

House Proposal of Amendment

S. 14

An act relating to payment of fair-share fees.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

* * * State Employees * * *

Sec. 1. 3 V.S.A. § 902 is amended to read:

§ 902. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

* * *

(19) “Collective bargaining service fee” means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization which is the exclusive bargaining agent for the bargaining unit of the employee. The collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization, and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization, and shall be used to defray the costs ~~incurred by the employee organization in fulfilling its duty to represent the employees in their employment relations with the state~~ of chargeable activities.

Sec. 2. 3 V.S.A. § 903 is amended to read:

§ 903. EMPLOYEES’ RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except as provided in ~~subsection (b)~~ subsections (b) and (c) of this section, and to appeal grievances as provided in this chapter.

(b) ~~No~~ A state employee may not strike or recognize a picket line of an employee or labor organization while in the performance of his or her official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee’s collective bargaining unit shall pay the collective bargaining service fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative. The employee organization shall indemnify and hold the employer harmless from any and all claims stemming from the implementation

or administration of the collective bargaining service fee. Nothing in this section shall require an employer to discharge an employee who does not pay the collective bargaining service fee.

(d) All employers, their officers, agents, and employees or representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 904 of this title and to settle all disputes, whether arising out of the application of those agreements, or growing out of any dispute between the employer and the employees thereof.

Sec. 3. 3 V.S.A. § 904 is amended to read:

§ 904. SUBJECTS FOR BARGAINING

(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters which are prescribed or controlled by statute. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by statute include ~~but are not limited to:~~

* * *

(9) ~~Rules~~ rules and regulations for personnel administration, except the following: rules and regulations relating to persons exempt from the classified service under section 311 of this title and rules and regulations relating to applicants for employment in state service and employees in an initial probationary status, including any extension or extensions thereof provided such rules and regulations are not discriminatory by reason of an applicant's race, color, creed, sex, or national origin; and

(10) ~~A collective bargaining service fee~~ the manner in which to enforce an employee's obligation to pay the collective bargaining service fee.

* * *

Sec. 4. 3 V.S.A. § 941 is amended to read:

§ 941. UNIT DETERMINATION, CERTIFICATION, AND REPRESENTATION

* * *

(k) Nothing in this chapter requires an individual to seek the assistance of his or her collective bargaining unit or its representative(s) in any grievance proceeding. He or she may represent himself or herself or be represented by counsel of his or her own choice or may avail himself or herself of the unit representative in grievance proceedings. ~~Employees who are eligible for membership in a collective bargaining unit who exercise their right not to join such unit may upon agreement with the unit representative avail themselves of the services of the unit representative(s) in grievance proceedings upon~~

~~payment to the unit of a fee established by the unit representative, provided that in the event a collective bargaining service fee is negotiated, the unit representative shall represent nonmember employees in grievance proceedings without charge.~~

Sec. 5. 3 V.S.A. § 962 is amended to read:

§ 962. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

* * *

(10) To charge a collective bargaining fee ~~negotiated pursuant to section 904 of this title~~ unless such employee organization has established and maintained a procedure to provide nonmembers with:

(A) an audited financial statement that identifies the major categories of expenses, and divides them into chargeable and nonchargeable expenses;

(B) an opportunity to object to the amount of the agency fee sought, any amount reasonably in dispute to be placed in escrow;

(C) prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

Sec. 5a. 3 V.S.A. § 1008 is added to read:

§ 1008. CONTRACT RATIFICATION; ANNUAL VOTE

Annually, the employees of the bargaining unit shall meet and discuss whether employees who have chosen not to join the employee organization shall be allowed to vote on the ratification of any collective bargaining agreement entered into pursuant to this chapter. After discussion, employees that are members of the employee organization shall vote on whether to allow employees who have chosen not to join the employee organization to vote on the ratification of any collective bargaining agreement.

* * * Judiciary Employees * * *

Sec. 6. 3 V.S.A. § 1011 is amended to read:

§ 1011. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

* * *

(4) “Collective bargaining service fee,” means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, and that fee is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. A

collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization; shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization; and shall be used to defray the costs ~~incurred by the employee organization in fulfilling its duty to represent the employees in their employment relations with the employer~~ of chargeable activities.

