

34:13A-5.4 to 34:13A-5.9
LEGISLATIVE HISTORY CHECKLIST

WASA 34:13A-5.4 to 34:13A-5.9 (Public employees pay deduction--fair share)

L.A.S OF 1979 CHAPTER 477

Bill No. A688

Sponsor(s) Paterno, Jackman and Totaro

Date Introduced Feb. 9, 1978

Committee: Assembly Labor

Senate _____

Amended during passage Yes ** Amendments during passage denoted by asterisks

Date of Passage: Assembly Dec. 4, 1978

Senate Jan. 7, 1980

Date of approval Feb. 27, 1980

Following statements are attached if available:

Sponsor statement Yes ~~xxx~~

Committee Statement: Assembly Yes ~~xxx~~

Senate ~~xxx~~ No

Fiscal Note ~~xxx~~ No

Veto message ~~xxx~~ No

Message on signing ~~xxx~~ No

Following were printed:

Reports ~~xxx~~ No

Hearings ~~xxx~~ No

U.S. Supreme Court decision (cited in Sponsor's statement)

Aboud et al. v. Detroit Board of Education et al.,
431 US209, 52 L.Ed.2d 261, 97 S.Ct. 1782.

EJ
9/1/78

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 688

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1978

By Assemblymen PATERO, JACKMAN and
Assemblywoman TOTARO

Referred to Committee on Labor

AN ACT to amend and supplement the "New Jersey Employer-Employee Relations Act," approved April 30, 1941 (P. L. 1941, c. 100, C. 34:13A-1 et seq.), as said short title was amended by P. L. 1968, c. 303.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1974, c. 123 (C. 34:13A-5.4) is amended to
2 read as follows:

3 1. a. **[Employers]** *Public employers*, their representatives or
4 agents are prohibited from:

5 (1) Interfering with, restraining or coercing employees in the
6 exercise of the rights guaranteed to them by this act.

7 (2) Dominating or interfering with the formation, existence or
8 administration of any employee organization.

9 (3) Discriminating in regard to hire or tenure of employment or
10 any term or condition of employment to encourage or discourage
11 employees in the exercise of the rights guaranteed to them by
12 this act.

13 (4) Discharging or otherwise discriminating against any em-
14 ployee because he has signed or filed an affidavit, petition or com-
15 plaint or given any information or testimony under this act.

16 (5) Refusing to negotiate in good faith with a majority repre-
17 sentative of employees in an appropriate unit concerning terms
18 and conditions of employment of employees in that unit, or refusing
19 to process grievances presented by the majority representative.

20 (6) Refusing to reduce a negotiated agreement to writing and
21 to sign such agreement.

22 (7) Violating any of the rules and regulations established by the
23 commission.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

24 b. Employee organizations, their representatives or agents are
25 prohibited from:

26 (1) Interfering with, restraining or coercing employees in the
27 exercise of the rights guaranteed to them by this act.

28 (2) Interfering with, restraining or coercing a public employer
29 in the selection of his representative for the purposes of negotia-
30 tions or the adjustment of grievances.

31 (3) Refusing to negotiate in good faith with a public employer,
32 if they are the majority representative of employees in an ap-
33 propriate unit concerning terms and conditions of employment of
34 employees in that unit.

35 (4) Refusing to reduce a negotiated agreement to writing and
36 to sign such agreement.

37 (5) Violating any of the rules and regulations established by the
38 commission.

39 c. The commission shall have exclusive power as hereinafter
40 provided to prevent anyone from engaging in any unfair practice
41 listed in subsections a. and b. above. Whenever it is charged that
42 anyone has engaged or is engaging in any such unfair practice,
43 the commission, or any designated agent thereof, shall have au-
44 thority to issue and cause to be served upon such party a complaint
45 stating the specific unfair practice charged and including a notice
46 of hearing containing the date and place of hearing before the
47 commission or any designated agent thereof; provided that no
48 complaint shall issue based upon any unfair practice occurring
49 more than 6 months prior to the filing of the charge unless the
50 person aggrieved thereby was prevented from filing such charge
51 in which event the 6 months period shall be computed from the day
52 he was no longer so prevented.

53 In any such proceeding, the provisions of the Administrative
54 Procedure Act P. L. 1968, c. 410 (C. 52:14B-1 et seq.) shall be
55 applicable. Evidence shall be taken at the hearing and filed with
56 the commission. If, upon all the evidence taken, the commission
57 shall determine that any party charged has engaged or is engaging
58 in any such unfair practice, the commission shall state its findings
59 of fact and conclusions of law and issue and cause to be served on
60 such party an order requiring such party to cease and desist from
61 such unfair practice, and to take such reasonable affirmative action
62 as will effectuate the policies of this act. All cases in which a
63 complaint and notice of hearing on a charge is actually issued by
64 the commission, shall be prosecuted before the commission or its

65 agent, or both, by the representative of the employee organization
66 or party filing the charge or his authorized representative.

67 d. The commission shall at all times have the power and duty,
68 upon the request of any public employer or majority representative,
69 to make a determination as to whether a matter in dispute is within
70 the scope of collective negotiations. The commission shall serve
71 the parties with its findings of fact and conclusions of law. Any
72 determination made by the commission pursuant to this subsection
73 may be appealed to the Appellate Division of the Superior Court.

74 **[e. The commission shall have the exclusive power as herein-*
75 *after provided to hear and decide all issues in a fair share fee chal-*
76 *lenge.]**

77 *[e.] * [f.] * *e.** The commission shall adopt such rules as may
78 be required to regulate the conduct of representation elections, and
79 to regulate the time of commencement of negotiations and of in-
80 stitution of impasse procedures so that there will be full oppor-
81 tunity for negotiations and the resolution of impasses prior to
82 required budget submitted dates.

