

[**House Labor and Industry**](http://www.ctbpls.com/htbin/web_com?17R026)

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**House Labor and Industry Committee**  
*9/5/18, 1:30 p.m., G-50 Irvis Office Building*  
By Jessica Richardson and Derek Snyder, Pennsylvania Legislative Services

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| |  |  | | --- | --- | | **Committee(s):** | House Labor and Industry Committee | | **Audio:** | [[http://www.ctbpls.com/www/temp/hphone.gif](javascript:openWindow('http://dingo.telicon.com/PA/17R/audio/20180905ay.m4a','Audio',400,100);) (click here)](javascript:openWindow('http://dingo.telicon.com/PA/17R/audio/20180905ay.m4a','Audio',400,100);)    (Note: Depending on your audio player and the length of the hearing this could take a few minutes to load.) | | **Meeting type:** | Public Hearing | | **Subject:** | HB 2571 | | **Bills discussed:** | [HB 2571](http://www.ctbpls.com/htbin/web_index.com?Bill_Number=HB02571&Session=17R) | | **Keyword(s):** | unions, public employees, employment, labor, Janus | | **Testimony:** | [David Osborne](http://dingo.telicon.com/pa/library/2018/20180905tk.pdf), President, The Fairness Center [Keith Williams](http://dingo.telicon.com/pa/library/2018/20180905tg.pdf), Pennsylvania Director of Outreach, Americans for Fair Treatment [Beth Anne Mumford](http://dingo.telicon.com/pa/library/2018/20180905tj.pdf), State Director, Americans for Prosperity [Steve Catanese](http://dingo.telicon.com/pa/library/2018/20180905tf.pdf), President, Service Employees International Union (SEIU) Local 668 [Stuart Knade](http://dingo.telicon.com/pa/library/2018/20180905th.pdf), Senior Director of Legal Services, Pennsylvania School Boards Association (PSBA) [James Vaughan](http://dingo.telicon.com/pa/library/2018/20180905ti.pdf), Executive Director, Pennsylvania State Education Association (PSEA) | | **Members Present:** | Chairman Rob Kauffman (R-Franklin), Minority Chairman John Galloway (D-Bucks), and Representatives Jesse Topper (R-Bedford), Sheryl Delozier (R-Cumberland), Cris Dush (R-Jefferson), Seth Grove (R-York), Dawn Keefer (R-York), Fred Keller (R-Snyder), Kate Klunk (R-York), David Maloney (R-Berks), Jack Rader (R-Monroe), Leanne Krueger-Braneky (D-Delaware), Morgan Cephas (D-Philadelphia), Maria Donatucci (D-Philadelphia), Jeanne McNeill (D-Lehigh), Ed Neilson (D-Philadelphia), and Pam Snyder (D-Greene) | |

The committee held a hearing on HB 2571.

[http://www.ctbpls.com/www/temp/ndot.jpg](javascript:openWindow('/htbin/web_trkpop.com?PA17RHB02571','Event',550,330);) [HB 2571](http://www.ctbpls.com/htbin/web_index.com?Bill_Number=HB+2571&Session=17R&STA=PA) [Klunk, Kate](http://www.ctbpls.com/htbin/web_member.com?17R169&STA=PA) - (PN 3883) Amends the Public Employe Relations Act adding language requiring a public employer to notify a nonmember in writing that there is no statutory obligation by nonmembers to make any payments to an employee organization that serves as the nonmember's exclusive representative. Provides for the content of the notification. Further provides for notification to a new public employee. Also prohibits a public employer from collecting through wage deduction any form of payment from a nonmember to an employee organization. Effective in 30 days.