* * *

Sec. 7. 3 V.S.A. § 1012 is amended to read:

§ 1012. EMPLOYEES' RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through their chosen representatives; to engage in concerted activities of collective bargaining or other mutual aid or protection; to refrain from any or all those activities, except as provided in ~~subsection (b)~~ subsections (b) and (c) of this section; and to appeal grievances as provided in this chapter.

(b) ~~No~~ An employee may not strike or recognize a picket line of an employee organization while performing the employee's official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee's certified unit pursuant to section 1021 of this title shall pay a collective bargaining service fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative. The employee organization shall indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the collective bargaining service fee. Nothing in this section shall require an employer to discharge an employee who does not pay the collective bargaining service fee.

~~(e)~~(d) The employer and employees and the employee's representative shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 1013 of this title and to settle all disputes, whether arising out of the application of those agreements or growing out of any dispute between the employer and the employees.

Sec. 8. 3 V.S.A. § 1013 is amended to read:

§ 1013. SUBJECTS FOR BARGAINING

All matters relating to the relationship between the employer and employees are subject to collective bargaining, to the extent those matters are not prescribed or controlled by law, including:

* * *

(10) A collective bargaining service fee the manner in which to enforce an employee's obligation to pay the collective bargaining service fee.

Sec. 9. 3 V.S.A. § 1027 is amended to read:

§ 1027. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

* * *

(10) To charge a ~~negotiated~~ collective bargaining fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

Sec. 9a. 3 V.S.A. § 1044 is added to read:

§ 1044. CONTRACT RATIFICATION; ANNUAL VOTE

Annually, the employees of the bargaining unit shall meet and discuss whether employees who have chosen not to join the employee organization shall be allowed to vote on the ratification of any collective bargaining agreement entered into pursuant to this chapter. After discussion, employees that are members of the employee organization shall vote on whether to allow employees who have chosen not to join the employee organization to vote on the ratification of any collective bargaining agreement.

* * * Teachers * * *

Sec. 10. 16 V.S.A. § 1981 is amended to read:

§ 1981. DEFINITIONS

As used in this chapter unless the context requires otherwise:

* * *

(7) “Agency fee” ~~means a fee for representation in collective bargaining, not exceeding teachers’ or administrators’ organization dues, payable to the organization which is the exclusive bargaining agent for teachers or administrators in a bargaining unit, from individuals who are not members of the organization~~ means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. The collective bargaining

service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization and shall be used to defray the costs of chargeable activities.

* * *

Sec. 11. 16 V.S.A. § 1982 is amended to read:

§ 1982. RIGHTS

(a) Teachers shall have the right to or not to join, assist, or participate in any teachers' organization of their choosing. However, teachers ~~may be required to pay an agency fee~~ who choose not to join the teachers' organization, recognized as the exclusive representative pursuant to an agreement negotiated under section 1992 of this chapter, shall pay the agency fee in the same manner as teachers who choose to join the teachers' organization pay membership fees. The teachers' organization shall indemnify and hold the school board harmless from any and all claims stemming from the implementation or administration of the agency fee.

(b) Principals, assistant principals, and administrators other than superintendent and assistant superintendent shall have the right to or not to join, assist, or participate in any administrators' organization or as a separate unit of any teachers' organization of their choosing. However, subject to the provisions of subsection (d) of this section, administrators other than the superintendent and assistant superintendent ~~may be required to pay an agency fee who choose not to join the administrators' organization, recognized as the exclusive representative pursuant to an agreement negotiated under section 1992 of this chapter, shall pay the agency fee in the same manner as administrators who choose to join the administrators' organization pay membership fees.~~ The administrators' organization agrees to indemnify and hold the school harmless from any and all claims stemming from the implementation or administration of the agency fee.

(c) ~~Neither the~~ The school board nor or any employee of the school board serving in any capacity, ~~nor~~ or any other person or organization shall not interfere with, restrain, coerce, or discriminate in any way against or for any teacher or administrator engaged in activities protected by this legislation.

(d) A teachers' or administrators' organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute;

(3) prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the teachers' or administrators' organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency fee. The costs of arbitration shall be paid by the teachers' or administrators' organization.

(e) Nothing in this section shall require an employer to discharge an employee who does not pay the agency fee.

