

No. 1993-15

AN ACT

SB 399

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

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

Section 1. Short title.

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

Section 2. Definitions.

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

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

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

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

“Fair share fee.” 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 employee organization as exclusive representative.

“Nonmember.” A public employer's employee who is not a member of the exclusive representative but who is represented in a collective bargaining unit by the exclusive representative for purposes of collective bargaining.

“Political subdivision.” A city, county, borough, incorporated town, township, institution district or any newly created governmental unit.

“Public employer.” All political subdivisions of the Commonwealth. The

term shall include "community college" as defined in section 1901-A of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

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

Section 3. Fair share fee.

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.

Section 4. Procedure.

(a) Deduction by employer.—To implement fair share agreements in accordance with section 3, 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 is obligated to pay and a reasonable schedule for deducting the amount from the salary or wages of the nonmember. The public employer shall deduct the fee in accordance with the schedule and promptly transmit the amount deducted to the exclusive representative.

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

Section 5. Objection to fee.

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

- (1) The propriety of the fair share fee.
- (2) Bona fide religious grounds.

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

(c) Challenge to propriety of fee.—If a challenge is made under subsection (a)(1), the challenge shall be resolved, along with all similar challenges, by an impartial arbitrator, paid for by the exclusive representative and selected by the American Arbitration Association or the Federal Mediation and Conciliation Service pursuant to the Rules for Impartial Determination of Union Fees promulgated by the American Arbitration Association. This subsection does not preclude a constitutional challenge

being filed in a court of competent jurisdiction.

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

(e) Escrow account.—If a challenge is made under subsection (a), the exclusive representative shall place 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 \$1,000 or imprisonment for not more than 30 days, or both. Each individual required to sign affidavits or reports under this act shall be personally responsible for filing such reports or affidavits and for any statement contained therein he knows to be false.

Section 9. Severability.

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

Section 10. Repeals.

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

Section 11. Effective date.

This act shall take effect immediately.

APPROVED—The 2nd day of June, A.D. 1993.

ROBERT P. CASEY