

Education Minnesota, Union Membership and the First Amendment

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EducatedTeachersMN seeks to inform and empower teachers by offering them educational material to evaluate their exclusive representative relationship with the national and state teachers' unions, how dues are being spent and consider alternatives to membership in the union. Informed and empowered teachers are more likely to enjoy teaching and are better suited to serve the needs of students. EducatedTeachersMN is a project of Center of the American Experiment, Minnesota's leading public policy organization.

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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

First Amendment to the United States Constitution

Introduction

Until recently, teachers and education support professionals (ESPs) did not have a meaningful choice about union membership. Minnesota’s K-12 teachers and ESPs were required, as a condition of employment, to either join Education Minnesota, or decline to join but pay 85 percent of dues (i.e., “fair-share” or agency fees) while losing all the rights of membership.

That changed on June 27, 2018 when the U.S. Supreme Court said “fair-share” fees were not fair at all because they violate the First Amendment rights of public employees. Now educators, for the first time in over forty years, have a more meaningful choice about union membership.

This paper is designed to provide educators with information they need to make an informed decision about the financial commitment and other consequences of joining Education Minnesota. Specifically, this paper explains what the Supreme Court said in June of 2018 about agency fees, how the terms of union membership are out of compliance with the Constitution, and how Education Minnesota collects and spends teachers’ dues.

The Landmark *Janus* Case. Teachers may recall that Rebecca Friedrichs, a California school teacher, sued her state union over forced fair-share fees the Court condoned in a 1977 case called *Abood v. Detroit Board of Education*. Her case (*Friedrichs v. California Teachers Association*) reached the U.S. Supreme Court in 2016. Mrs. Friedrichs’ argument was simple: because all collective-bargaining is inherently political, forcing her to fund it violated her First Amendment rights, and she asked the Court to overturn *Abood*. A 5-4 majority, including Justice Antonin Scalia, appeared to agree during oral argument, but before the Court issued a written opinion, Justice Scalia died. The case ended in a 4-4 deadlock.

Another case, *Janus v. AFSCME*, was pending when *Friedrichs* ended in deadlock. Mark Janus, a social worker from Illinois, made the same First Amendment argument as Mrs. Friedrichs.

I don’t see my union working totally for the good of Illinois government. For years it supported candidates who put Illinois into its current budget and pension crisis. Government unions have pushed for government spending that made the state’s fiscal situation worse. How is that good for the people of the state? The union voice is not my voice. The union’s fight is not my fight. But a

piece of my paycheck every week still goes to the union... And I shouldn't be forced to pay money to a union if I don't think it does a good job representing my interests.¹

The U.S. Supreme Court agreed with Mrs. Friedrichs and Mr. Janus on June 27, 2018, saying the First Amendment protects all public employees from getting fired if they decline to financially support a union. Public employees, including teachers, no longer have to pay fair-share fees to take and keep their job. Here is Justice Alito writing for the majority of the Court.

For these reasons, States and public-sector unions may no longer extract agency fees from nonconsenting employees... This procedure violates the First Amendment and cannot continue. Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed... Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence... Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.²

Why did the Court use such strong language? Because the First Amendment rights of public employees, which have been violated for over forty years, are at stake. The right to speak or not to speak, the right to associate or not to associate, which protect citizens against being forced to fund someone else's political speech, are the bedrock of our freedom and constitutional republic. These rights define, in part, what it is to be uniquely American. Any impingement of the First Amendment must meet what is called the "strict scrutiny test," which is why the Court describes *Abood* as an "outlier"³ that was bound to be overruled. The only puzzle is why it took so long.

The Court also directly addressed collective bargaining by teachers and the field of education.

Take the example of education, which was the focus of briefing and argument in *Friedrichs*. The public importance of subsidized union speech is especially apparent in this field, since educators make up by far the largest category of state and local government employees, and education is typically the largest component of state and local government expenditures.

Speech in this area also touches on fundamental questions of education policy. Should teacher pay be based on seniority, the better to retain experienced teachers? Or should schools adopt merit-pay systems to encourage teachers to get the best results out of their students? Should districts transfer more experienced teachers to the lower performing schools that may have the greatest need for their skills, or should those teachers be allowed to stay where they have put down roots? Should teachers be given tenure protection and, if so, under what conditions? On what grounds and pursuant to what procedures should teachers be subject to discipline or dismissal? How should teacher performance and student progress be measured—by standardized tests or other means?

