

Latest Developments from the Connecticut General Assembly: The Labor and Public Employees Committee Addresses Public Employee Union Membership Issues

Working Together

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At its March 21, 2019 meeting, the General Assembly's **Labor and Public Employees Committee** voted favorably on and advanced out of committee **House Bill No. 6935** ("**An Act Concerning The Right Of A Public Employee To Join Or Support A Union**"). On its face, this bill appears to be in response to the U.S. Supreme Court's decision in *Janus v. AFSCME*, 138 S.Ct. 2448 (June 27, 2018), which held that the involuntary withholding of "agency fees" from non-union members violates their "free speech" rights; this decision could weaken public sector unions.

The following is a summary of the key terms of this bill, which now awaits action by the full General Assembly.

RIGHT TO CONTACT INFORMATION: This bill would require any public employer to provide a union with the following contact information for all newly hired employees in the bargaining unit within ten days of hire (or the first pay period of the month following the hiring): Name, job title, department, work location, work, home and personal cell phone numbers, personnel e-mail address on file with the employer, and home address. The bill would require any public employer to provide the union with similar contact information, in an editable digital format agreed to by the parties, for each employee in the bargaining unit at least every 120 days.

RIGHT TO ACCESS: The bill would require any public employer to provide its unions with 1) access to its new employee orientations, and 2) at least ten days' prior notice of any such orientation. Upon either party's request, the employer and the union shall negotiate regarding the structure, time and manner of such access to the orientation; in the absence of an agreement, either party can request **compulsory interest arbitration**. The bill would also require a public employer to provide the union with "access" to the public employees that the union represents, including but not limited to the right to 1) meet with individual employees on the employer's premises during the work day to investigate and discuss grievances, workplace-related complaints, and other workplace issues, 2) conduct worksite meetings during meal periods and other non-work breaks, and before and after the workday, on the employer's premises, and 3) meet with newly hired

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employees, without charge to the employees' pay or leave time, for not less than 30 minutes nor more than one 120 minutes, within 30 calendar days from the date of hire, during new employee orientations, or, if the employer does not conduct new employee orientations, at individual or group meetings. The bill would also give unions the right to use the employer's e-mail systems to communicate with bargaining unit members regarding collective bargaining, the administration of collective bargaining agreements, the investigation of grievances, other workplace-related complaints and issues and internal union matters involving the governance or business of the union. In addition, unions would have the right to use government buildings and other facilities that are owned or leased by government entities to conduct meetings with bargaining unit members; the union representative would have the right to hold such meetings at a time and place of his or her choice, provided the meetings do not interfere with the public employer's operations. A union would have the right to conduct such meetings without "undue interference" and may place reasonable restrictions on the conduct of individuals attending such meetings.

Yes, there is more.

DUES DEDUCTIONS: The bill provides that employees (including retired employees) of a public employer may authorize deductions to be made from their salaries, wages or retirement allowances for the payment of dues in, or for any other service, program or committee provided or sponsored by any union "or bona fide association whose membership is comprised, in whole or in part, of employees of the public employer and employees of such organization and which has as one of its objectives improvements in the terms or conditions of employment for the advancement of the welfare of such employees". The bill provides that a public employer shall honor employee authorizations created or adopted by a labor organization for the deductions in any form that satisfies the requirements of the Connecticut Uniform Electronic Transactions Act; most importantly, **the revocability of an authorization shall be determined by the terms of the authorization (that is created by the union).**

WHO HOLDS THE AUTHORIZATIONS: Public employers that provide for the administration of payroll deductions authorized by employees will have to rely on the certification from the union that it has and will maintain the authorizations signed by the individual from whose wages the deduction or reduction is to be made. An employee organization that certifies that it has and will maintain individual employee authorizations shall not be required to provide a copy of an individual authorization to the public employer unless a dispute arises about the existence or terms of the authorization. The employee organization shall 1) indemnify the public employer for any claims made by the employee for deductions made in reliance on that certification, and 2) direct employee requests to cancel or change deductions for employee organizations to the employee organization, rather than to the public employer. The public employer shall rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed, and the employee organization shall indemnify the public employer for any

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claims made by the employee for deductions made in reliance on such information. **Deductions may be revoked only pursuant to the terms of the employee's written authorization.**

LIABILITY AND DISPUTES: The bill provides that a labor organization or public employer shall only be liable for any amounts improperly deducted. No further damages or penalties shall be awarded by any public agency or court. However, employers shall be liable to labor organizations, without recourse to the employees, for the full amount of dues that an employer fails to withhold or remit to the labor organization, provided the labor organization complied with its obligation to provide the list required by this bill. The bill provides that if a dispute arises between the employee and the labor organization regarding the existence, validity or revocation of a payroll deduction authorization, the dispute shall be resolved through a prohibited labor practice proceeding pursuant to Connecticut laws (i.e., usually filed with the State Board of Labor Relations).

DISCOURAGING MEMBERSHIP IN A UNION? The bill expressly provides that a public employer shall not deter or “discourage” public employees or applicants for public employee positions from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization. The bill further provides that it shall be an prohibited labor practice for a public employer to: 1) Encourage an employee to resign or decline to obtain membership in a labor organization, 2) encourage an employee to revoke authorization for a payroll deduction of dues to a labor organization, 3) knowingly aid any such effort by any other entity, and 4) permit use of the employer's electronic mail system **by any entity to discourage** membership in a labor organization or discourage authorization of payroll deduction of dues to a labor organization.

SO WHAT HAPPENS NEXT? To be blunt, some of these provisions on their face may be of dubious constitutionality, and beg for further clarification if not revision. In any event, the 2019 session of the General Assembly is scheduled to adjourn on June 5, 2019, and we will see if this bill (in its present or revised form) passes both houses of the General Assembly and is signed by the Governor. At that point, we will provide further analysis of the impact of this bill upon public employers. Stay tuned.

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