Rep. Klunk discussed the United States Supreme Court's decision in *Janus v. AFSCME* that allows government employees who have opted out of their unions to not pay union agency fees or fair share fees. Rep. Klunk said that *Janus* is a First Amendment victory for all government employees throughout Pennsylvania, as the ruling ensures that employees have a choice to support unions that may not hold their own personal or political beliefs. Rep. Klunk noted that unions contribute large amounts of money on political activity, and fair share employees contribute quite a bit to that activity. Rep. Klunk added that $114 million has been spent by public sector unions on politics over the last 10 years. "28,000 Pennsylvanians who are workers here in the state pay fair share fees," Rep. Klunk said, noting that fair share fees for these workers add up to $9.7 million in one year. "My legislation HB 2571 simply ensures that the law of the land is enforced here in Pennsylvania, and that these government workers are made aware of their rights," concluded Rep. Klunk, adding that the bill would further protect the rights of individuals in a collective bargaining unit who are not members of the representative union.

Rep. Klunk said the bill would propose four changes to Act 195, including directing public sector unions to inform nonunion members of the *Janus* decision and that fair share fees are now purely voluntary. Rep. Klunk added that it would require workers to be informed that their employment status is not affected if they do or do not decide to contribute to the union, and job applicants must be notified that being a member of the representative union is not a condition of employment and that as a nonmember there is no obligation to make payments to the union. Rep. Klunk said that the bill would prohibit public employers from making any payroll deductions from wages of nonmembers, so that payments are ensured to be purely voluntarily. Rep. Klunk concluded that the bill repeals Act 84 of 1988 and Act 15 of 1993, which helps to ensure that Pennsylvania law complies with *Janus*.

[David Osborne](http://dingo.telicon.com/pa/library/2018/20180905tk.pdf), President, The Fairness Center, stated it is essential that Pennsylvania bring itself into alignment with *Janus* by repealing its fair share fee laws as Pennsylvania's public-sector employees should have the right to stop paying their unions and can justifiably expect that their union will honor that right. He noted fair share fee laws may be used against public employees unless the General Assembly repeals these laws, which the bill does. Osborne continued the General Assembly should proactively oversee the unions' efforts to secure nonmember fees moving forward, as *Janus* ruled that extraction of agency fees as a condition of employment is unconstitutional, but it does allow public-sector unions to take fees from nonmembers with their voluntary consent. He stated the bill under consideration begins to address these issues by ending payroll deductions and requiring a notice to nonmembers and new hires of their rights. Osborne added the General Assembly should repeal the maintenance of membership law as it purports to keep public employees from exercising their rights by limiting their opportunity to leave their union to a fifteen-day period prior to the expiration of a collective bargaining agreement.

[Keith Williams](http://dingo.telicon.com/pa/library/2018/20180905tg.pdf), Pennsylvania Director of Outreach, Americans for Fair Treatment, noted he is testifying as a public sector employee for over two decades. He commented the bill is necessary because he knows from personal experience as a public sector employee that unions cannot be trusted to hold themselves accountable. Williams stated when he became a full-time teacher he was led to believe that it was part of becoming a teacher to join a union. He said overtly forcing an employee to join a public sector union as a condition of employment is both illegal and gross overreach of a political lobbying group. However, employees are led to believe they must join the union as a condition of employment, Williams said.

Williams commented it is important that employees understand they are no longer forced to pay a union in order to keep their jobs. He stated public sector unions and their political benefactors clearly understand they can create and maintain a revenue stream by keeping employees in the dark about their options. Williams said the bill protects public sector employees, employers, and taxpayers from the deception and manipulation unions practice in securing their income stream

[Beth Anne Mumford](http://dingo.telicon.com/pa/library/2018/20180905tj.pdf), State Director, Americans for Prosperity, commented the bill aims to protect the rights of employees in a collective bargaining unit who are not members of a representative union by accomplishing four things:

 Requiring that public employers routinely notify nonunion members that all payments made to a representative union are voluntary and that employers receive affirmative consent from an employee for any such payment collection;

 Requiring that public employers notify job applicants that membership in a representative union is not a condition of employment and that, as a nonmember, they have no obligation to make any payments to a union;

 Prohibiting public employers from making any payroll deductions from wages of nonmembers in order to make payments to a representative union;

 Repealing previous state laws that authorized "fair share fee" payments to unions by nonmembers.

