



**Testimony of the  
Pennsylvania State Education Association (PSEA)**

**Public Hearing Regarding  
House Bill 2571**

**Presented to the  
House Labor & Industry Committee  
September 5, 2018**

**By  
James Vaughan  
PSEA Executive Director**

Chairman Kauffman, Chairman Galloway, and members of the House Labor Committee. Good afternoon. I am Jim Vaughan, and I serve as the Executive Director of the Pennsylvania State Education Association. Thank you for inviting PSEA to participate in the discussion today surrounding House Bill 2571, which was introduced following the *Janus v. AFSCME* ruling recently handed down by the United States Supreme Court.

PSEA has slightly more than 181,000 dues-paying members. Of these, approximately, 142,000 are active school employees including teachers and education support professionals. In addition to those individuals, prior to June 27, 2018, PSEA received fair share fees from approximately 6,800 fee payers.

PSEA was certainly disappointed in the 5-4 ruling that overturned a decades-old precedent, and we do not agree with the rationale on which the ruling was based. Nevertheless, the United States Supreme Court has ruled and PSEA is acting in compliance with the decision. I can assure you that PSEA was prepared to act in the event of an adverse ruling, and the Association took immediate steps to comply.

For additional context, PSEA is the parent organization of more than 1,000 local associations. These local associations are certified as the exclusive bargaining representatives of public employees pursuant to Pennsylvania's Public Employee Relations Act. Prior to the ruling many of these local associations had, as permitted by Pennsylvania law, fair share provisions negotiated into their collective bargaining agreements with their respective public employers. Pursuant to these fair share provisions, employees who were part of a union-represented

bargaining unit, but who declined to become dues-paying members of the union, could be required to pay a fee in lieu of union dues corresponding to their share of the union's costs of collective bargaining and contract administration. This is no longer the case.

PSEA and local associations clearly understand that fair share provisions in public sector collective bargaining agreements are now unconstitutional. To this end, PSEA and our local associations have done everything to fully comply with the Court's decision. For your reference, I have included copies of PSEA's correspondence to school employers and non-member employees following the Court's decision. In sum, I can assure you that PSEA has notified all former fee payers of the ruling; is no longer collecting fair share fees from non-members; and is refunding a portion of the 2017-2018 fees to prior fee payers, where appropriate.

When the Supreme Court in *Janus v. AFSCME* overruled its precedent and held that fair share requirements were unconstitutional in the public sector, PSEA took the following steps to comply with the Court's ruling and to explain the new situation to non-members who previously had been required to pay a fair share fee:

1. Within hours of the ruling, PSEA contacted all affected employers by express mail, email, and telephone call, informing them of the decision and asking them to "immediately cease payroll deductions of fair share fees from fee payers in bargaining units represented by PSEA local associations."
2. Because of the seasonal nature of school employment, in many cases the public employer had, prior to June 27, already deducted the full amount of fair share fees for PSEA's 2017-18 fiscal year, which ends on August 31, 2018. PSEA

accordingly asked each public employer to provide to PSEA data showing any such pre-collected fair share fees attributable to the period of June 27 – August 21, 2018, as well as any fees deducted after June 27 where it was too late for the employer to modify a scheduled payroll. Immediately, PSEA placed an amount that it deemed to be more than sufficient to cover any such fees into a restricted bank account to be used exclusively for the purpose of refunding to the non-member fee payers any fair share fees attributable to the period between June 27 and August 31, 2018.

3. As PSEA receives the necessary data from the public employers, it is refunding these post-*Janus* fees to the non-member fee payers. All such fees attributable to the time between June 27 and August 31, 2018, are being refunded as promptly as possible, with interest.
4. Also, on July 2, 2018, PSEA sent to every fair share fee payer, in every bargaining unit for which a PSEA local affiliate had bargained a fair share requirement, a letter explaining the *Janus* decision, and informing the non-member that he or she was no longer required to pay a fair share fee and that PSEA had directed the employer immediately to cease payroll deductions of such fees. The letter also explained that any fees attributable to the period between June 27 and August 31 would be refunded to the non-member fee payer with interest.

In the months prior to *Janus*, PSEA partnered extensively with the associations representing public school business officials and superintendents to assist employers in the event of an adverse decision. This assistance included identifying actions that must be taken immediately by

both unions and employers if the ruling did, in fact, prohibit the collection of fair share fees. This collaboration began in the winter of 2018 with a joint letter to all public-school employers and PSEA local presidents which had fair share provisions in their contracts, followed by a joint webinar for public-school employers in the spring. This proactive partnership continues even after the ruling, as PSEA determines the amount of any refund that may be due to non-members for fees collected prior to the date of the decision but attributable to July or August.

