

# Protecting the Rights of Pennsylvania Public Employees

## KEY POINTS

- Pennsylvania state law grants unions exclusive bargaining rights in government workplaces, makes it difficult for workers to leave their union, and allows taxpayer collection of union political money.
- Through this collective bargaining power, union executives trap public employees in their unions, deny workers alternative representation, and leverage their political weight to lobby against needed reforms—ultimately minimizing workers’ ability to have a meaningful voice in their workplaces.
- [House Bill 1117](#) (Rep. David Rowe) will amend the [Public Employee Relations Act](#)<sup>1</sup> (PERA) and restore fundamental free association and workplace rights to public employees by:
  - Repealing fair share fee laws that violate worker’s constitutional rights and a U.S. Supreme Court ruling.
  - Notifying workers of their membership rights and requiring written proof of union membership.
  - Establishing the right to resign from a union at any time.
  - Expanding workers’ choice of representation and election rights.
  - Prohibiting the use of taxpayer resources to collect union political money.

## REPEALING FAIR SHARE FEE LAWS AND NOTIFYING WORKERS OF THEIR RIGHTS

In June 2018, the U.S. Supreme Court ruled in *Janus v. AFSCME* that government workers can no longer be forced to pay union fees as a condition of employment, yet nearly [one-third](#) of government workers and [over half](#) of teachers are unaware of the ruling and their right to not join a union. In addition, unconstitutional state laws that violate the *Janus* ruling remain on the books—sowing confusion during collective bargaining and among workers.

Pennsylvania teachers and state employees report a long history of union representatives withholding information or lying about union membership being mandatory. As one veteran teacher recounts, “To this day, when people choose to leave, [the union] threatens them with fees.”

A [2019 poll](#) found that upon learning about the *Janus* decision, two-thirds of Pennsylvania registered voters—across party lines—support notifying workers of their rights.

**The proposed legislation allows Pennsylvania’s government workers to make an informed choice about union membership and aligns state law with the Court’s ruling.** Specifically, it:

- Repeals provisions in state law—Section 2215 of the Administrative Code<sup>2</sup> and the Public Employee Fair Share Fee Law<sup>3</sup>—authorizing fair share fees in violation of Janus.
- Requires a public employer to annually notify, in writing, all public employees that they are not obligated to pay a union; that union membership is not a condition of employment; and that payment can only be made via explicit agreement to financially support a union.
  - The employer must also notify new workers of these same rights and inform them that they “may opt to be a nonmember by not giving affirmative consent.”
- Prohibits deducting union payments from nonmembers’ wages and from employees for whom there is no proof of affirmative consent within the past 12 months.<sup>4</sup>
  - The employee may revoke the authorization at any time.
  - A consent form can be provided twice annually and cannot impose a compliance deadline. Employer and union representatives have an equivalent ability to provide communication related to affirmative consent.
  - Employees cannot be required to announce their membership decision or attend a meeting with the purpose of influencing that decision. They cannot, moreover, receive communication at their home or be promised benefits or threatened retribution based upon their decision.

This legislative reform resembles the [Employee Rights Notification Act](#) (HB 2042, Rep. Kate Klunk), which informs new and nonunion employees about their rights and repeals unconstitutional fair share fee laws. The House Labor and Industry Committee passed this legislation in two previous legislative sessions.

## EXPANDING THE RIGHT TO RESIGN

Public employees deserve to freely join and leave a union. However, many public employees who attempt to resign their membership are rejected by union officials citing “maintenance of membership” contract provisions. Pennsylvania is one of [six states](#) with this provision in law, which restricts a worker’s ability to resign to a two-week “escape window” at the end of a collective bargaining agreement. Most unions adopt or modify this provision in their collective bargaining agreements.

Unions face no requirement to notify workers of their upcoming resignation window. This leaves many workers unaware of their specific resignation date and could impose unwanted union membership.

Numerous [Pennsylvania employees have sued](#) to leave their union and end the involuntary deduction of dues from their paychecks. For instance, even though Pennsylvania hospital clerk Elizabeth McKeon resigned her membership from AFSCME 13, the union continued taking her wages for dues and political spending for over a year. In response to her lawsuit, the union [allowed McKeon to leave](#) and agreed to pay back dues since her resignation.