83 *[f.] * [g.] * *f.** The commission shall have the power to apply
84 to the Appellate Division of the Superior Court for an appropri-
85 ate order enforcing any order of the commission issued under
86 subsection c. or d. hereof, and its findings of fact, if based upon
87 substantial evidence on the record as a whole, shall not, in such
88 action, be set aside or modified; any order for remedial or affirma-
89 tive action, if reasonably designed to effectuate the purposes of
90 this act, shall be affirmed and enforced in such proceeding.

1 **[2. (New section) Notwithstanding any other provisions to the*
2 *contrary, no majority representative of public employees in an*
3 *appropriate unit or public employer of such employees shall be*
4 *denied from executing an agreement to require the payment by*
5 *all employees in the unit to the majority representative of a fair*
6 *share fee for services rendered by the majority representative,*
7 *subject to the provisions hereinafter stated.*

1 3. (New section) a. The fair share fee for services rendered by
2 the majority representative shall be in an amount equal to the
3 regular membership dues, initiation fees and assessments of the
4 majority representative, less the cost of benefits financed through
5 the dues and available only to members of the majority representa-
6 tive, but in no event shall the fee exceed 85% of the regular
7 membership dues, fees and assessments. Such sum representing a
8 fair share fee shall not reflect the costs of financial support of
9 political causes or candidates except to the extent that it is
10 necessary for the majority representative to engage in lobbying

11 activity designed to foster its policy goals in collective negotiations
12 and contract administration and to secure for the employees it
13 represents advances in wages, hours, and other conditions of em-
14 ployment which ordinarily cannot be secured through collective
15 negotiations with the public employer.

16 b. The majority representative shall provide advance written
17 notice of the amount of the fair share fee assessment to the com-
18 mission, the public employer and to all employees within the unit
19 as shall be determined by a list of such employees furnished by the
20 public employer. Any challenge to an assessment by an employee
21 shall be filed in writing with the commission, the public employer,
22 and the majority representative within 30 days after receipt of the
23 written notice by the employee. All challenges shall specify those
24 portions of the assessment challenged and the reasons therefor but
25 the burden of proof relating to the amount of the fair share fee
26 shall be on the majority representative.

27 c. The public employer shall deduct the fee from the earnings of
28 the employee and transmit the fee to the majority representative
29 pursuant to section 4 of this act after the written notice was pro-
30 vided, or, in the event a challenge is filed, the deductions for a fair
31 share fee shall be held in escrow by the public employer pending a
32 decision by the commission pursuant to section 1 of this act.

1 4. (New section) Payment of the fair share fee shall be made to
2 the majority representative, during the term of the collective nego-
3 tiation agreement affecting such employee and during the period,
4 if any, between successive agreements so providing, on or after,
5 but in no case sooner than:

6 a. The thirtieth day following notice of the amount of the fair
7 share fee as provided for in section 3.b. of this act.

8 b. The date of satisfactory completion of the appropriate pro-
9 bationary period or the thirtieth day following the beginning of
10 employment, whichever is later, for new employees appointed to
11 positions in the collective negotiation unit from employment or pro-
12 motional lists;

13 c. The tenth day following the beginning of employment for em-
14 ployees entering into work in the negotiation unit from reemploy-
15 ment lists;

16 d. The date of satisfactory completion of the probationary period
17 or the completion of a 3-month period following the beginning of
18 employment, whichever is sooner, for employees hired on a tem-
19 porary basis; provided, however, that no employee in the aforesaid
20 categories nor any employee in the employ of the public employer

21 at the time an agency shop agreement becomes effective shall be
22 required to tender the fair share fee before the thirtieth day follow-
23 ing the date the said agreement becomes effective.

1 5. (New section) No agency shop agreement executed pursuant
2 to this act:

3 a. Shall take effect until the majority representative has estab-
4 lished a procedure by which a nonmember employee in the unit can
5 challenge the assessment provided for in section 3 of this act. Such
6 procedure shall allow for a determination by the commission which
7 may be appealed to the Appellate Division of the Superior Court.

8 b. Shall authorize any relationship or obligation to the majority
9 representative on the part of an objecting employee other than that
10 authorized by this act;

11 c. Shall take, or remain in, effect if membership in the union
12 was not available to all employees in the unit on an equal basis.]*

1 *2. (New section) a. Notwithstanding any other provisions of
2 law to the contrary, the majority representative and the public em-
3 ployer of public employees in an appropriate unit shall, where
4 requested by the majority representative, negotiate concerning the
5 subject of requiring the payment by all ***nonmember*** employees
6 in the unit to the majority representative of a representation fee
7 in lieu of dues for services rendered by the majority representative.
8 Where agreement is reached it shall be embodied in writing and
9 signed by the authorized representatives of the public employer
10 and the majority representative.

11 b. ***[Public employees in an appropriate unit who are not*
12 *members of the majority representative in that unit shall be subject*
13 *to a payroll pay deduction of a representation fee in lieu of dues*
14 *to the majority representative, as provided in section 3 of this*
15 *act.]*** The representation fee in lieu of dues shall be ***in an*
16 *amount*** equivalent to the ***regular membership*** dues, initia-
17 tion fees and assessments charged by the majority representative
17A to its own members ***less the cost of benefits financed through*
17B *the dues, fees and assessments and available to or benefitting only*
17C *its members, but in no event shall such fee exceed 85% of the regular*
17D *membership dues, fees and assessments.***

18 c. Any public employee who pays a representation fee in lieu
19 of dues shall have the right to demand and receive from the ma-
20 jority representative, under proceedings established and main-
21 tained in accordance with section 3 of this act, a return of any part
22 of that fee ***paid by him*** which represents the employee's
23 ***additional*** pro rata share of expenditures by the majority

24 representative ***that is either*** in aid of activities or causes of
25 a partisan political or ideological nature only incidentally related
26 to the terms and conditions of employment[]]****. The pro rata share
27 subject to refund shall also reflect[]]*** or applied toward*** the
28 cost of any other benefits available only to members of the majority
29 representative. The pro rata share ***subject to refund*** shall not
30 reflect, however, the costs of support of lobbying activities designed
31 to foster policy goals in collective negotiations and contract
32 administration or to secure for the employees represented advant-
33 ages in wages, hours, and other conditions of employment in addi-
34 tion to those secured through collective negotiations with the
35 public employer.

