

SENATE, No. 2353

STATE OF NEW JERSEY

INTRODUCED DECEMBER 18, 1997

By Senator LaROSSA

1 AN ACT concerning public employee organizations and amending
2 P.L.1974, c.123 and P.L.1979, c.477.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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

9 1. a. Public employers, their representatives or agents are
10 prohibited from:

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

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

15 (3) Discriminating in regard to hire or tenure of employment or any
16 term or condition of employment to encourage or discourage
17 employees in the exercise of the rights guaranteed to them by this act.

18 (4) Discharging or otherwise discriminating against any employee
19 because he has signed or filed an affidavit, petition or complaint or
20 given any information or testimony under this act.

21 (5) Refusing to negotiate in good faith with a majority
22 representative of employees in an appropriate unit concerning terms
23 and conditions of employment of employees in that unit, or refusing to
24 process grievances presented by the majority representative.

25 (6) Refusing to reduce a negotiated agreement to writing and to
26 sign such agreement.

27 (7) Violating any of the rules and regulations established by the
28 commission.

29 b. Employee organizations, their representatives or agents are
30 prohibited from:

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

33 (2) Interfering with, restraining or coercing a public employer in the
34 selection of his representative for the purposes of negotiations or the

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

Matter underlined thus is new matter.

1 adjustment of grievances.

2 (3) Refusing to negotiate in good faith with a public employer, if
3 they are the majority representative of employees in an appropriate
4 unit concerning terms and conditions of employment of employees in
5 that unit.

6 (4) Refusing to reduce a negotiated agreement to writing and to
7 sign such agreement.

8 (5) Violating any of the rules and regulations established by the
9 commission.

10 (6) Establishing in their constitutions or by-laws any provision for
11 removing an employee from membership in the employee organization
12 or fining an employee for exercising rights guaranteed to him by this
13 act.

14 c. The commission shall have exclusive power as hereinafter
15 provided to prevent anyone from engaging in any unfair practice listed
16 in subsections a. and b. above. Whenever it is charged that anyone has
17 engaged or is engaging in any such unfair practice, the commission,
18 or any designated agent thereof, shall have authority to issue and cause
19 to be served upon such party a complaint stating the specific unfair
20 practice charged and including a notice of hearing containing the date
21 and place of hearing before the commission or any designated agent
22 thereof; provided that no complaint shall issue based upon any unfair
23 practice occurring more than 6 months prior to the filing of the charge
24 unless the person aggrieved thereby was prevented from filing such
25 charge in which event the 6-month period shall be computed from the
26 day he was no longer so prevented.

27 In any such proceeding, the provisions of the Administrative
28 Procedure Act P.L.1968, c.410 (C.52:14B-1 et seq.) shall be
29 applicable. Evidence shall be taken at the hearing and filed with the
30 commission. If, upon all the evidence taken, the commission shall
31 determine that any party charged has engaged or is engaging in any
32 such unfair practice, the commission shall state its findings of fact and
33 conclusions of law and issue and cause to be served on such party an
34 order requiring such party to cease and desist from such unfair
35 practice, and to take such reasonable affirmative action as will
36 effectuate the policies of this act. All cases in which a complaint and
37 notice of hearing on a charge is actually issued by the commission,
38 shall be prosecuted before the commission or its agent, or both, by the
39 representative of the employee organization or party filing the charge
40 or his authorized representative.

41 d. The commission shall at all times have the power and duty, upon
42 the request of any public employer or majority representative, to make
43 a determination as to whether a matter in dispute is within the scope
44 of collective negotiations. The commission shall serve the parties with
45 its findings of fact and conclusions of law. Any determination made
46 by the commission pursuant to this subsection may be appealed to the

1 Appellate Division of the Superior Court.

2 e. The commission shall adopt such rules as may be required to
3 regulate the conduct of representation elections, and to regulate the
4 time of commencement of negotiations and of institution of impasse
5 procedures so that there will be full opportunity for negotiations and
6 the resolution of impasses prior to required budget submission dates.

7 f. The commission shall have the power to apply to the Appellate
8 Division of the Superior Court for an appropriate order enforcing any
9 order of the commission issued under subsection c. or d. hereof, and
10 its findings of fact, if based upon substantial evidence on the record as
11 a whole, shall not, in such action, be set aside or modified; any order
12 for remedial or affirmative action, if reasonably designed to effectuate
13 the purposes of this act, shall be affirmed and enforced in such
14 proceeding.