Unions can also speak out in collective bargaining on controversial subjects such as climate change, the Confederacy, sexual orientation and gender identity, evolution, and minority religions. These are sensitive political topics, and they are undoubtedly matters of profound "value and concern to the public." We have often recognized that such speech "occupies the highest rung of the hierarchy of

¹ Mark Janus, "Why I don't want to pay union dues," *Chicago Tribune*, January 5, 2016, <https://www.chicagotribune.com/news/opinion/commentary/ct-union-dues-supreme-court-afscme-perspec-0106-20160105-story.htm>.

² See, *Janus v. AFSCME*, 585 U.S. __ (2018), pp. 48-49.

³ *Ibid*, p. 4.

First Amendment values” and merits “special protection.” What does the dissent say about the prevalence of such issues? The most that it is willing to admit is that “some” issues that arise in collective bargaining “raise important non-budgetary disputes.” Here again, the dissent refuses to recognize what actually occurs in public-sector collective bargaining.⁴

The *Janus* ruling acknowledged how the Court’s serious error in *Abood* forced countless public employees like Mr. Abood, Mrs. Friedrichs and Mr. Janus to fund speech and a political agenda they did not agree with, and how that error resulted in an unconstitutional advantage and “windfall” for public-sector unions.

We recognize that the loss of payments from nonmembers may cause unions to experience unpleasant transition costs in the short term, and may require unions to make adjustments in order to attract and retain members. But . . . we must weigh these disadvantages against the considerable windfall that unions have received under *Abood* for the past 41 years. It is hard to estimate how many billions of dollars have been taken from nonmembers and transferred to public-sector unions in violation of the First Amendment.⁵

Although the Court said money cannot be taken from public employees unless they had freely waived their First Amendment rights, and that such a waiver cannot be presumed but rather proven by “clear and compelling evidence,” it will take time, perhaps years, for union membership rules, restrictions and dues-collection practices to be brought into compliance with the high standards required by the First Amendment.

For example, as discussed in more detail below, Education Minnesota only allows union members to resign from union membership during a very narrow seven-day window. These narrow and restrictive membership rules are not expected to survive legal challenge, but until those matters are settled either by the courts or the legislature, Minnesota teachers are subject to the terms unilaterally dictated by Education Minnesota.

Similarly, it is not clear whether school districts have any evidence, let alone “clear and compelling evidence,” that employees have freely consented to union membership. As of June 27, 2018, public employers and unions were put on notice of two things: they were to stop deducting agency fees from nonmember paychecks, and they needed evidence that members freely consented to waive their First Amendment rights before dues could be deducted from another paycheck.

It appears that Minnesota employers, with a few exceptions, promptly complied with the Court’s order to stop deducting agency fees from nonmembers (including religious objectors). But public employers and unions in Minnesota have not documented the affirmative consent of union members, by requiring, for example, a copy of the union card dated June 28, 2018 or later with a certified acknowledgment and a waiver of their First Amendment rights.

Exclusive Representation: A Union Right and Obligation. The *Janus* ruling did not affect the long-standing statutory right of unions to exclusively represent all employees in a bargaining unit. Local representatives of Education Minnesota, at K-12 school districts in Minnesota including three charter schools, will continue to collectively bargain over salaries, work rules and certain benefits (not including pensions).⁶

⁴ See, *Janus v. AFSCME*, 585 U.S. __ (2018), pp. 29-31.

⁵ *Ibid.*, p. 47.

⁶ Pensions, while not subject to collective bargaining under Minnesota law, are certainly “on the table” for districts and the legislature when negotiating teacher contracts. The contribution rates, however, for school districts as the employer and teachers as the employee are set by the Legislative Commission on Pensions and Retirement (LCPR), a joint legislative body. The teachers’ union lobbies the LCPR and the legislature; the board of trustees for the Teachers Retirement Association (TRA) is, and has historically been, dominated by past and present teachers’ union representatives.