1 3. (New section) Where a negotiated agreement is reached, pur-
2 suant to section 2 of this act, a majority representative of public
3 employees in an appropriate unit shall be entitled to a representa-
4 tion fee in lieu of dues by payroll deduction from the wages or
5 salaries of the employees in such unit who are not members of a
6 majority representative; provided, however, that membership in
7 the majority representative is available to all employees in the
8 unit on an equal basis and that the representation fee in lieu of dues
9 shall be available only to a majority representative that has estab-
10 lished and maintained a demand and return system which provides
11 pro rata returns as described in section 2(c). The demand and
12 return system shall include a provision by which persons who pay
13 a representation fee in lieu of dues may obtain review of the amount
14 returned through full and fair proceedings placing the burden of
15 proof on the majority representative. Such proceedings shall pro-
16 vide for an appeal to a board consisting of three members to be
17 appointed by the Governor, by and with the advice and consent of
18 the Senate, who shall serve without compensation but shall be re-
19 imburged for actual expenses reasonably incurred in the perform-
20 ance of their official duties. Of such members, one shall be repre-
21 sentative of public employers, one shall be representative of public
22 employee organizations and one, as chairman, who shall represent
23 the interest of the public as a strictly impartial member not having
24 had more than a casual association or relationship with any public
25 employers, public employer organizations or public employee or-
26 ganizations in the 10 years prior to appointment. Of the first ap-
27 pointees, one shall be appointed for 1 year, one for a term of 2
28 years and the chairman, for a term of 3 years. Their successors
29 shall be appointed for terms of 2 years each and until their succes-
30 sors are appointed and qualified, except that any person chosen to

31 fill a vacancy shall be appointed only for the unexpired term of
32 the member whose office has become vacant. Nothing herein shall
33 be deemed to require any employee to become a member of the
34 majority representative.

1 4. (New section) Any action engaged in by a public employer,
2 its representatives or agents, or by an employee organization, its
3 representatives or agents, which discriminates between nonmem-
4 bers who pay the said representation fee and members with regard
5 to the payment of such fee other than as allowed under this act,
6 shall be treated as an unfair practice within the meaning of sub-
7 section 1(a) or subsection 1(b) of this act.

1 5. (New section) Payment of the representation fee in lieu of
2 dues shall be made to the majority representative during the term
3 of the collective negotiation agreement affecting such nonmember
4 employees and during the period, if any, between successive agree-
5 ments so providing, on or after, but in no case sooner than the
6 thirtieth day following the beginning of an employee's employment
7 in a position included in the appropriate negotiations unit, and the
8 tenth day following reentry into the appropriate unit for employees
9 who previously served in a position included in the appropriate
10 unit who continued in the employ of the public employer in an
11 excluded position and individuals being reemployed in such unit
12 from a reemployment list. For the purposes of this section, indi-
13 viduals employed on a 10-month basis or who are reappointed from
14 year to year shall be considered to be in continuous employment.*

1 6. (New section) The commission may promulgate rules or regu-
2 lations to effectuate the purposes of this act.

1 7. This act shall take effect July 1 next following its enactment.

ASSEMBLY, No. 688

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1978

By Assemblymen PATERO, JACKMAN and
Assemblywoman TOTARO

Referred to Committee on Labor

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2 read as follows:

3 1. a. **[Employers]** *Public employers*, their representatives or
4 agents are prohibited from:

5 (1) Interfering with, restraining or coercing employees in the
6 exercise of the rights guaranteed to them by this act.

7 (2) Dominating or interfering with the formation, existence or
8 administration of any employee organization.

9 (3) Discriminating in regard to hire or tenure of employment or
10 any term or condition of employment to encourage or discourage
11 employees in the exercise of the rights guaranteed to them by
12 this act.

13 (4) Discharging or otherwise discriminating against any em-
14 ployee because he has signed or filed an affidavit, petition or com-
15 plaint or given any information or testimony under this act.

16 (5) Refusing to negotiate in good faith with a majority repre-
17 sentative of employees in an appropriate unit concerning terms
18 and conditions of employment of employees in that unit, or refusing
19 to process grievances presented by the majority representative.

20 (6) Refusing to reduce a negotiated agreement to writing and
21 to sign such agreement.

22 (7) Violating any of the rules and regulations established by the
23 commission.

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

24 b. Employee organizations, their representatives or agents are
25 prohibited from:

26 (1) Interfering with, restraining or coercing employees in the
27 exercise of the rights guaranteed to them by this act.

28 (2) Interfering with, restraining or coercing a public employer
29 in the selection of his representative for the purposes of negotia-
30 tions or the adjustment of grievances.

31 (3) Refusing to negotiate in good faith with a public employer,
32 if they are the majority representative of employees in an ap-
33 propriate unit concerning terms and conditions of employment of
34 employees in that unit.

35 (4) Refusing to reduce a negotiated agreement to writing and
36 to sign such agreement.

37 (5) Violating any of the rules and regulations established by the
38 commission.

39 c. The commission shall have exclusive power as hereinafter
40 provided to prevent anyone from engaging in any unfair practice
41 listed in subsections a. and b. above. Whenever it is charged that
42 anyone has engaged or is engaging in any such unfair practice,
43 the commission, or any designated agent thereof, shall have au-
44 thority to issue and cause to be served upon such party a complaint
45 stating the specific unfair practice charged and including a notice
46 of hearing containing the date and place of hearing before the
47 commission or any designated agent thereof; provided that no
48 complaint shall issue based upon any unfair practice occurring
49 more than 6 months prior to the filing of the charge unless the
50 person aggrieved thereby was prevented from filing such charge
51 in which event the 6 months period shall be computed from the day
52 he was no longer so prevented.