AFSCME 13 is among several sued government unions—covering over 50,000 Pennsylvania public employees—that were forced to acknowledge the harm of maintenance of membership and removed the provisions from their new contracts. Other unions, however, [including teachers’ unions](#), not only enforce maintenance of membership but may also include unconstitutional nonmember fees in their contracts.

**This legislation ensures Pennsylvania law reflects the rights workers increasingly demand for at-will membership.** Specifically, it:

- Removes maintenance of membership from PERA.
- Prohibits union collective bargaining agreements from imposing union resignation conditions on public employees. In other words, an employee may resign from a union at any time, with resignation effective 30 days after a resignation letter is mailed first class.

[Similar legislation](#) has been introduced by Rep. Greg Rothman (HB 2036) that would grant the right to resign by eliminating maintenance of membership from collective bargaining; it has been considered in the House Labor and Industry Committee for two consecutive legislative sessions.

## ESTABLISHING WORKERS CHOICE OF REPRESENTATION AND ELECTION RIGHTS

Workers deserve the right to choose the union that represents them. PERA, on the other hand, states that a union elected via a majority of ballots cast (not a majority of all workers) and “certified” to represent public employees never has to stand for re-election and has monopoly representation over all workers—even those who voted against the union.

Most Pennsylvania government unions were certified at least four decades ago, and few—if any—current employees were around that long. As a result, the majority of employees have never been allowed to vote on what union represents them.

### Certification of Government Unions

Union	Certification date	Current workers employed at election date	% of current employees
UFCW 1776	1971	1	0.1%
AFSCME	1974	163	0.5%
PSCOA	2001	3,412	33.4%
SEIU 668	1972	22	0.2%
ISSU	1971	2	0.3%
<b>Total</b>		<b>3,600</b>	<b>6.88%</b>
20 Largest School Districts	1960s—2000s	17	0.07%

Sources: Right-to-Know requests submitted to the Pennsylvania Labor Relations Board, Pa. Office of Administration, Pa. Department of Education, and school districts. Data up-to-date as of 2016.

Likewise, it is difficult to replace the current union. If workers want to decertify or replace their union, they must be familiar with the strict process dictated by PERA and overseen by the [Pennsylvania Labor Relations Board](#). It involves a petition for a union election during a 30-day window near the end of a collective bargaining agreement every several years and a demonstration of 30% support within the bargaining unit to hold an election.

According to a nationwide survey, [three-quarters of union employees](#) want the right to vote regularly on which union represents them.

**This legislation would give workers a greater voice in their representation.** Specifically, it:

- Establishes “independent bargaining” directly between an individual employee and employer without the intervention of a union.
  - Greater or lesser rights or privileges cannot be granted to either union members or independent employees. Further, union and nonunion employees’ wages cannot be contingent on each other.
  - Unions do not have to represent nonmembers, and only one union can be designated per employee unit.
- Requires periodic union recertification elections via secret ballot votes. More than 50% of bargaining unit members must vote for recertification to retain union representation.
  - Elections must be held at a union contract’s expiration and not less than every three years, with unions bearing election fees ranging between \$200-\$2,000.
  - If the union is not re-elected, a similar or affiliated union cannot be certified for two years.

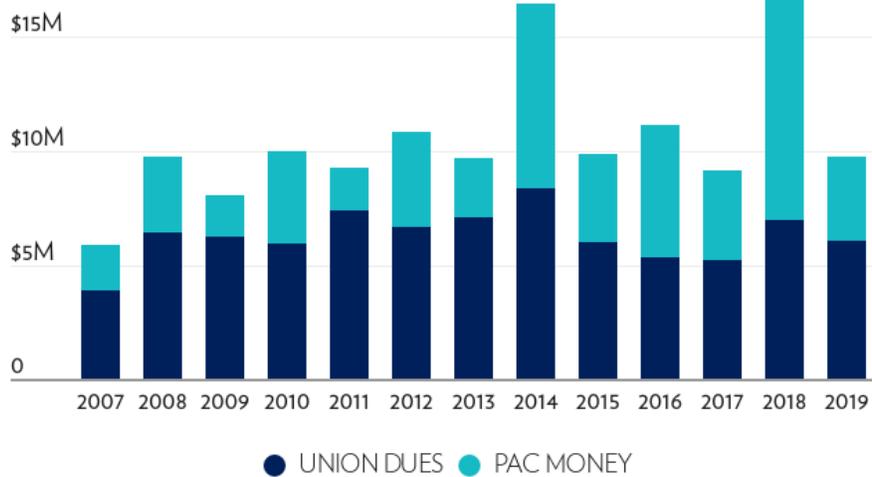
Similarly, legislation to grant [workers’ voting rights](#) (HB 2037, Rep. Dawn Keefer) by mandating union elections every six years has been considered in the House Labor and Industry Committee for two previous legislative sessions.