The flip side of the union’s right of exclusive agency is the duty to fairly represent all employees covered by the union contract (members and nonmembers alike). This raises the issue of “free riders” which will be discussed below. Unions argue it is unfair to require them to represent employees who do not pay union dues. The Court in *Janus* addressed the union’s argument that unions would not, and should not have to, represent nonmembers.

... it is simply not true that unions will refuse to serve as the exclusive representative of all employees in the unit if they are not given agency fees. As noted, unions represent millions of public employees in jurisdictions that do not permit agency fees. ... Even without agency fees, designation as the exclusive representative confers many benefits. ... These benefits greatly outweigh any extra burden imposed by the duty of providing fair representation for nonmembers.

Importantly, the Court also made it clear that the statutory privilege enjoyed by public-sector unions to exclusively represent employees, while allowed by federal and state labor statutes and blessed by the Supreme Court in 1984⁷, raises serious First Amendment concerns.

[T]he State may require that a union serve as exclusive bargaining agent for its employees—itsself a significant impingement on associational freedoms that would not be tolerated in other contexts.

The High Court warned public unions that they are expected to fairly represent nonmembers in the wake of *Janus*.⁸ If unions wish to maintain the monopolistic privilege of exclusive agency, it would be a mistake, for example, to treat (or threaten to treat) nonmembers differently, or to favor (or threaten to favor) members over nonmembers in collective bargaining or other representational duties.

Because public-sector unions can no longer collect agency fees or count on guaranteed income, perhaps they will become more focused on the needs of the people they represent. Here is a story from a talented teacher whose experience drove him to leave the public schools.

By any measure, Nathan Streng is an outstanding teacher. Accepted into the Gates Foundation’s Teacher Advisory Council, he’s won national teaching honors and been nominated as Minnesota’s Teacher of the Year. But the enormous skill and dedication that earned such recognition were not enough to move the union Nathan financially supported to save his job. In fact, it was rules set up by the union that mandated Nathan be laid off.

⁷ *Ellis v. Brotherhood of Ry. Employees*, 466 U.S. 435 (1984), “Forced contributions for union social affairs do not increase the infringement of the employee’s First Amendment rights. And while both union publications and conventions have direct communicative content, there is little additional infringement of First Amendment rights, and none that is not justified by the governmental interests behind the union shop itself,” <https://supreme.justia.com/cases/federal/us/466/435/>.

⁸ The Court used the same language here (an “impingement” on First Amendment rights) that the Court used to describe agency fees in *Abood v. Detroit Board of Education*, now overturned by the Court in *Janus*. The Court in *Janus*, no doubt, chose its language carefully and meant this as a warning.

Back in 2011, Nathan was teaching math at a public school just outside of the Twin Cities. In only his second year at the school he proved to be exceptional at his craft, teaching Algebra II and Pre-Calculus, and was the only teacher accredited to teach AP Statistics. Nonetheless, when budget cuts were announced at the end of the school year, Nathan was laid off. His principal fought in vain to save Nathan's job.

Nathan was a victim of LIFO—"Last In, First Out"—a union-mandated practice that allows tenured teachers to remain, irrespective of quality, while those at the start of their careers or just beginning in a school district are the first to go.



"The moment I realized that quality would play no part in saving my job was like getting punched hard in the stomach," Nathan says. "Up to that point in my life I believed a narrative that quality of one's performance was the most important thing."

Unions often justify taking money out of workers' paychecks by saying they provide protection and job security for members. But, many times, union rules specifically target their own members to protect the status quo.

Nathan says it was maddening to talk to union leaders about his predicament only to have them parrot "Well, that's just the way it is." What was equally frustrating, he says, was that union officials weren't concerned about the effect such policies had on the students deprived of the best possible teachers.

“I did assume they would want to try to explore options that would be mutually beneficial to students and dues-paying teachers,” says Nathan, head of the math department at a prestigious private school. “One union leader told me that I would appreciate the security when I was more experienced. I disagreed then as much as I disagree now; the cost of that level of security is student learning and alienated young teachers.”⁹

The Union Card: Unilateral Membership Terms. When teachers in Minnesota join the union, they sign an Education Minnesota union card.¹⁰ Membership terms and dues are set by the union alone; they are non-negotiable. The card authorizes the deduction of monthly dues by a teacher’s employer and includes automatic membership renewal language. Teachers should read the fine print and exercise caution before providing personal data and signing the union card.