53 In any such proceeding, the provisions of the Administrative
54 Procedure Act P. L. 1968, c. 410 (C. 52:14B-1 et seq.) shall be
55 applicable. Evidence shall be taken at the hearing and filed with
56 the commission. If, upon all the evidence taken, the commission
57 shall determine that any party charged has engaged or is engaging
58 in any such unfair practice, the commission shall state its findings
59 of fact and conclusions of law and issue and cause to be served on
60 such party an order requiring such party to cease and desist from
61 such unfair practice, and to take such reasonable affirmative action
62 as will effectuate the policies of this act. All cases in which a
63 complaint and notice of hearing on a charge is actually issued by
64 the commission, shall be prosecuted before the commission or its

65 agent, or both, by the representative of the employee organization
66 or party filing the charge or his authorized representative.

67 d. The commission shall at all times have the power and duty,
68 upon the request of any public employer or majority representative,
69 to make a determination as to whether a matter in dispute is within
70 the scope of collective negotiations. The commission shall serve
71 the parties with its findings of fact and conclusions of law. Any
72 determination made by the commission pursuant to this subsection
73 may be appealed to the Appellate Division of the Superior Court.

74 e. *The commission shall have the exclusive power as hereinafter*
75 *provided to hear and decide all issues in a fair share fee challenge.*

76 **[e.]** f. The commission shall adopt such rules as may be required
77 to regulate the conduct of representation elections, and to regulate
78 the time of commencement of negotiations and of institution of
79 impasse procedures so that there will be full opportunity for
80 negotiations and the resolution of impasses prior to required
81 budget submitted dates.

82 **[f.]** g. The commission shall have the power to apply to the
83 Appellate Division of the Superior Court for an appropriate order
84 enforcing any order of the commission issued under subsection e.
85 or d. hereof, and its findings of fact, if based upon substantial
86 evidence on the record as a whole, shall not, in such action, be set
87 aside or modified; any order for remedial or affirmative action, if
88 reasonably designed to effectuate the purposes of this act, shall
89 be affirmed and enforced in such proceeding.

1 2. (New section) Notwithstanding any other provisions to the
2 contrary, no majority representative of public employees in an
3 appropriate unit or public employer of such employees shall be
4 denied from executing an agreement to require the payment by
5 all employees in the unit to the majority representative of a fair
6 share fee for services rendered by the majority representative,
7 subject to the provisions hereinafter stated.

1 3. (New section) a. The fair share fee for services rendered by
2 the majority representative shall be in an amount equal to the
3 regular membership dues, initiation fees and assessments of the
4 majority representative, less the cost of benefits financed through
5 the dues and available only to members of the majority representa-
6 tive, but in no event shall the fee exceed 85% of the regular
7 membership dues, fees and assessments. Such sum representing a
8 fair share fee shall not reflect the costs of financial support of
9 political causes or candidates except to the extent that it is
10 necessary for the majority representative to engage in lobbying

11 activity designed to foster its policy goals in collective negotiations
12 and contract administration and to secure for the employees it
13 represents advances in wages, hours, and other conditions of em-
14 ployment which ordinarily cannot be secured through collective
15 negotiations with the public employer.

16 b. The majority representative shall provide advance written
17 notice of the amount of the fair share fee assessment to the com-
18 mission, the public employer and to all employees within the unit
19 as shall be determined by a list of such employees furnished by the
20 public employer. Any challenge to an assessment by an employee
21 shall be filed in writing with the commission, the public employer,
22 and the majority representative within 30 days after receipt of the
23 written notice by the employee. All challenges shall specify those
24 portions of the assessment challenged and the reasons therefor but
25 the burden of proof relating to the amount of the fair share fee
26 shall be on the majority representative.

27 c. The public employer shall deduct the fee from the earnings of
28 the employee and transmit the fee to the majority representative
29 pursuant to section 4 of this act after the written notice was pro-
30 vided, or, in the event a challenge is filed, the deductions for a fair
31 share fee shall be held in escrow by the public employer pending a
32 decision by the commission pursuant to section 1 of this act.

1 4. (New section) Payment of the fair share fee shall be made to
2 the majority representative, during the term of the collective nego-
3 tiation agreement affecting such employee and during the period,
4 if any, between successive agreements so providing, on or after,
5 but in no case sooner than:

6 a. The thirtieth day following notice of the amount of the fair
7 share fee as provided for in section 3.b. of this act.

8 b. The date of satisfactory completion of the appropriate pro-
9 bationary period or the thirtieth day following the beginning of
10 employment, whichever is later, for new employees appointed to
11 positions in the collective negotiation unit from employment or pro-
12 motional lists;

13 c. The tenth day following the beginning of employment for em-
14 ployees entering into work in the negotiation unit from reemploy-
15 ment lists;

16 d. The date of satisfactory completion of the probationary period
17 or the completion of a 3-month period following the beginning of
18 employment, whichever is sooner, for employees hired on a tem-
19 porary basis; provided, however, that no employee in the aforesaid
20 categories nor any employee in the employ of the public employer

21 at the time an agency shop agreement becomes effective shall be
22 required to tender the fair share fee before the thirtieth day follow-
23 ing the date the said agreement becomes effective.

1 5. (New section) No agency shop agreement executed pursuant
2 to this act:

3 a. Shall take effect until the majority representative has estab-
4 lished a procedure by which a nonmember employee in the unit can
5 challenge the assessment provided for in section 3 of this act. Such
6 procedure shall allow for a determination by the commission which
7 may be appealed to the Appellate Division of the Superior Court.

8 b. Shall authorize any relationship or obligation to the majority
9 representative on the part of an objecting employee other than that
10 authorized by this act;

11 c. Shall take, or remain in, effect if membership in the union
12 was not available to all employees in the unit on an equal basis.

1 6. (New section) The commission may promulgate rules or regu-
2 lations to effectuate the purposes of this act.

