. Many sought to be free to act on the religious convictions or dictates of conscience that led them to object to union membership. If this amendment is enacted, and public employers and unions choose to condition public service on union membership, our clients will likely need to take action in federal court yet again to protect their fundamental constitutional freedoms.