Now, I would like to turn my attention to House Bill 2571, and it is my hope to be clear and succinct on this point; the notice requirements contained in House Bill 2571 are unnecessary. As has been pointed out, post-*Janus*, public employers are prohibited from deducting fair share fees from nonconsenting non-members, which makes the proposed mandate superfluous. PSEA has already provided this notice to non-members who were formerly fee payers. It is illogical to require notice to non-members that they are no longer required to have any dealings with the union when, post-*Janus*, they are no longer required to have any dealings with the union. Public employees are non-members by default. Union membership requires employees to affirmatively consent by completing the PSEA membership form.

In addition to being unnecessary, the notification mandate in HB 2571 may be construed as burdensome. If public employers are complying with the ruling and have discontinued fair share fee deduction—as we believe they have—HB 2571 would require continual notification to a potentially dynamic list of recipients, every pay period, indefinitely. Further, HB 2571 does not consider non-member employees who are in bargaining units that do not have payroll deduction. In those instances, school employers would not necessarily know which employees are non-members, making it difficult for employers to comply with these requirements.

It should also be noted that HB 2571 is silent with regard to mechanisms for compliance and enforcement. The bill lacks specificity with regard to the means by which the notice must be delivered. Whether inadvertent or not, this oversight creates the potential for abuse and exposes parties to potential unfair labor practices, discrimination in hiring, and interference with employee rights under the Public Employee Relations Act if the employer notice crosses the line of neutrality.

Notwithstanding the former, even if employers provide the notification in a fair manner, the legislation ensures anti-union bias by explaining only one side of the choice. In Pennsylvania, employees and their colleagues can determine for themselves whether to form a union.

Individual employees always have the free choice to engage in or refrain from union activities.

If the stated intent of HB 2571 is truly to ensure non-members are aware of their rights following the *Janus* decision, the bill should require notice of their *full* rights. In its current form, HB 2571 is exclusively focused on telling public employees of their right to *not* join a union. But there is another side. They may also choose to join a union, just as the overwhelming majority of school district bargaining unit employees have chosen to do.

*Janus v. AFSCME* was backed by coordinated and well-funded interests that have made clear it is their mission to “defund and defang” public sector unions. Given its current construct, it is difficult not to view HB 2571 as another attempt to diminish unions and their role in the work place. This is disappointing. If this is truly about informing non-members of their rights post-*Janus*, then let employees make a fully informed decision. Or, let public employers make their own determinations; it may surprise you that more than a handful of public school

administrations work well and collaboratively with their local unions. They see unions as partners in the educational process.

PSEA is proud of the benefits and services it provides to members. Our members are too. In the months leading up to the *Janus* ruling, local associations have engaged in tens of thousands of one-on-one conversations with non-members, new employees, and existing members. We are encouraged and invigorated by those conversations. Overwhelmingly, these discussions confirm that public school employees value PSEA and have made clear the value of our union is not simply bargaining and enforcing a contract. At the heart of our membership is a resounding desire to be supported and recognized for the challenging and important work members do on behalf of Pennsylvania's students and schools. PSEA will continue to provide the tools, protections, and resources our members need to perform their work. Our members are constantly striving to improve their practice and grow professionally because they are committed to making sure all students receive a high-quality education.

Thank you, again, for this opportunity.

June 27, 2018

RE: Janus v. AFSCME

Dear Chief Executive Officer:

This is to notify you that on June 27, the U. S. Supreme Court issued a decision in **Janus v. AFSCME** declaring the collection of public sector agency fees to be unconstitutional. This means that Pennsylvania's Fair Share Law can no longer stand and, that as of June 27, fair share fees can no longer be deducted from public employee paychecks.

PSEA would like to work together with you to ensure our mutual legal obligations imposed by **Janus** are addressed.

***To this end, PSEA is requesting that you immediately cease payroll deduction of fair share fees from fee payers in bargaining units represented by PSEA local associations.***

***Please advise PSEA by July 3 whether you are able to stop such deductions before your next payroll.*** If you are unable to stop the deductions, PSEA will need to know the name(s) of the fee payer(s) and the amount deducted, and will work with you to address the best way to rectify the withholding. ***Please send your response to Joe Howlett, PSEA Business Manager at [jhowlett@psea.org](mailto:jhowlett@psea.org).***

PSEA will contact you at a later point to gather information to determine if any refunds are due from PSEA to fee payers. Specifically, PSEA will need to know: 1) the name of each fee payer; 2) the amount of the fair share fee deducted from each fee payer's salary as of the date of the decision; and 3) the total annual amount of the fair share fee to be deducted from each fee payer's salary. ***If you have that information available now, please forward it to [jhowlett@psea.org](mailto:jhowlett@psea.org).***

If you have collected fees prior to the date of the decision, ***please immediately transfer those to the local association using your current procedures.*** PSEA has established an escrow account, restricted to the purpose of refunding fair share fees that were collected prior to the date of the decision but attributable to the time period (i.e., July and August) after the decision, and has deposited into that account an amount of money more than sufficient to cover the costs of any refunds. Failure to transfer the fees will make it difficult for PSEA to calculate and pay refunds



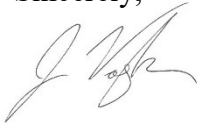
and will ultimately interfere with the rights of fee payers. If you have any concerns or questions regarding the transfer, please contact Lynne Wilson, PSEA General Counsel at [lwilson@psea.org](mailto:lwilson@psea.org).