1 7. This act shall take effect July 1 next following its enactment.

STATEMENT

This public sector "agency shop" bill, a significant revision of previous legislation on the subject, was drafted to include a "fair share" formula for payroll deductions and procedural due process provisions intended to protect the rights of the minority without destroying the rights of the majority.

For many years, the "New Jersey Employer-Employee Relations Act" has required that a majority representative of public employees which has negotiated a labor agreement covering such employees to represent the interests of *all* employees in the bargaining unit, regardless of organizational membership, without discrimination. Non-members of the majority organization, therefore, enjoy virtually equal benefits and protections without sharing in the costs, incurred by collective negotiations, grievance representation, and other services. In the recent May, 1977 decision of the United States Supreme Court (*Abood et al. v. Detroit Board of Education et al.*) which upheld the constitutional validity of state "agency shop" legislation, the Court pointed to the fact that the tasks of negotiating and administering an agreement are continuing and difficult ones and entail the expenditure of much time and money, often requiring the services of lawyers, expert negotiators, economists, research staff, as well as administrative personnel. In

that decision, the Court went on to state that "a union shop arrangement has been thought to distribute fairly the cost of these activities among those who benefit, and it counteracts the incentive that employees might otherwise have to become 'free riders'—to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees." Many analysts feel that union security agreements such as the agency shop are vital to the stability and sense of responsibility of public sector unions.

The proposed actual amount of the fair share fee to be deducted is to be equal to regular dues, initiation fees and assessments less the cost of benefits financed through the dues and available only to members—and in no event greater than 85% of dues—similar to legislation now in effect in Minnesota. Due process guarantees in the bill provide that a (non-member) public employee will have (a) the right to advance notice of the amount of an impending fair share fee to be deducted from his earnings; (b) the right to bring an administrative action that may be appealed in court to challenge the amount of the withheld fee; and (c) the right to have the fair share fee held in escrow pending such a determination.

When considering challenges to a union's use of service fees, however, the Commission and the courts would be expected to distinguish between political activities which are partisan or ideological and lobbying activities which are integral to economic well-being of all employees represented.

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is not enacted and is intended to be omitted in the law.

24 b. Employee organizations, their representatives or agents are
25 prohibited from:

26 (1) Interfering with, restraining or coercing employees in the
27 exercise of the rights guaranteed to them by this act.

28 (2) Interfering with, restraining or coercing a public employer
29 in the selection of his representative for the purposes of negotia-
30 tions or the adjustment of grievances.

31 (3) Refusing to negotiate in good faith with a public employer,
32 if they are the majority representative of employees in an ap-
33 propriate unit concerning terms and conditions of employment of
34 employees in that unit.

35 (4) Refusing to reduce a negotiated agreement to writing and
36 to sign such agreement.

37 (5) Violating any of the rules and regulations established by the
38 commission.

39 c. The commission shall have exclusive power as hereinafter
40 provided to prevent anyone from engaging in any unfair practice
41 listed in subsections a. and b. above. Whenever it is charged that
42 anyone has engaged or is engaging in any such unfair practice,
43 the commission, or any designated agent thereof, shall have au-
44 thority to issue and cause to be served upon such party a complaint
45 stating the specific unfair practice charged and including a notice
46 of hearing containing the date and place of hearing before the
47 commission or any designated agent thereof; provided that no
48 complaint shall issue based upon any unfair practice occurring
49 more than 6 months prior to the filing of the charge unless the
50 person aggrieved thereby was prevented from filing such charge
51 in which event the 6 months period shall be computed from the day
52 he was no longer so prevented.

53 In any such proceeding, the provisions of the Administrative
54 Procedure Act P. L. 1968, c. 410 (C. 52:14B-1 et seq.) shall be
55 applicable. Evidence shall be taken at the hearing and filed with
56 the commission. If, upon all the evidence taken, the commission
57 shall determine that any party charged has engaged or is engaging
58 in any such unfair practice, the commission shall state its findings
59 of fact and conclusions of law and issue and cause to be served on
60 such party an order requiring such party to cease and desist from
61 such unfair practice, and to take such reasonable affirmative action
62 as will effectuate the policies of this act. All cases in which a
63 complaint and notice of hearing on a charge is actually issued by
64 the commission, shall be prosecuted before the commission or its

65 agent, or both, by the representative of the employee organization
66 or party filing the charge or his authorized representative.

67 d. The commission shall at all times have the power and duty,
68 upon the request of any public employer or majority representative,
69 to make a determination as to whether a matter in dispute is within
70 the scope of collective negotiations. The commission shall serve
71 the parties with its findings of fact and conclusions of law. Any
72 determination made by the commission pursuant to this subsection
73 may be appealed to the Appellate Division of the Superior Court.

74 ***[e.]** *The commission shall have the exclusive power as herein-*
75 *after provided to hear and decide all issues in a fair share fee chal-*
76 *lenge.**
77

78 **[e.]** ***[f.]*** *e.* The commission shall adopt such rules as may
79 be required to regulate the conduct of representation elections, and
80 to regulate the time of commencement of negotiations and of in-
81 stitution of impasse procedures so that there will be full oppor-
82 tunity for negotiations and the resolution of impasses prior to
83 required budget submitted dates.

84 **[f.]** ***[g.]*** *f.* The commission shall have the power to apply
85 to the Appellate Division of the Superior Court for an appropri-
86 ate order enforcing any order of the commission issued under
87 subsection c. or d. hereof, and its findings of fact, if based upon
88 substantial evidence on the record as a whole, shall not, in such
89 action, be set aside or modified; any order for remedial or affirma-
90 tive action, if reasonably designed to effectuate the purposes of
91 this act, shall be affirmed and enforced in such proceeding.

1 ***[2.]** (New section) Notwithstanding any other provisions to the
2 contrary, no majority representative of public employees in an
3 appropriate unit or public employer of such employees shall be
4 denied from executing an agreement to require the payment by
5 all employees in the unit to the majority representative of a fair
6 share fee for services rendered by the majority representative,
7 subject to the provisions hereinafter stated.