The PAC and the Foundation: An Undue Burden on First Amendment Rights. Education Minnesota uses its membership card to collect revenue for a Political Action Committee (PAC), currently a charge of \$25 a year. The union card also authorizes the payment of \$5 a year toward Education Minnesota’s Foundation for Excellence in Teaching and Learning, an educational non-profit.

Political Action Committee (PAC): Your dues include \$25 per year for the Education Minnesota PAC. The PAC uses these contributions to fund political action efforts to strengthen the collective voice of educators in public policymaking.

Foundation for Excellence in Teaching and Learning: Your dues include \$5 per year towards the Education Minnesota Foundation. The Foundation uses these contributions to fund member grants as well as workshops that support and promote access to learning and excellence in teaching.

If a new teacher does not wish to contribute to the PAC or the Foundation, he or she must ask for a refund every year by calling the union to request and submit two different forms within 30 days of submitting a new membership application. If a teacher is already a member, he or she must submit the PAC and Foundation refund request forms found in the October issue of the union’s magazine by October 31. *Members are required to request these refunds every year, as well.* There is no option to request the refund online, and no photocopies of the forms are permitted. If you miss the union-imposed deadlines, you are not eligible for a refund.

This default favors funding the PAC and the Foundation and makes it more likely than not that teachers will forego submitting the annual paperwork required to save \$30. Here is a transcript from Education Minnesota’s refund request hotline.

⁹ Nathan Streng, “Stories,” EducatedTeachersMN.com, originally published by “For Kids & Country.”

¹⁰ It may be that the union has not kept a careful record of union cards; that might explain Education Minnesota’s renewal campaign in 2017. Given the *Janus* decision and follow-on litigation, the union can be expected to ask all teachers and ESPs to sign a new card. We note that the form asks for the last four digits of social security numbers; why would the union need that data? We warn members against providing that data due to the risk of identity theft. It also asks for personal contact information such as a cell phone number and other phone numbers. Members who provide that information are agreeing to get robo-calls and texts 4-5 times a month. The membership form is available online, <https://www.educationminnesota.org/member-benefits/join-us/New-member/Apply>.

You have reached the Education Minnesota refund request hotline. The refund request forms for the political action committee and the Foundation for Excellence in Teaching and Learning appear in the October issue of the *Minnesota Educator*. This issue should be mailed to your home between the last week of September and the first week of October. To qualify for the refund, you must be an active member of Education Minnesota. ... Only one set of forms may be requested per individual. You may not request multiple forms to be sent to you or request forms for others. Photocopies will not be accepted. These forms will not be available to Education Minnesota to mail out to you until the first week of October in the current school year. If you are calling to request copies please leave your name, including spelling, complete address, and the forms you wish to have sent. These forms will be mailed the first week of October. This date also applies to new members starting at the beginning of the school year. The forms must be mailed back to Education Minnesota postmarked by October 31. You can expect your refund check to be mailed by November 30. If you join Education Minnesota mid-year, you have 30 days from the day you signed your membership to request the forms. Please state the date you signed your membership application on this message. Once you have received your refund forms, please submit within 30 days. Thank you.

Teachers who do not wish to fund the PAC or the Foundation, as well as teachers who object to this annual ritual as a matter of principle, should take the time to request a refund. If a large enough percentage of teachers stop funding the PAC or Foundation, Education Minnesota might rethink its disrespectful approach. It would be an effective way to give the union feedback and get its attention.

The process for getting these refunds is clearly designed to discourage teachers from exercising their constitutional right not to fund the political and charitable activities of the union. Like the narrow seven-day window for resigning from membership, this burden on teachers, if challenged, is not expected to survive scrutiny under the First Amendment.

How Much Teachers Pay in Dues. Education Minnesota's revenue from union dues and fair-share fees paid by nonmembers in 2017 was approximately \$50 million, though the union has revenue from other sources, as well. The union divides the revenue from teachers between the local union, state union and its two national affiliates—the National Education Association (NEA) and the American Federation of Teachers (AFT)—with Education Minnesota taking the bulk of the revenue even though the local conducts the representational and day-to-day activities.