## **PROHIBITING THE USE OF TAXPAYER RESOURCES TO COLLECT UNION POLITICAL MONEY**

PERA permits government unions to utilize public payroll systems—financed by taxpayers—to collect their private money to spend on political campaigns and lobbying. This money is automatically deducted from workers’ paychecks before ever reaching their bank accounts.

From 2007—2019, Pennsylvania’s largest government unions spent more than [\\$137 million](#) on politics, with nearly 60% coming from members’ dues and earmarked for “political activities and lobbying.” These dues, and in many cases political action committee contributions (PAC), were deducted directly from workers’ paychecks using taxpayer dollars.

## Pa. Government Union Political Spending, 2007–2019



Sources: The U.S. Department of Labor, Office of Labor-Management Standards, Pa. Department of State, Campaign Finance Database.

The law says public resources and systems [cannot be used for political activity](#) by government officials and employees, yet union officials are exempt from this ethics standard by using the government to collect union dues and PAC contributions that are then donated to, or spent on behalf of, political campaigns and officials with whom they negotiate. Further, it shields union representatives from the accountability that comes when members must directly cut checks to the union.

More than [two-thirds](#) of Pennsylvania voters—across political parties and regions—support ending the public collection of union political money.

**This legislation would eliminate political conflict of interest and empower public workers with more control over how their money is spent on politics.** Specifically, it:

- Prohibits public employers from deducting political contributions and membership dues from employees' wages.<sup>5</sup>
  - This prohibition applies only to contracts entered into, renewed, or extended on or after the effective date of the bill (30 days after signing).
  - Exceptions include: public safety employees covered under Act 111 of 1968 and employees not permitted to strike under [Section 1001](#) (prison and mental hospital guards and court employees).

Legislation to [end the automatic deduction of political money](#), including [HB 2048](#) (Rep. Ryan Mackenzie) has been introduced in three consecutive legislative sessions. It has passed both Senate and House committees and the full Senate twice.

## CONCLUSION

Current law is stacked against government workers. Government unions face no re-election requirements, enjoy steep political advantages, can trap workers in membership for years—without written proof—and benefit from a law that has not been modified to reflect a U.S. Supreme Court ruling. Despite modest rights being restored by Janus, the widespread privileges still enjoyed by union leaders minimize their accountability.

The comprehensive labor reform contained in HB 1117 will retain every single freedom that workers currently enjoy under collective bargaining. This measure simply protects workers' rights when it comes to choosing who represents them, if they want representation; gives them a greater voice in their union; and removes taxpayers as the middleman in collecting union campaign contributions—ensuring that union membership is truly voluntary and that union leaders more directly answer to their members.

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<sup>1</sup> Pennsylvania General Assembly, Act 195 of 1970,

<https://www.legis.state.pa.us/CFDOCS/LEGIS/LI/uconsCheck.cfm?txtType=HTM&yr=1970&sessInd=0&smthLwInd=0&act=0195>.

<sup>2</sup> Pennsylvania General Assembly, Act 175 of 1929, <https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1929/0/0175..PDF>.

<sup>3</sup> Pennsylvania General Assembly, Act 15 of 1993, <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=1993&sessInd=0&act=15>.

<sup>4</sup> The consent form language from HB 2748: "I recognize that I have a First Amendment right to associate. My rights provide that I am not compelled to pay an employe organization as a condition of employment, and I do not have to sign this waiver. However, I am hereby choosing to associate with the herein named employe organization and affirmatively consent to allow my employer to deduct payments to such employe organization until such time as I choose to revoke this authorization."

<sup>5</sup> Political contributions definitions refer to the Pennsylvania Election Code, Section 1621 of Act 320 of 1937,

<https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1937/0/0320..PDF>, and Title 65 Chapter 13A,

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=65&div=0&chpt=13A>. They include a donation or expenditure given to or spent on behalf of a candidate or in an election; an independent expenditure spent to influence an election; lobbying to influence legislative or administrative action; and voter registration or a get-out-the-vote drive.