1 3. (New section) a. The fair share fee for services rendered by
2 the majority representative shall be in an amount equal to the
3 regular membership dues, initiation fees and assessments of the
4 majority representative, less the cost of benefits financed through
5 the dues and available only to members of the majority representa-
6 tive, but in no event shall the fee exceed 85% of the regular
7 membership dues, fees and assessments. Such sum representing a
8 fair share fee shall not reflect the costs of financial support of
9 political causes or candidates except to the extent that it is
10 necessary for the majority representative to engage in lobbying

11 activity designed to foster its policy goals in collective negotiations
12 and contract administration and to secure for the employees it
13 represents advances in wages, hours, and other conditions of em-
14 ployment which ordinarily cannot be secured through collective
15 negotiations with the public employer.

16 b. The majority representative shall provide advance written
17 notice of the amount of the fair share fee assessment to the com-
18 mission, the public employer and to all employees within the unit
19 as shall be determined by a list of such employees furnished by the
20 public employer. Any challenge to an assessment by an employee
21 shall be filed in writing with the commission, the public employer,
22 and the majority representative within 30 days after receipt of the
23 written notice by the employee. All challenges shall specify those
24 portions of the assessment challenged and the reasons therefor but
25 the burden of proof relating to the amount of the fair share fee
26 shall be on the majority representative.

27 c. The public employer shall deduct the fee from the earnings of
28 the employee and transmit the fee to the majority representative
29 pursuant to section 4 of this act after the written notice was pro-
30 vided, or, in the event a challenge is filed, the deductions for a fair
31 share fee shall be held in escrow by the public employer pending a
32 decision by the commission pursuant to section 1 of this act.

1 4. (New section) Payment of the fair share fee shall be made to
2 the majority representative, during the term of the collective nego-
3 tiation agreement affecting such employee and during the period,
4 if any, between successive agreements so providing, on or after,
5 but in no case sooner than:

6 a. The thirtieth day following notice of the amount of the fair
7 share fee as provided for in section 3.b. of this act.

8 b. The date of satisfactory completion of the appropriate pro-
9 bationary period or the thirtieth day following the beginning of
10 employment, whichever is later, for new employees appointed to
11 positions in the collective negotiation unit from employment or pro-
12 motional lists;

13 c. The tenth day following the beginning of employment for em-
14 ployees entering into work in the negotiation unit from reemploy-
15 ment lists;

16 d. The date of satisfactory completion of the probationary period
17 or the completion of a 3-month period following the beginning of
18 employment, whichever is sooner, for employees hired on a tem-
19 porary basis; provided, however, that no employee in the aforesaid
20 categories nor any employee in the employ of the public employer

21 at the time an agency shop agreement becomes effective shall be
22 required to tender the fair share fee before the thirtieth day follow-
23 ing the date the said agreement becomes effective.

1 5. (New section) No agency shop agreement executed pursuant
2 to this act:

3 a. Shall take effect until the majority representative has estab-
4 lished a procedure by which a nonmember employee in the unit can
5 challenge the assessment provided for in section 3 of this act. Such
6 procedure shall allow for a determination by the commission which
7 may be appealed to the Appellate Division of the Superior Court.

8 b. Shall authorize any relationship or obligation to the majority
9 representative on the part of an objecting employee other than that
10 authorized by this act;

11 c. Shall take, or remain in, effect if membership in the union
12 was not available to all employees in the unit on an equal basis.]*

1 *2. (New section) a. Notwithstanding any other provisions of
2 law to the contrary, the majority representative and the public em-
3 ployer of public employees in an appropriate unit shall, where
4 requested by the majority representative, negotiate concerning the
5 subject of requiring the payment by all employees in the unit to
6 the majority representative of a representation fee in lieu of dues
7 for services rendered by the majority representative. Where agree-
8 ment is reached it shall be embodied in writing and signed by the
9 authorized representatives of the public employer and the majority
10 representative.

11 b. Public employees in an appropriate unit who are not members
12 of the majority representative in that unit shall be subject to a
13 payroll pay deduction of a representation fee in lieu of dues to the
14 majority representative, as provided in section 3 of this act. The
15 representation fee in lieu of dues shall be equivalent to the dues,
16 initiation fees and assessments charged by the majority representa-
17 tive to its own members.

18 c. Any public employee who pays a representation fee in lieu
19 of dues shall have the right to demand and receive from the ma-
20 jority representative, under proceedings established and main-
21 tained in accordance with section 3 of this act, a return of any part
22 of that fee which represents the employee's pro rata share of ex-
23 penditures by the majority representative in aid of activities or
24 causes of a partisan political or ideological nature only incidentally
25 related to the terms and conditions of employment. The pro rata
26 share subject to refund shall also reflect the cost of any other
27 benefits available only to members of the majority representative.

28 *The pro rata share shall not reflect, however, the costs of support*
29 *of lobbying activities designed to foster policy goals in collective*
30 *negotiations and contract administration or to secure for the em-*
31 *ployees represented advantages in wages, hours, and other condi-*
32 *tions of employment in addition to those secured through collective*
33 *negotiations with the public employer.*