"In states that have passed similar right to work-type legislation, the evidence is clear that such policies provide not only better overall individual rights for public workers but also better laws governing measures that affect taxpayers and state and local budgets," Mumford said.

Mumford stated Pennsylvania was given a D letter grade for its required collective bargaining, binding arbitration during contract negotiation impasses, and forced unionization by the Commonwealth Foundation. She said in comparison, West Virginia received a letter grade of B as they recently passed its own public sector labor reforms. The data is strong: policies that enhance worker freedom help to strengthen the state's economy, Mumford commented.

Chairman Galloway asked if Americans for Fair Treatment is encouraging its members to drop out of unions. Williams answered that they are informing people of their rights and are protecting them when they seek to get out of a union or to push back on related work place humiliation. Chairman Galloway asked if Williams wanted to educate employees of all of their rights, or just their right to not join a union. Williams answered that his job is to inform people of all of their rights, including their rights of both joining and not joining a union.

Rep. Neilson noted that he has been a proud member of the International Brotherhood of Electrical Workers (IBEW) for 35 years and that he understands what this decision does to workers. Rep. Neilson asked Williams if he thought it was fair for the person next to him to pay union dues for the people negotiating his wages, when he is not paying those same dues. Williams answered that one of the benefits of being a teacher is that he could look at his pay scale and always know what he would be making each year, but at the same time he knew that he would not receive further performance based compensation.

Rep. Neilson added that there is not a penny spent by a union that is not voted on by the members, and if someone in a union decides not to take an active role and attend meetings, that it is their own fault. Rep. Neilson asked if the panel believes in the right to organize, which all three responded yes. Rep. Neilson asked Osborne how many cases he had last year representing members and their union rights. Osborne answered that he personally deals with approximately three cases a year. Osborne added that they represent public employees, which Rep. Neilson noted typically involves going against the unions. Rep. Neilson asked the panel where each of them receive their funding. Williams responded that most of their funding comes from business owners and private donations. Osborne said that they are a non-profit and raise most of their money through fundraising, which Mumford also agreed with.

Rep. Dush asked Williams if unions are trying to convince and sometimes pressure non-members to become union members. Williams agreed and added that union members are also given extra privileges and benefits that non-members do not receive. Rep. Dush noted that 59 percent of the National Education Association (NEA) members in Wisconsin walked when given the opportunity, adding that there's something wrong with their representation when that many people decide to walk.

Rep. Keefer asked Williams if there needs to be a better defined procedure for providing information on how to opt-in or opt-out of a union. Williams answered that the maintenance of membership certainly speaks to that issue, and each district in Pennsylvania could in theory have its own individual maintenance of membership. Williams added that some places have a window of only 15 days where employees can decide to opt-out of their union each year.

Rep. Krueger-Braneky asked Williams how the union he was a part of as a teacher was contributing to the Democratic Party through union dues, as he suggested. Williams said that based on contributions, the breakdown from the 2015-2016 election cycle showed that 89 percent of the union's contributions went to supporting Democratic political action committees and causes. Rep. Krueger-Braneky asked Williams if he was aware that unions are required to solicit separate funds for political contributions and cannot use dues or fair share fees, which Williams said he was.

Rep. Krueger-Braneky asked Williams how he can say that he is not discouraging union members to disenroll from their union when his organization's website suggests otherwise. Rep. Krueger-Braneky asked Williams if his organization was affiliated with the Koch brothers, which Williams denied. Rep. Krueger-Braneky followed up by asking about his organization's involvement with the Commonwealth Foundation, to which Williams said that the CEO of the Commonwealth Foundation served on Americans for Fair Treatment's board. Rep. Krueger-Braneky asked Mumford if she was encouraging her members to push against unions, which she replied that they were not. Rep. Krueger-Braneky asked the panel if their organizations have filed freedom of information requests to identify union members, which Williams and Osborne both responded yes.

