



LEXSTAT 71 P.S. §575

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

THIS DOCUMENT IS CURRENT THROUGH THE END OF THE 2008 REGULAR SESSION AND THE 2008 SPECIAL SESSIONS

*** May 1, 2009 Annotation Service ***

PENNSYLVANIA STATUTES
TITLE 71. STATE GOVERNMENT
I. THE ADMINISTRATIVE CODES AND RELATED PROVISIONS
CHAPTER 2. THE ADMINISTRATIVE CODE OF 1929
ARTICLE XXII. POWERS AND DUTIES OF THE DEPARTMENT OF LABOR AND INDUSTRY, ITS
DEPARTMENTAL ADMINISTRATIVE AND ADVISORY BOARDS AND DEPARTMENTAL
ADMINISTRATIVE OFFICERS
(A) GENERAL PROVISIONS

Go to the Pennsylvania Code Archive Directory

71 P.S. § 575 (2008)

§ 575. (Adm. Code § 2215). Fair share fee; payroll deduction

(a) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"BONA FIDE RELIGIOUS OBJECTION" shall mean 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 employe is a member.

"COMMONWEALTH" shall mean the Commonwealth of Pennsylvania, including any board, commission, department, agency or instrumentality of the Commonwealth.

"EMPLOYE ORGANIZATION" shall mean an organization of any kind or any agency or employe representation committee or plan in which membership includes public employes and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employe-employer disputes, wages, rates of pay, hours of employment or conditions of work, but shall not include any organization which practices discrimination in membership because of race, gender, color, creed, national origin or political affiliation.

"EXCLUSIVE REPRESENTATIVE" shall mean the employe organization selected by the employes 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 Employe Relations Act."

"FAIR SHARE FEE" shall mean 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 employe organization as exclusive representative.

"NONMEMBER" shall mean an employe of a public employer, 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.

"PUBLIC EMPLOYER" shall mean the Commonwealth of Pennsylvania or a school entity.

"SCHOOL ENTITY" shall mean any school district, intermediate unit or vocational-technical school.

"STATEWIDE EMPLOYE ORGANIZATION" shall mean the Statewide affiliated parent organization of an exclusive representative, or an exclusive representative representing employees Statewide, and which is receiving nonmember fair share payments.

(b) 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.

(c) To implement fair share agreements in accordance with subsection (b), 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 or she is obligated to pay and a reasonable schedule for deducting said amount from the salary or wages of such nonmember. The public employer shall deduct the fee in accordance with said schedule and promptly transmit the amount deducted to the exclusive representative.

(d) 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 (c) on the grounds that the exclusive representative has not satisfied its obligation under this subsection.

(e) Within forty (40) days of transmission of notice under subsection (d), any nonmember may challenge as follows:

(1) to the propriety of the fair share fee; or

(2) to the payment of fair share fees for bona fide religious grounds.

(f) Any objection under subsection (e) shall be made in writing to the exclusive representative and shall state whether the objection is made on the grounds set forth in subsection (e)(1) or (2).

(g) When a challenge is made under subsection (e)(1), such 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. The decision of the impartial arbitrator shall be final and binding.

(h) When a challenge is made under subsection (e)(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 forty (40) days from receipt of notification.

(i) When a challenge is made under subsection (e)(1), the exclusive representative shall place fifty per centum (50%) of each challenged fair share fee into an interest-bearing escrow account until such time as the challenge is resolved by an arbitrator. When a challenge is made under subsection (e)(2), the exclusive representative shall place one hundred per centum (100%) of each challenged fair share fee into an interest-bearing escrow account until such time as the challenge is resolved by an arbitrator.

(j) Every Statewide employe 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 a copy of such report to the Secretary of Labor and Industry.

(k) All materials and reports filed pursuant to this section 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.

(l) Any employe organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall be subject to a fine of not more than two thousand dollars (\$ 2,000).

(m) Any person who wilfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall be fined not more than one thousand dollars (\$ 1,000) or undergo imprisonment for not more than thirty (30) days, or both. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false.

LexisNexis (R) Notes:

CASE NOTES

1. In a class action seeking declaratory and injunctive relief under 42 U.S.C.S. § 1983, the United States Court of Appeals for the Third Circuit determined that 71 P.S. § 575(g), as interpreted pursuant to 1 Pa.C.S. § 1903 and 1 Pa.C.S. § 1921(a), was unenforceable, so plaintiff nonunion employees were not required to arbitrate their the constitutional challenges to 71 P.S. § 575, which permitted the Commonwealth of Pennsylvania and the exclusive representative selected by the unionized employees of the Commonwealth to enter into a "fair share fee" agreement, sometimes referred to as an "agency shop" agreement. Under such agreement, the employer deducted from the pay of employees represented by, but not members of, a union, fees that were then transmitted to the union to pay the nonmembers' proportionate share of the costs of collective bargaining. *Hohe v. Casey*, 956 F.2d 399, 1992 U.S. App. LEXIS 1528, 60 U.S.L.W. 2576, 139 L.R.R.M. (BNA) 2468 (3d Cir. Pa. 1992).