1 3. (New section) *Where a negotiated agreement is reached, pur-*
2 *suant to section 2 of this act, a majority representative of public*
3 *employees in an appropriate unit shall be entitled to a representa-*
4 *tion fee in lieu of dues by payroll deduction from the wages or*
5 *salaries of the employees in such unit who are not members of a*
6 *majority representative; provided, however, that membership in*
7 *the majority representative is available to all employees in the*
8 *unit on an equal basis and that the representation fee in lieu of dues*
9 *shall be available only to a majority representative that has estab-*
10 *lished and maintained a demand and return system which provides*
11 *pro rata returns as described in section 2(c). The demand and*
12 *return system shall include a provision by which persons who pay*
13 *a representation fee in lieu of dues may obtain review of the amount*
14 *returned through full and fair proceedings placing the burden of*
15 *proof on the majority representative. Such proceedings shall pro-*
16 *vide for an appeal to a board consisting of three members to be*
17 *appointed by the Governor, by and with the advice and consent of*
18 *the Senate, who shall serve without compensation but shall be re-*
19 *imbursed for actual expenses reasonably incurred in the perform-*
20 *ance of their official duties. Of such members, one shall be repre-*
21 *sentative of public employers, one shall be representative of public*
22 *employee organizations and one, as chairman, who shall represent*
23 *the interest of the public as a strictly impartial member not having*
24 *had more than a casual association or relationship with any public*
25 *employers, public employer organizations or public employee or-*
26 *ganizations in the 10 years prior to appointment. Of the first ap-*
27 *pointees, one shall be appointed for 1 year, one for a term of 2*
28 *years and the chairman, for a term of 3 years. Their successors*
29 *shall be appointed for terms of 2 years each and until their succes-*
30 *sors are appointed and qualified, except that any person chosen to*
31 *fill a vacancy shall be appointed only for the unexpired term of*
32 *the member whose office has become vacant. Nothing herein shall*
33 *be deemed to require any employee to become a member of the*
34 *majority representative.*

1 4. (New section) *Any action engaged in by a public employer,*
2 *its representatives or agents, or by an employee organization, its*

3 *representatives or agents, which discriminates between nonmem-*
4 *bers who pay the said representation fee and members with regard*
5 *to the payment of such fee other than as allowed under this act,*
6 *shall be treated as an unfair practice within the meaning of sub-*
7 *section 1(a) or subsection 1(b) of this act.*

1 5. (New section) *Payment of the representation fee in lieu of*
2 *dues shall be made to the majority representative during the term*
3 *of the collective negotiation agreement affecting such nonmember*
4 *employees and during the period, if any, between successive agree-*
5 *ments so providing, on or after, but in no case sooner than the*
6 *thirtieth day following the beginning of an employee's employment*
7 *in a position included in the appropriate negotiations unit, and the*
8 *tenth day following reentry into the appropriate unit for employees*
9 *who previously served in a position included in the appropriate*
10 *unit who continued in the employ of the public employer in an*
11 *excluded position and individuals being reemployed in such unit*
12 *from a reemployment list. For the purposes of this section, indi-*
13 *viduals employed on a 10-month basis or who are reappointed from*
14 *year to year shall be considered to be in continuous employment.**

1 6. (New section) *The commission may promulgate rules or regu-*
2 *lations to effectuate the purposes of this act.*

1 7. *This act shall take effect July 1 next following its enactment.*

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 688

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 19, 1978

The Assembly Labor Committee favorably reports this legislation to establish a modified "agency shop" in the public sector as a required subject of negotiations at the request of the majority representative. The statement appended to and printed with the bill adequately explains its provisions except that amendments adopted by the committee alter the description contained in the statement's last two paragraphs.

Within a given negotiating unit, this bill is intended to protect the rights of nonmembers of a public employee union without unfairly burdening its regular members with the cost of union services benefiting the nonmembers in the unit. Existing law requires all majority representatives of public employees to represent the interests of all employees in the negotiating unit, regardless of membership, without discrimination. The legislation would not require any public employee to actually join a union against his wishes. Moreover, the bill's provisions would not apply to public employees who are not a part of an existing negotiating unit represented by a majority employee organization.

The Public Employment Relations Commission had indicated to the committee that the role originally intended for it as an arbiter of fee challenges would have placed a heavy administrative burden on it and slowed its processing of unfair labor practice charges as well as scope of negotiation and unit determinations. At the urging of a coalition of public employee associations and unions, the committee amended the bill along the lines of a recommendation contained in the U.S. Supreme Court's "*Abood*" decision (425 U.S. 949), which upheld the constitutional validity of state "agency shop" legislation. That suggestion was for a "demand and return" refund system based on a rebate after objection of any portion of fees used by the union for partisan political or ideological purposes only incidentally related to the terms and conditions of employment. The pro rata share of expenditures by the majority representative subject to refund to a

nonmember, where an objection is made, would also have to include the cost of "any other benefits available only to members," e. g. contributions to charitable or religious organizations or causes; fines, penalties or damages arising from the unlawful activities of a bargaining agent; social or recreational activities; costs of educational activities unrelated to collective negotiations, contract administration or lobbying for improved wages and benefits; costs of medical insurance; retirement benefits or other benefit programs; and costs incurred by the bargaining agent to organize employees who are not included in the bargaining unit.

Under the terms of the bill, as amended, nonmembers can appeal the amount of any union-determined rebate by bringing their cases (individually or collectively) before a three-member tripartite board with staggered terms which would be appointed by the Governor with the advice and consent of the Senate. It would have a strictly impartial chairman, representing the interest of the public, who has had no more than a casual association or relationship with any public employers, public employer organizations or public employee organizations in the 10 years prior to appointment.

The bill was opposed by the New Jersey School Boards Association, the New Jersey State Chamber of Commerce and the New Jersey Business and Industry Association. It was supported by the State Coalition of Public Employees (S. C. O. P. E.) which included the NJCSA, the NJSEA, AFSCME, the NJEA and AFT as well as the NJFBA, IFA, PBA, IFPTE, the Service Employees International Union and the Teamsters.

ASSEMBLY COMMITTEE AMENDMENTS TO
ASSEMBLY, No. 688

STATE OF NEW JERSEY

ADOPTED JUNE 12, 1978

Amend page 3, section 1, lines 74-75, omit in their entirety.

Amend page 3, section 1, line 76, omit "f.", insert "e."

Amend page 3, section 1, line 82, omit "g.", insert "f."