Rep. McNeill discussed Mumford's comments about West Virginia passing their own public sector laws, noting that West Virginia has the lowest average rate for teacher pay. Rep. McNeill added that Pennsylvania is better off not having *Janus* in the public sector, and that it is going to hurt people in Pennsylvania by adding more laws to it. Mumford answered that her goal is to provide information to her members and allow for them to make their own decisions.

Rep. Cephas asked if the panel could give a demographic breakdown of its constituents that they are representing. Osborne answered that one of the groups he represents is homecare workers, who only make $20,000 and were asked to take a 2 percent pay cut to support union dues. Rep. Cephas asked what reasons other than political contributions were being given for people wanting to leave their unions. Williams said that the biggest issues dealt with people not feeling that they were being well represented. Williams added that reasons vary, but the majority has dealt with disagreeing with the union's political activity.

Rep. Klunk said that since introducing her bill, she has become aware that non-union employees have been approached to sign contracts and pledge a certain amount of money to the unions. Rep. Klunk asked the panel what they thought would happen with contracts that were signed before the *Janus* decision and how it plays into things if people do not want to contribute anymore to their union. Osborne answered that there were people being asked to sign contracts and pay a certain amount towards the union regardless of their membership status. Osborne added that he is not aware if the courts have addressed the constitutionality of a provision like that yet.

[Steve Catanese](http://dingo.telicon.com/pa/library/2018/20180905tf.pdf), President, Service Employees International Union (SEIU) Local 668, explained that what is believed to be "fair share fees" are not union membership dues. He said nonmember public employees covered by a collective bargaining agreement are legally entitled to the same representative services to which full dues-paying members are. Catanese commented fair share fees provided an equitable compromise, however while the outcome baffled the union, the decision is not law.

Catanese explained that prior to the *Janus* decision, the union sent letters to employers telling them to stop collecting fair share fees immediately. He said there is no need to ensure that public employee unions comply with the decision, and consequently no need for the bill, as there is no evidence that unions did not comply with the previous law. Catanese noted the onus to comply with the decision and the legislation falls as much, if not more so, on the employer, rather than the union. He said the proposed legislation creates a clear double standard as it would create a law that would statutorily force an employer to intimidate employees into not joining a union. Catanese commented the bill is merely another effort by anti-union organizations and their legislative allies to undermine public workers and the labor movement. He said the legislation is unnecessary and unsound, driven ultimately by corporate special interests to erode the rights of hard-working, tax-paying public servants. Catanese urged the chair not to call this bill for a vote.

[Stuart Knade](http://dingo.telicon.com/pa/library/2018/20180905th.pdf), Senior Director of Legal Services, Pennsylvania School Boards Association (PSBA), stated PSBA was able to help public school entities prepare well in advance of the Court's eventual ruling this June. He said PSBA provided recommendations for immediate implementation of a possible decision declaring fair share fees unconstitutional, and for appropriate preparatory communications with the affected employees and their unions. Knade continued that timely action by public school employers was able to stop ongoing violation of employee First Amendment rights, but that in and of itself does not end the matter entirely. He said at the local level, variations in the language of collective bargaining agreements may prompt discussions of how best to clean up contract language that now cannot be followed as written, as well as other details associated with the fees and their collection. At the state level, it is rarely wise to leave on the books statutes that have been declared unconstitutional, or that can no longer be followed as written for constitutional reasons, Knade said. He stated the legislation would accomplish repeal of such statutes and PSBA will be happy to work with the legislative staff to offer their suggestions.

[James Vaughan](http://dingo.telicon.com/pa/library/2018/20180905ti.pdf), Executive Director, Pennsylvania State Education Association (PSEA), commented PSEA and the local associations have done everything to fully comply with the Court's decision. He stated the notice requirements in the legislation are unnecessary as since *Janus*, public employers are prohibited from deducting fair share fees from nonconsenting non-members, which makes the proposed mandate unnecessary.