If you have not already seen it, on the day of the decision, PSEA sent an email to both of you containing the information appearing in this letter and requesting that you acknowledge receipt of the email. ***If you have not yet acknowledged receipt, please follow the instructions in the email to acknowledge receipt.***

Finally, please be aware that PSEA has alerted its local associations to the decision in **Janus**. We will also be notifying fee payers of the ruling and of the steps PSEA will take to comply with the ruling.

Thank you for following up as requested. We appreciate your cooperation and assistance. Note that while the ruling prohibits deductions of fair share fees, it ***does not affect the deduction of Association membership dues***. Please do not hesitate to call Joe Howlett (717-255-7096) if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Vaughan", written in a cursive style.

James G. Vaughan  
PSEA Executive Director

June 27, 2018

RE: Janus v. AFSCME

Dear Business Manager:

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Sincerely,



James G. Vaughan  
PSEA Executive Director

June 27, 2018

RE: Janus v. AFSCME

Dear Superintendent:

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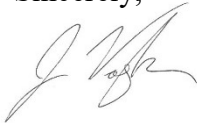
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Sincerely,

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James G. Vaughan  
PSEA Executive Director

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Dolores McCracken, *President*  
Richard W. Askey, *Vice President*  
Jeffrey D. Ney, *Treasurer*  
James G. Vaughan, *Executive Director*

July 2, 2018

On June 27, the U.S. Supreme Court issued a decision in *Janus v. AFSCME* declaring the collection of public sector agency fees, also known as “fair share” fees, to be unconstitutional. You have been paying these fair share fees based on the law prior to this decision.

Now that the Supreme Court has issued a new interpretation of the law, we want to let you know about the steps PSEA is taking to comply with the Supreme Court’s decision.

#### **Stopping payroll deduction of fair share fees**

On the day of the decision, PSEA called, emailed, and sent a letter to all school superintendents and business managers asking them to immediately stop payroll deduction of fair share fees from fee payers like you in bargaining units represented by PSEA local associations. In that communication, we asked school districts to advise us if they were unable to stop such deductions before the next payroll. If any district was unable to stop deductions, we asked them to work with us to address the best way to rectify the withholding.

#### **Establishing an escrow account and processing refunds if necessary**

In addition, PSEA immediately established an escrow account solely for the purpose of refunding fair share fees that were collected prior to the date of the decision but attributable to the time period (i.e., July and August) after the decision. Based on your schedule of fee deductions, you may have already paid fair share fees for July and August, so the payments for those months may need to be refunded to you. PSEA has deposited into the escrow account an amount of money more than sufficient to cover the costs of those refunds.

#### **Potential refunds**

PSEA is asking districts for information (specifically, the amount and schedule for fair share fee deductions) needed to determine the amount of any refund that might be due to fee payers. We intend to make accurate refunds as expeditiously as possible.

If you are owed a refund of any fair share fees you have paid, you will receive additional information from PSEA. In the meantime, you are no longer a fee payer but continue to be a non-member.

#### **The PSEA Mission**

*We are members who promote, protect, and advocate for our schools, students, and professions.*

Affiliated with the National Education Association

If you have questions, please feel free to call 717-255-7000 and ask to be directed to Financial Services.

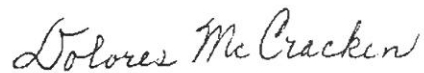
**Consider joining PSEA**

As we work to comply with the Supreme Court's decision in the *Janus* case, I want to invite you to join PSEA as a member.

In order to access all the benefits PSEA offers, you need to become a member. As a PSEA member, you will join with the members of your local association to secure the wages, benefits, and working conditions all educators and support professionals deserve. Just as important, you will be able to vote on your local contract ratification, elect association officers who will represent you at the bargaining table, and access civil or criminal liability insurance, legal services for employment issues outside the contract, and other discounts and reduced prices from endorsed vendors that are only available to PSEA members.

I have enclosed information about PSEA membership and would urge you to consider joining the Association.

Sincerely,

A handwritten signature in cursive script that reads "Dolores McCracken".

Dolores McCracken  
President