Amend pages 3-5, sections 2-5, omit in their entirety, insert new sections 2 through 5 as follows:

"2. (New section) a. Notwithstanding any other provisions of law to the contrary, the majority representative and the public employer of public employees in an appropriate unit shall, where requested by the majority representative, negotiate concerning the subject of requiring the payment by all employees in the unit to the majority representative of a representation fee in lieu of dues for services rendered by the majority representative. Where agreement is reached it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

b. Public employees in an appropriate unit who are not members of the majority representative in that unit shall be subject to a payroll pay deduction of a representation fee in lieu of dues to the majority representative, as provided in section 3 of this act. The representation fee in lieu of dues shall be equivalent to the dues, initiation fees and assessments charged by the majority representative to its own members.

c. Any public employee who pays a representation fee in lieu of dues shall have the right to demand and receive from the majority representative, under proceedings established and maintained in accordance with section 3 of this act, a return of any part of that fee which represents the employee's pro rata share of expenditures by the majority representative in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment. The pro rata share subject to refund shall also reflect the cost of any other benefits available only to members of the majority representative. The pro rata share shall not reflect, however, the costs of support of lobbying activities designed to foster policy goals in collective negotiations and contract administration or to secure for the employees represented advantages in wages, hours, and other conditions of employment in addition to those secured through collective negotiations with the public employer.

3. (New section) Where a negotiated agreement is reached, pursuant to section 2 of this act, a majority representative of public employees in an appropriate unit shall be entitled to a representation fee in lieu of dues by payroll deduction from the wages or salaries of the employees in such unit who are not members of a majority representative; provided, however, that membership in the majority representative is available to all employees in the unit on an equal basis and that the representation fee in lieu of dues shall be available only to a majority representative that has established and maintained a demand and return system which provides pro rata returns as described in section 2(c). The demand and return system shall include a provision by which persons who pay a representation fee in lieu of dues may obtain review of the amount returned through full and fair proceedings placing the burden of proof on the majority representative. Such proceedings shall provide for an appeal to a board consisting of three members to be appointed by the Governor, by and with the advice and consent of the Senate, who shall serve without compensation but shall be reimbursed for actual expenses reasonably incurred in the performance of their official duties. Of such members, one shall be representative of public employers, one shall be representative of public employee organizations and one, as chairman, who shall represent the interest of the public as a strictly impartial member not having had more than a casual association or relationship with any public employers, public employer organizations or public employee organizations in the 10 years prior to appointment. Of the first appointees, one shall be appointed for 1 year, one for a term of 2 years and the chairman, for a term of 3 years. Their successors shall be appointed for terms of 2 years each and until their successors are appointed and qualified, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant. Nothing herein shall be deemed to require any employee to become a member of the majority representative.

4. (New section) Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between nonmembers who pay the said representation fee and members with regard to the payment of such fee other than as allowed under this act, shall be treated as an unfair practice within the meaning of subsection 1(a) or subsection 1(b) of this act.

5. (New section) Payment of the representation fee in lieu of dues shall be made to the majority representative during the term of the collective negotiation agreement affecting such nonmember employees

and during the period, if any, between successive agreements so providing, on or after, but in no case sooner than the thirtieth day following the beginning of an employee's employment in a position included in the appropriate negotiations unit, and the tenth day following re-entry into the appropriate unit for employees who previously served in a position included in the appropriate unit who continued in the employ of the public employer in an excluded position and individuals being reemployed in such unit from a reemployment list. For the purposes of this section, individuals employed on a 10-month basis or who are reappointed from year to year shall be considered to be in continuous employment.''.

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 688
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED NOVEMBER 20, 1978

Amend page 5, section 2, line 5, after "all", insert "nonmember".

Amend page 5, section 2, lines 11 through 13, after "b.", omit line 11 in its entirety through line 13.

Amend page 5, section 2, line 14, omit "majority representative, as provided in section 3 of this act."

Amend page 5, section 2, line 15, after "be", insert "in an amount"; after "the", insert "regular membership".

Amend page 5, section 2, line 17, after "members", insert "less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event shall such fee exceed 85% of the regular membership dues, fees and assessments".

Amend page 5, section 2, line 22, after "fee", insert "paid by him"; after "employee's", insert "additional".

Amend page 5, section 2, line 23, after "representative", insert "that is either".

Amend page 5, section 2, line 25, omit ". The pro rata".

Amend page 5, section 2, line 26, omit "share subject to refund shall also reflect", insert "or applied toward".

Amend page 6, section 2, line 28, after "share", insert "subject to refund".

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

FEBRUARY 27, 1980

PATRICK J. SWEENEY

Governor Brendan Byrne today signed the following bills in a public ceremony in the Chambers of the New Jersey State Assembly:

A-688, sponsored by Assemblyman Joseph D. Patero (D-Somerset), which is known as the "agency shop" bill. The bill requires payment of a "representation fee in lieu of dues" to the majority representative union by non-members.

The representation fee is to be the equivalent of regular membership dues, initiation fees and assessments, less the cost of benefits so financed which are available only to members. In no event, however, can the representation fee exceed 85 percent of the regular charges.

In addition, a non-member who pays the representation fee may receive refund on a pro rate basis of the cost of: (1) political or ideological activities which are only inadvertently related to the employment; or (2) other benefits available only to members. This does not include lobbying connected with the terms or benefits of the employment.

The bill will take effect on July 1, 1980.

AJR-9, sponsored by Assemblyman Robert D. Franks (R-Union), which provides for the Governor to designate "New Jersey Unity Day", during which time citizens will be encouraged to demonstrate their support for Americans held hostage in Iran by publicly displaying flags.

The Governor signed a proclamation, designating Sunday, March 9, 1980 as "New Jersey Unity Day."

A-1265, sponsored by former Assemblyman Daniel F. Newman (D-Ocean), which is intended to regulate dental plan organizations. The bill will fill a gap in the insurance laws which regulate dental plans run by insurance companies and medical or dental service corporations.

The bill is intended to ensure that dental plan organizations are operated in a sound financial manner, and are able to provide adequate services to their enrollees.