Sec. 12. 16 V.S.A. § 2004 is amended to read:

§ 2004. AGENDA

The school board, through its negotiations council, shall, upon request, negotiate with representatives of the teachers' or administrators' organization negotiations council on matters of salary, related economic conditions of employment, ~~an~~ the manner in which it will enforce an employee's obligation to pay the agency service fee, procedures for processing complaints and grievances relating to employment, and any mutually agreed upon matters not in conflict with the statutes and laws of the state State of Vermont.

Sec. 12a. 16 V.S.A. § 2028 is added to read:

§ 2028. CONTRACT RATIFICATION; ANNUAL VOTE

Annually, the employees of the bargaining unit shall meet and discuss whether employees who have chosen not to join the employee organization shall be allowed to vote on the ratification of any collective bargaining agreement entered into pursuant to this chapter. After discussion, employees that are members of the employee organization shall vote on whether to allow employees who have chosen not to join the employee organization to vote on the ratification of any collective bargaining agreement.

* * * Certain Private Sector Employees * * *

Sec. 13. 21 V.S.A. § 1502 is amended to read:

§ 1502. DEFINITIONS

~~In~~ As used in this chapter the following words shall have the following meaning:

* * *

(14) "Agency fee" means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. A collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of

the employee organization and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization and shall be used to defray the costs of chargeable activities.

Sec. 14. 21 V.S.A. § 1503 is amended to read:

§ 1503. RIGHTS OF EMPLOYEES; MUTUAL DUTY TO BARGAIN

(a) Employees shall have the right to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in ~~section~~ subsection 1621(a) of this title. An employee who exercises the right not to join the labor organization representing the employee's certified unit pursuant to section 1581 of this title shall, subject to subsection (b) of this section, pay the agency fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative. The labor organization agrees to indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the agency fee.

(b) A labor organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute;

(3) prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the teachers' or administrators' organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency fee. The costs of arbitration shall be paid by the labor organization.

Sec. 15. 21 V.S.A. § 1621 is amended to read:

§ 1621. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

* * *

(6) Nothing in this chapter or any other statute of this state shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this subsection (a) as an unfair labor practice) to require as a condition of

employment membership in such labor organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 1583 of this chapter, in the appropriate collective bargaining unit covered by such agreement when made; and (ii) unless following an election held as provided in section 1584 of this chapter within one year preceding the effective date of such agreement, the ~~board~~ Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. Nothing in this section shall require an employer to discharge an employee in the absence of such an agreement. ~~No~~ An employer shall not justify any discrimination against an employee for nonmembership in a labor organization:

(A) ~~If~~ if the employer has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) ~~If~~ if the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

* * *

(b) It shall be an unfair labor practice for a labor organization or its agents:

* * *

(5) To require employees covered by ~~a~~ the agency fee requirement or other union security agreement authorized under subsection (a) of this section to pay, as a condition precedent to becoming a member of such organization, a fee in an amount which the ~~board~~ Board finds excessive or discriminatory under all the circumstances. In making such a finding, the ~~board~~ Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected.

* * *

Sec. 15a. 21 V.S.A. § 1624 is added to read:

§ 1624. CONTRACT RATIFICATION; ANNUAL VOTE

Annually, the employees of the bargaining unit shall meet and discuss whether employees who have chosen not to join the employee organization shall be allowed to vote on the ratification of any collective bargaining agreement entered into pursuant to this chapter. After discussion, employees that are members of the employee organization shall vote on whether to allow

employees who have chosen not to join the employee organization to vote on the ratification of any collective bargaining agreement.

* * * Municipal Employees * * *

Sec. 16. 21 V.S.A. § 1722 is amended to read;

§ 1722. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

(1) ~~“Agency service fee” means a fee for representation in collective bargaining not exceeding employee organization dues, payable to an employee organization which is the exclusive bargaining agent for employees in a bargaining unit from individuals who are not members of the employee organization~~ a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. A collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization and shall be used to defray the costs of chargeable activities.