2. In plaintiff non-union teachers' 42 U.S.C.S. § 1983 and First Amendment challenge to defendant unions' fair-share fees paid pursuant to 71 P.S. § 575, a local union, regardless of size, was required to provide an independent audit, the unions could assess for litigation expenditures not relating to the teachers' own bargaining unit, and the unions were allowed to assess for non-litigation expenses related to healthcare members. *Otto v. Pennsylvania State Educ. Ass'n-NEA*, 330 F.3d 125, 2003 U.S. App. LEXIS 8685, 172 L.R.R.M. (BNA) 2452, 148 Lab. Cas. (CCH) P59710 (3d Cir. Pa. 2003), writ of certiorari denied by 540 U.S. 982, 124 S. Ct. 466, 157 L. Ed. 2d 372, 2003 U.S. LEXIS 8019, 72 U.S.L.W. 3307, 173 L.R.R.M. (BNA) 2576 (2003), writ of certiorari denied by 540 U.S. 982, 124 S. Ct. 467, 157 L. Ed. 2d 372, 2003 U.S. LEXIS 8020, 72 U.S.L.W. 3307, 173 L.R.R.M. (BNA) 2576 (2003).

3. In a class action seeking declaratory and injunctive relief under 42 U.S.C.S. § 1983, the United States Court of Appeals for the Third Circuit determined that 71 P.S. § 575(g), as interpreted pursuant to 1 Pa.C.S. § 1903 and 1 Pa.C.S. § 1921(a), was unenforceable, so plaintiff nonunion employees were not required to arbitrate their the constitutional challenges to 71 P.S. § 575, which permitted the Commonwealth of Pennsylvania and the exclusive representative selected by the unionized employees of the Commonwealth to enter into a "fair share fee" agreement, sometimes referred to as an "agency shop" agreement. Under such agreement, the employer deducted from the pay of employees represented by, but not members of, a union, fees that were then transmitted to the union to pay the nonmembers' proportionate share of the costs of collective bargaining. *Hohe v. Casey*, 956 F.2d 399, 1992 U.S. App. LEXIS 1528, 60 U.S.L.W. 2576, 139 L.R.R.M. (BNA) 2468 (3d Cir. Pa. 1992).

4. In plaintiff non-union teachers' 42 U.S.C.S. § 1983 and First Amendment challenge to defendant unions' fair-share fees paid pursuant to 71 P.S. § 575, a local union, regardless of size, was required to provide an independent audit, the

unions could assess for litigation expenditures not relating to the teachers' own bargaining unit, and the unions were allowed to assess for non-litigation expenses related to healthcare members. *Otto v. Pennsylvania State Educ. Ass'n-NEA*, 330 F.3d 125, 2003 U.S. App. LEXIS 8685, 172 L.R.R.M. (BNA) 2452, 148 Lab. Cas. (CCH) P59710 (3d Cir. Pa. 2003), writ of certiorari denied by 540 U.S. 982, 124 S. Ct. 466, 157 L. Ed. 2d 372, 2003 U.S. LEXIS 8019, 72 U.S.L.W. 3307, 173 L.R.R.M. (BNA) 2576 (2003), writ of certiorari denied by 540 U.S. 982, 124 S. Ct. 467, 157 L. Ed. 2d 372, 2003 U.S. LEXIS 8020, 72 U.S.L.W. 3307, 173 L.R.R.M. (BNA) 2576 (2003).

5. Non-union teacher plaintiffs challenged defendant unions' fair-share fee procedure and assessments, and the court held that local unions collecting fair-share fees from non-members must be formally audited regardless of their size; however, pooling arrangements that shared litigation expenses with other bargaining units could be charged to the fair-share fee. *Otto v. Pa. State Educ. Ass'n*, 326 F.3d 142, 2003 U.S. App. LEXIS 6395, 172 L.R.R.M. (BNA) 2138 (3d Cir. Pa. 2003), vacated by 328 F.3d 715, 2003 U.S. App. LEXIS 8832, 172 L.R.R.M. (BNA) 2451 (3d Cir. 2003), substituted opinion at 330 F.3d 125, 2003 U.S. App. LEXIS 8685, 172 L.R.R.M. (BNA) 2452, 148 Lab. Cas. (CCH) P59710 (3d Cir. Pa. 2003).

6. In a class action seeking declaratory and injunctive relief under 42 U.S.C.S. § 1983, the United States Court of Appeals for the Third Circuit determined that 71 P.S. § 575(g), as interpreted pursuant to 1 Pa.C.S. § 1903 and 1 Pa.C.S. § 1921(a), was unenforceable, so plaintiff nonunion employees were not required to arbitrate their constitutional challenges to 71 P.S. § 575, which permitted the Commonwealth of Pennsylvania and the exclusive representative selected by the unionized employees of the Commonwealth to enter into a "fair share fee" agreement, sometimes referred to as an "agency shop" agreement. Under such agreement, the employer deducted from the pay of employees represented by, but not members of, a union, fees that were then transmitted to the union to pay the nonmembers' proportionate share of the costs of collective bargaining. *Hohe v. Casey*, 956 F.2d 399, 1992 U.S. App. LEXIS 1528, 60 U.S.L.W. 2576, 139 L.R.R.M. (BNA) 2468 (3d Cir. Pa. 1992).

TREATISES AND ANALYTICAL MATERIALS

1. 29 P.L.E., LABOR § 232, Pennsylvania Law Encyclopedia, LABOR, § 232. Membership, Copyright 2007, Matthew Bender & Company, Inc., a member of the LexisNexis Group.