In addition, the notification mandate may be construed as burdensome as it would require continual notification to a potentially dynamic list of recipients, every pay period, indefinitely, Vaughan said. He stated it also does not consider non-member employees who are in bargaining units that do not have payroll deduction. Vaughan added the bill lacks specificity with regard to the means by which the notice must be delivered. Given its current construct, it is difficult not to view the bill as another attempt to diminish unions and their role in the work place, Vaughan said.

Rep. Donatucci asked what the typical response is when they reach out to non-members. Catanese said that they reach out to workers and explain to them the benefits of joining a union, and then some join while others do not join. Vaughan answered that they try to engage with non-members, explain the benefits of joining a union, and answer any questions that they might have. Vaughan added that they are doing a good job of complying with the court case and refunding necessary fair share funds to people. Rep. Donatucci asked if unions are required by law to represent non-union members, which Catanese confirmed.

Rep. Keller asked if the panel was aware of any collective bargaining agreements that went around seeking people to join unions and sign papers as a result of the Supreme Court decision. Catanese confirmed that they have people that go around and encourage workers to sign up, and added that this increased during the time of the Supreme Court decision. Rep. Keller discussed an employee he knows of that was visited six times within a three-week period and was being told to sign up for the union. Rep. Keller added that this bill is about letting people know of their rights not to join a union, because they are currently being bombarded by the other side. Rep. Keller asked Knade if they evaluate teacher performance, which Knade confirmed was an important priority for them. Rep. Keller discussed how there would be little incentive for teachers to do better if everybody is being paid the same amount no matter how well they teach.

Rep. Cephas asked the second panel if they could provide the demographics of their membership. Vaughan answered that roughly 75 percent of their union members were female, but that he did not know the rest of the demographics.

Rep. Snyder asked what other kind of benefits union members receive outside of the bargaining contract negotiations. Catanese said that being a member gives people a voice in every part of the process that unions partake in. Catanese added that they work for member benefits for things like insurance rates, and give legal advice from time to time. Vaughan added that their members appreciate having a sense of community and shared values, and knowing that PSEA respects the job they do and supports public education. Rep. Snyder said that she knows how hard the public school teachers work in her district, and noted that her daughter is a kindergarten teacher. Rep. Snyder asked the panel how they felt when Mr. Williams said that they should not even be testifying today. Vaughan said that he believed all of the speakers were invited to attend today and that he was happy to be there on behalf of his organization.

Rep. Krueger-Braneky asked if any of the union dues support political contributions, which the panel denied. Rep. Krueger-Braneky asked if PSEA endorses Republicans and Democrats in Pennsylvania, which Vaughan confirmed. Rep. Krueger-Braneky asked how much it would cost to make up the money that would be lost if there were no longer payroll deductions. Vaughan said that it is hard to say without knowing how many people would still choose to make a contribution to the union. Catanese added payroll deduction is the easiest way for both his organization and its members.

Rep. Neilson asked Knade if he thought all Pennsylvania employers should notify employees of all of the rights that they have. Knade answered that he deals with notifications with both employees and students, and it is worth the conversation to figure out how to best accomplish the goals of the bill to best get the message across. Knade added that it is helpful to keep in mind that employers do not deduct anything, with the exception of things such as taxes, unless the employee gives authorization for them to do so.

Rep. Klunk reiterated that the employee affirmatively needs to decide to contribute to a fair share fee, which is why it is important to take the payroll deduction out. Rep. Klunk asked if PSEA has a mechanism to collect for political contributions on its website, which Vaughan confirmed. Rep. Klunk asked if they were able to do that, if they could also use their website to collect fair share contributions. Vaughan answered that they could, but right now they are not set up to do that. Rep. Klunk asked Vaughan if he would be supportive of the bill if it were to require both *Janus* rights, as well as the rights to join a union Vaughan said that he could not speak on behalf of his membership, but that his organization is always open to further discussions.

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