* * *

Sec. 17. 21 V.S.A. § 1726 is amended to read:

§ 1726. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

* * *

(8) ~~Nothing in this chapter or any other statute of this state shall preclude a municipal employer from making an agreement with the exclusive bargaining agent to require an agency service~~ A municipal employer and the exclusive bargaining agent may agree to require the agency service fee to be paid as a condition of employment, or to require as a condition of employment membership in such employee organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later. Nothing in this section shall require an employer to discharge an employee in the absence of such an agreement. No ~~A~~ A municipal employer shall not discharge or discriminate against any employee for nonpayment of ~~an~~ the agency service fee or for nonmembership in an employee organization:

(A) ~~If~~ if the employer has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) ~~If~~ if the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

(b) It shall be an unfair labor practice for an employee organization or its agents:

* * *

(6) ~~To~~ to require employees covered by ~~an~~ the agency service fee ~~agreement~~ requirement or other union security agreement authorized under subsection (a) of this section to pay an initiation fee which the ~~board~~ Board finds excessive or discriminatory under all the circumstances, including the practices and customs of employee organizations representing municipal employees; and the wages paid to the employees affected.

* * *

(12) to charge the agency service fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(B) an opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute; and

(C) prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the employee organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency service fee. The costs of arbitration shall be paid by the employee organization.

Sec. 18. 21 V.S.A. § 1734 is amended to read:

§ 1734. MISCELLANEOUS

(a) Municipal employees and exclusive bargaining agents are authorized to negotiate provisions in a collective bargaining agreement calling for:

(1) ~~Payroll~~ payroll deduction of employee organization dues and initiation fees; ~~or an agency service fee;~~

(2) ~~Binding~~ binding arbitration of grievances involving the interpretation or application of a written collective bargaining agreement. The cost of arbitration shall be shared equally by the parties.

* * *

(d) In the absence of an agreement requiring an employee to be a member of the employee organization, an employee choosing not to be a member of the employee organization shall pay the agency service fee in the same manner as employees who choose to join the employee organization pay dues. The employee organization shall indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the agency service fee.

Sec. 18a. 21 V.S.A. § 1736 is added to read:

§ 1736. CONTRACT RATIFICATION; ANNUAL VOTE

Annually, the employees of the bargaining unit shall meet and discuss whether employees who have chosen not to join the employee organization shall be allowed to vote on the ratification of any collective bargaining agreement entered into pursuant to this chapter. After discussion, employees that are members of the employee organization shall vote on whether to allow employees who have chosen not to join the employee organization to vote on the ratification of any collective bargaining agreement.

* * * Moderation of Union Dues * * *

Sec. 19. MODERATION OF UNION DUES

An employee organization shall use any increased revenue resulting from the implementation of this act solely for the purpose of moderating its existing membership dues.

Sec. 19a. SCHOOL EMPLOYEES; MERIT PAY; ANALYSIS

(a) The Secretary of Education shall analyze whether and in what ways public education in Vermont would benefit from including merit pay provisions in school employee contracts under 16 V.S.A. chapter 57 and 21 V.S.A. chapter 22. Among other considerations, the Secretary shall examine whether merit pay would improve the quality of education and increase opportunities available to Vermont students.

(b) The Secretary shall consult with members of the House Committee on General, Housing and Military Affairs, the Senate Committee on Economic Development, Housing and General Affairs, and the House and Senate Committees on Education, with stakeholders, and with other interested parties.

(c) On or before January 15, 2014, the Secretary shall submit a report to the committees identified in subsection (b) of this section regarding the analysis, including the factors considered, the results of the analysis, whether merit pay provisions would benefit Vermont students, and recommendations, if any.

* * * Effective Dates * * *

Sec. 20. EFFECTIVE DATES

This act shall take effect on June 30, 2013 and apply to employees subject to 3 V.S.A. chapters 27 and 28, 16 V.S.A. chapter 57, and 21 V.S.A. chapters 19 and 22 on the date following the expiration date stated in the collective bargaining agreement, if any, then in effect, but in no event shall an employee be required to pay an agency fee under this act for any period prior to July 1, 2013 unless an existing collective bargaining agreement requires payment of the fee. In the event that no collective bargaining agreement is in effect on June 30, 2013, this act shall take effect on June 30, 2013 and apply to employees subject to 3 V.S.A. chapters 27 and 28, 16 V.S.A. chapter 57, and 21 V.S.A. chapters 19 and 22 on July 1, 2013.

and that after passage the title of the bill be amended to read: "An act relating to payment of agency fees and collective bargaining service fees"