

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1321 Session of
2008

INTRODUCED BY M. WHITE, FOLMER, CORMAN, PUNT, EICHELBERGER,
WAUGH, MADIGAN, EARLL, PICCOLA, ARMSTRONG, VANCE AND
McILHINNEY, MARCH 24, 2008

REFERRED TO LABOR AND INDUSTRY, MARCH 24, 2008

AN ACT

1 Repealing the act of June 2, 1993 (P.L.45, No.15), entitled "An
2 act requiring public employees who are not members of a
3 collective bargaining unit to contribute a fair share fee;
4 establishing payment, notice, objection and reporting
5 procedures; and imposing penalties," and relieving certain
6 employee organizations of certain duties and obligations.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The act of June 2, 1993 (P.L.45, No.15), known as
10 the Public Employee Fair Share Fee Law, is repealed:

11 [AN ACT

12 Requiring public employees who are not members of a collective
13 bargaining unit to contribute a fair share fee; establishing
14 payment, notice, objection and reporting procedures; and
15 imposing penalties.

16 Section 1. Short title.

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

19 Section 2. Definitions.

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

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

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

16 "Exclusive representative." The employee organization
17 selected by the employees of a public employer to represent them
18 for purposes of collective bargaining pursuant to the act of
19 July 23, 1970 (P.L.563, No.195), known as the Public Employe
20 Relations Act.

21 "Fair share fee." The regular membership dues required of
22 members of the exclusive representative, less the cost for the
23 previous fiscal year of its activities or undertakings which
24 were not reasonably employed to implement or effectuate the
25 duties of the employee organization as exclusive representative.

26 "Nonmember." A public employer's employee who is not a
27 member of the exclusive representative but who is represented in
28 a collective bargaining unit by the exclusive representative for
29 purposes of collective bargaining.

30 "Political subdivision." A city, county, borough,

1 incorporated town, township, institution district or any newly
2 created governmental unit.

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

7 "Statewide employee organization." The Statewide affiliated
8 parent organization of an exclusive representative, or an
9 exclusive representative representing employees Statewide, which
10 is receiving nonmember fair share payments.

11 Section 3. Fair share fee.

12 If the provisions of a collective bargaining agreement so
13 provide, each nonmember of a collective bargaining unit shall be
14 required to pay to the exclusive representative a fair share
15 fee.

16 Section 4. Procedure.

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

26 (b) Annual notice.--As a precondition to the collection of
27 fair share fees, the exclusive representative shall establish
28 and maintain a full and fair procedure, consistent with
29 constitutional requirements, that provides nonmembers, by way of
30 annual notice, with sufficient information to gauge the

1 propriety of the fee and that responds to challenges by
2 nonmembers to the amount of the fee. The procedure shall provide
3 for an impartial hearing before an arbitrator to resolve
4 disputes regarding the amount of the chargeable fee. A public
5 employer shall not refuse to carry out its obligations under
6 subsection (a) on the grounds that the exclusive representative
7 has not satisfied its obligation under this subsection.

8 Section 5. Objection to fee.

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

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

12 (2) Bona fide religious grounds.

13 (b) Procedure.--Any objection under subsection (a) shall be
14 made in writing to the exclusive representative and shall state
15 whether the objection is made on the grounds set forth in
16 subsection (a).

17 (c) Challenge to propriety of fee.--If a challenge is made
18 under subsection (a)(1), the challenge shall be resolved, along
19 with all similar challenges, by an impartial arbitrator, paid
20 for by the exclusive representative and selected by the American
21 Arbitration Association or the Federal Mediation and
22 Conciliation Service pursuant to the Rules for Impartial
23 Determination of Union Fees promulgated by the American
24 Arbitration Association. This subsection does not preclude a
25 constitutional challenge being filed in a court of competent
26 jurisdiction.

27 (d) Challenge based upon religious grounds.--If a challenge
28 is made under subsection (a)(2), the objector shall provide the
29 exclusive representative with verification that the challenge is
30 based on bona fide religious grounds. If the exclusive

1 representative accepts the verification, the challenging
2 nonmember shall pay the equivalent of the fair share fee to a
3 nonreligious charity agreed upon by the nonmember and the
4 exclusive representative. If the exclusive representative
5 rejects the verification because it is not based on bona fide
6 religious grounds, the challenging nonmember may challenge that
7 determination within 40 days from receipt of notification.

8 (e) Escrow account.--If a challenge is made under subsection
9 (a), the exclusive representative shall place each challenged
10 fair share fee into an interest-bearing escrow account until the
11 challenge is resolved by an arbitrator.

12 Section 6. Reports.

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

18 Section 7. Public records.

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

24 Section 8. Penalties.

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

30 (b) Violation by individuals.--An individual who willfully

1 violates this act or who makes a false statement knowing it to
2 be false or who knowingly fails to disclose a material fact
3 commits a summary offense subject to a fine of not more than
4 \$1,000 or imprisonment for not more than 30 days, or both. Each
5 individual required to sign affidavits or reports under this act
6 shall be personally responsible for filing such reports or
7 affidavits and for any statement contained therein he knows to
8 be false.

9 Section 9. Severability.

10 The provisions of this act are severable. If any provision of
11 this act or its application to any person or circumstance is
12 held invalid, the invalidity shall not affect other provisions
13 or applications of this act which can be given effect without
14 the invalid provision or application.

15 Section 10. Repeals.

16 Sections 401 and 705 of the act of July 23, 1970 (P.L.563,
17 No.195), known as the Public Employee Relations Act, are repealed
18 insofar as they are inconsistent with this act.

19 Section 11. Effective date.

20 This act shall take effect immediately.]

21 Section 2. (1) No collective bargaining agreement made
22 after the effective date of this section by a political
23 subdivision nor an extension of an existing collective
24 bargaining agreement made after the effective date of this
25 section by a political subdivision may require payment of a fair
26 share fee to the exclusive representative by a nonmember of the
27 exclusive representative.

28 (2) Notwithstanding the provisions of section 606 of the act
29 of July 23, 1970 (P.L.563, No.195), known as the Public Employee
30 Relations Act, or any other law to the contrary, an employee

1 organization acting as an exclusive representative shall owe no
2 duty and shall have no obligation to represent a public employee
3 who is not a member of the employee organization in any
4 grievance or other proceeding filed with or against a public
5 employer.

6 Section 3. This act shall take effect immediately.