Total annual dues range from about \$800 to well over \$1,000.¹¹ Minnesota is one of the only states where teachers pay dues to both the NEA and AFT.¹²

For the 2016-2017 school year, the dues structure was as follows:

- National: \$244.56
- State: \$460
- Local: Varies

National dues increased by \$3 and state dues increased by \$11¹³ for the 2017-2018 school year:

- National: \$247.56
- State: \$471
- Local: Varies

For the 2018-2019 school year, national dues did not increase, but state dues increased \$7:

- National: \$247.56
- State: \$478
- Local: Varies

The total amount paid to the union varies because the dues assessed by the “local rep” are different district to district. National and state dues increase almost every year, but local dues tend to hold steady.¹⁴

A focus group of K-12 public school teachers conducted by Educated Teachers in August 2017 revealed that teachers had a general idea of what they pay to the union annually; no one could name the exact amount. That may be because union dues are like taxes—they come out of your paycheck before you get it. If teachers had to pay dues directly to the union, more teachers would know what they were spending.

¹¹ Annual union dues are not listed in one place. The highest we found was \$985.88 in Intermediate District 287—a consortium of metro area school districts. One teacher in Robbinsdale said she was paying about \$1,400. Minneapolis school district dues for the 2016-2017 school year were \$932.46. The 2017-2018 dues increased to \$946.46 (\$47.32 from 20 paychecks). The Minneapolis Federation of Teachers noted the fair-share fee payer paid \$672.42 in 2017-2018 dues (\$33.63 from 20 paychecks), amounting to a difference of only \$13.70 per paycheck (\$274 difference for the year) from full member dues. Because of this, many teachers chose to retain their full member status over paying fair-share fees, <https://www.mft59.org/index.php/141-contracts/dues/teachers-dues/teachers-dues-for-deductions/675-2017-2018-teachers-dues-scale-for-deductions>.

¹² Education Minnesota affiliates with both the NEA and AFT as a result of a merger. See, “Workplace Democracy? Today’s K-12 Teachers Did Not Vote for Education Minnesota,” Kim Crockett and Catrin Thorman.

¹³ Dues went up \$14 to pay for an Education Minnesota/NEA joint initiative against the mandatory “fair-share” fees case, *Janus v. AFSCME*, before the Supreme Court in 2018.

¹⁴ National and state dues in 2014 were \$231.96 and \$435. In 2015, national and state dues increased to \$238.56 and \$451, and to \$244.56 and \$460 in 2016. According to a teacher who contacted the Center with his current dues, national and state dues for 2017 increased to \$247.56 and \$471 (\$3 more in national dues, \$11 more in state dues, amounting to the \$14 increase discussed above). In 2018, national dues did not increase, but state dues increased \$7 to \$478.

Dues are the same for all teachers even though younger teachers have lower salaries often accompanied by student debt and other professional start-up expenses.

No More Fair-Share Fees: What about Free Riders? Mandatory agency fees were assessed (at least in theory) to cover just the costs of collective bargaining for nonmembers prior to the *Janus* decision; fees were set by the union, with no real oversight by the state, as a percentage of member dues.¹⁵ Education Minnesota, and other government unions in Minnesota, charged agency fee payers the maximum percentage allowed under state law (85 percent of regular member dues) even though, as the Court noted in *Janus*, unions are not spending a majority of dues revenue on representational activities.¹⁶

The rationale, laid out in the *Abood* teachers' case from Detroit, was this: unions fought for—and won—the right to be the exclusive agent for all members of a bargaining unit, such as licensed teachers at K-12 schools. It was only “fair” to ask each employee to cover the cost of bargaining. After all, went the argument, the employee gets a benefit from that representation. To do otherwise allows “free riders.” The *Abood* decision in 1977 meant that the union, once certified, had guaranteed income, no matter what kind of job it was doing for members or even nonmembers it chooses to represent. This monopoly power created a moral hazard where unions, over time, became arrogant. Here is one teacher's story.