15 (cf: P.L.1979, c.477, s.1)

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17 2. Section 2 of P.L.1979, c.477 (C.34:13A-5.5) is amended to read
18 as follows:

19 2. a. Notwithstanding any other provisions of law to the contrary
20 and subject to the provisions of section 3 of P.L.1979, c.477
21 (C.34:13A-5.6), the majority representative and the public employer
22 of public employees in an appropriate unit shall, where requested by
23 the majority representative, negotiate concerning the subject of
24 requiring the payment by all nonmember employees in the unit to the
25 majority representative of a representation fee in lieu of dues for
26 services rendered by the majority representative. Where agreement is
27 reached it shall be embodied in writing and signed by the authorized
28 representatives of the public employer and the majority representative.

29 b. The representation fee in lieu of dues shall be in an amount
30 equivalent to the regular membership dues, initiation fees and
31 assessments charged by the majority representative to its own
32 members less the cost of benefits financed through the dues, fees and
33 assessments and available to or benefitting only its members, but in no
34 event shall such fee exceed 85% of the regular membership dues, fees
35 and assessments.

36 c. Any public employee who pays a representation fee in lieu of
37 dues pursuant to the provisions of section 3 of P.L.1979, c.477
38 (C.34:13A-5.6) shall have the right to demand and receive from the
39 majority representative, under proceedings established and maintained
40 in accordance with section 3 of [this act] P.L.1979, c.477 (C.34:13A-
41 5.6), a return of any part of that fee paid by him which represents the
42 employee's additional pro rata share of expenditures by the majority
43 representative that is either in aid of activities or causes of a partisan
44 political or ideological nature only incidentally related to the terms and
45 conditions of employment or applied toward the cost of any other
46 benefits available only to members of the majority representative. The

1 pro rata share subject to refund shall not reflect, however, the costs of
2 support of lobbying activities designed to foster policy goals in
3 collective negotiations and contract administration or to secure for the
4 employees represented advantages in wages, hours, and other
5 conditions of employment in addition to those secured through
6 collective negotiations with the public employer.
7 (cf: P.L.1979, c.477, s.2)

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9 3. Section 3 of P.L.1979, c.477 (C.34:13A-5.6) is amended to read
10 as follows:

11 3. a. Where a negotiated agreement is reached, pursuant to section
12 2 of this act, a majority representative of public employees in an
13 appropriate unit shall be entitled to a representation fee in lieu of dues
14 [by payroll deduction] from the [wages or salaries of the] employees
15 in such unit who are not members of a majority representative;
16 provided, however, that membership in the majority representative is
17 available to all employees in the unit on an equal basis and that the
18 representation fee in lieu of dues shall be available only to a majority
19 representative that has established and maintained a [demand and
20 return] system which provides [pro rata returns as described in section
21 2(c).] employees in the unit who are not members with a bill for
22 payment of the representation fee on a quarterly basis and, with the
23 bill, an itemization of the expenses incurred for that unit which justifies
24 the amount presented to the nonmember employees. Upon receipt of
25 the bill and the itemized expenses justifying the amount, the employee
26 shall pay the amount in full within five days; except that if the
27 employee regards the justification of the amount of the bill as
28 insufficient, the employee may request a review of the amount and the
29 itemized expenses justifying the amount [The demand and return
30 system shall include a provision by which persons who pay a
31 representation fee in lieu of dues may obtain review of the amount
32 returned] through full and fair proceedings placing the burden of proof
33 on the majority representative. Such proceedings shall provide for an
34 appeal to a board consisting of three members to be appointed by the
35 Governor, by and with the advice and consent of the Senate, who shall
36 serve without compensation but shall be reimbursed for actual
37 expenses reasonably incurred in the performance of their official
38 duties. Of such members, one shall be representative of public
39 employers, one shall be representative of public employee
40 organizations and one, as chairman, who shall represent the interest of
41 the public as a strictly impartial member not having had more than a
42 casual association or relationship with any public employers, public
43 employer organizations or public employee organizations in the 10
44 years prior to appointment. Of the first appointees, one shall be
45 appointed for 1 year, one for a term of 2 years and the chairman, for
46 a term of 3 years. Their successors shall be appointed for terms of 2

1 years each and until their successors are appointed and qualified,
2 except that any person chosen to fill a vacancy shall be appointed only
3 for the unexpired term of the member whose office has become vacant.
4 If an employee requests a review of the amount of the representation
5 fee billed, the majority representative shall deposit the payment in an
6 escrow account established pursuant to subsection b. of this section.
7 Nothing herein shall be deemed to require any employee to become a
8 member of the majority representative.

