

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1342 Session of  
2010

INTRODUCED BY M. WHITE, FOLMER, YAW, WAUGH, BRUBAKER, PICCOLA,  
VANCE, SMUCKER, EARLL AND EICHELBERGER, APRIL 30, 2010

REFERRED TO LABOR AND INDUSTRY, APRIL 30, 2010

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10 the Public Employee Fair Share Fee Law, is repealed: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.

20 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

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

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

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

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

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

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

1 created governmental unit.

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

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

10 Section 3. Fair share fee.

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

15 Section 4. Procedure.

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

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

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

7 Section 5. Objection to fee.

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

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

11 (2) Bona fide religious grounds.

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

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

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

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

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

#### 11 Section 6. Reports.

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

#### 17 Section 7. Public records.

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

#### 23 Section 8. Penalties.

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

29 (b) Violation by individuals.--An individual who willfully  
30 violates this act or who makes a false statement knowing it to

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

8 Section 9. Severability.

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

14 Section 10. Repeals.

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

18 Section 11. Effective date.

19 This act shall take effect immediately.]

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

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

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

5       Section 3. This act shall take effect immediately.