9 b. In order to be eligible to receive a representation fee in lieu of
10 dues from nonmember employees, a majority representative shall
11 establish an escrow account in a State or federally chartered bank,
12 savings bank, savings and loan association or credit union into which
13 the majority representative shall deposit the payments of a nonmember
14 employee who requests a review of the amount as provided in
15 subsection a. of this section.

16 c. The majority representative shall establish with the employer a
17 procedure for use each fiscal year which provides the employees
18 represented by that majority representative the choice of full
19 membership with dues deducted by a payroll deduction system or
20 nonmember status with a representation fee payable as set forth in
21 subsection a. of this section. This choice shall be provided to
22 employees no later than April of the fiscal year preceding the fiscal
23 year in which the option chosen by an employee shall be effective.

24 d. The commission shall promulgate regulations in order to
25 effectuate the provisions of this section including, but not limited to
26 the:

27 (1) establishment and administration of escrow accounts;

28 (2) operation of the review system; and

29 (3) determination of how the disposition of the representation fee,
30 including any interest earned, shall be made upon a decision by the
31 review board with respect to the reasonableness of the representation
32 fee.

33 (cf: P.L.1979, c.477, s.3)

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35 4. Section 5 of P.L.1979, c.477 (C.34:13A-5.8) is amended to read
36 as follows:

37 5. Payment of the representation fee in lieu of dues shall be made
38 to the majority representative in accordance with the provisions of
39 section 3 of P.L.1979, c.477 (C.34:13A-5.6) during the term of the
40 collective negotiation agreement affecting such nonmember employees
41 and during the period, if any, between successive agreements so
42 providing, on or after, but in no case sooner than the thirtieth day
43 following the beginning of an employee's employment in a position
44 included in the appropriate negotiations unit, and the tenth day
45 following reentry into the appropriate unit for employees who
46 previously served in a position included in the appropriate unit who

1 continued in the employ of the public employer in an excluded position
2 and individuals being reemployed in such unit from a reemployment
3 list. For the purposes of this section, individuals employed on a
4 10-month basis or who are reappointed from year to year shall be
5 considered to be in continuous employment.

6 (cf: P.L.1979, c.477, s.5)

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8 5. This act shall take effect on the 180th day following enactment.

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STATEMENT

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13 This bill makes it an unfair labor practice if a public employee
14 organization, its representative or agent establishes in its constitution
15 or by-laws any provision for removing an employee from membership
16 in the employee organization or fining an employee for exercising
17 rights guaranteed under the "New Jersey Employer-Employee
18 Relations Act," P.L.1941, c.100, (C.34:13A-1 et seq.). In addition the
19 bill changes the method by which employees in the unit who are not
20 members of the unit pay representative fees in lieu of dues. The
21 majority representative is required to establish a system by which
22 employees in the unit are asked to select the option of becoming a
23 member with dues paid by payroll deduction or becoming a
24 nonmember billed on a quarterly basis for a representation fee in lieu
25 of dues. This choice must be made by April of the fiscal year
26 preceding the fiscal year in which an employee's choice would be
27 effective. In addition to billing nonmembers on a quarterly basis, the
28 majority representative is also required to provide the itemized
29 expenses incurred for that unit that would justify the amount of the
30 bill. The nonmember is required to pay this bill within five days of
31 receipt. If the nonmember wishes to challenge the amount as not
32 justified, the nonmember may appeal the amount to the existing board
33 for a full and thorough hearing. If the nonmember challenges the
34 amount, the majority representative is required to deposit the
35 nonmember's payment into an escrow account established and
36 administered in accordance with the provisions of the bill and
37 regulations promulgated by the New Jersey Public Employment
38 Relations Commission.

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43 Clarifies certain rights of employees in public sector employee
44 organizations.