Linda Hoekman loves teaching and says she can't imagine doing anything else. As a high school physics teacher, she loves seeing the joy in students' eyes when they finally grasp a challenging concept. She assumed that's what motivated every teacher but learned that not all teachers are determined to give their best effort. She's seen teachers hand out worksheets and then settle in reading newspapers. Some



Linda Hoekman:
Linda Hoekman has been teaching science for more than 20 years. She has developed curriculum to help all her students succeed and hopefully enjoy science, too.

¹⁵ Public Employment Labor Relations Act, Minnesota Statute §179A.06, subd.3 (1971), on fair-share fees reads in part: An exclusive representative may require employees who are not members of the exclusive representative to contribute a fair-share fee for services rendered by the exclusive representative. The fair-share fee must be equal to the regular membership dues of the exclusive representative, less the cost of benefits financed through the dues and available only to members of the exclusive representative. **In no event may the fair-share fee exceed 85 percent of the regular membership dues.** (Emphasis added)

¹⁶ As of 2016, Education Minnesota reported agency fee payers pay 85 percent of the regular member rate for local dues, 83.20 percent of the member rate for state dues, and 55.99 percent of the member rate for national dues. The amount paid in state and national dues is the same for all agency fee payers statewide, but the fair-share rate for local dues varies district to district, <https://drive.google.com/file/d/0B9qw9LE492O0RF9mMHVXSX0h1UUK/view>.

show feature films instead of presenting content and others consistently leave students unattended and purposely neglect to take attendance to ensure kids don't come to class.

“I didn't understand why some teachers were making so many bad choices,” she says. “While most teachers are caring and amazing, the current school environment allows, and even encourages, teachers to take shortcuts.”

Linda went to her principal and asked him to intervene by talking to the offending teachers, but he was unwilling, claiming his hands were tied. Because state and national unions protect ineffective teachers, many administrators do very little to remove those failing to do their jobs. Things got so bad at Linda's school that a group of teachers banded together to attempt to rescue vulnerable children from a teacher so ineffective the classroom was a danger zone.

“The principal did nothing, so they filed a grievance with the union against the principal,” Linda says. “But that same union turned around and defended the failing teacher against removal! Not surprisingly, nothing happened to the principal or the failing teacher.”

Realizing that the state and national unions were behind the policies hurting children and educational outcomes, Linda resigned union membership but was forced to continue to accept and fund union representation as an agency fee payer. Since the union was her forced representative and still getting her money, Linda continued to ask for help in challenging situations, but she received no support whatsoever.

“The heating and cooling system in my building is broken and drips from the ceiling. One night, I slipped in a puddle and was so injured, I couldn't come to work,” Linda says. “There were no substitute teachers available, so my coworkers had to teach my classes between their duties. I called the union office to ask for help with my injury, the condition of the building and the substitute shortage, but they said there was nothing they could do. They didn't even offer any emotional support. They just hung up the phone!”

Though she was severely injured, Linda is so dedicated to her students and was so concerned about the lack of a substitute, she believed getting back to school to teach those kids was the right thing to do. So, she showed up, in pain, and taught them from a reclining chair. While she taught in pain, her union—which claims to improve working conditions and provide “benefits” for teachers—did nothing to help.

And that puddle that caused her injury? It remains to this day in the hallway—right next to her classroom.¹⁷

¹⁷ Linda Hoekman, “Stories,” EducatedTeachersMN.com, originally published by “For Kids & Country.”

As the Court explained in *Janus*, there are many problems with the standard union defense of exclusive agency and forced fees, the most important of which from a legal standpoint is that it forces public employees to fund the political speech and agenda of unions and their willing members.

It also assumes that all employees view the union contract as a “benefit.” Some teachers would prefer to negotiate their own employment terms (over 90 percent of private-sector employees and about 70 percent of public-sector employees are not in a union).¹⁸

Finally, the argument for forced fees ignores the fact that public-sector unions prefer to be the exclusive agent, thus creating the “free rider” problem they now complain about. If unions do not want to represent nonmembers, they can decline the privilege of being the exclusive agent in a workplace.

According to 2017-2018 union filings, Education Minnesota has 75,731 active members (67,326 teachers and 8,405 ESPs). The union often claims to have 80,000 or more members but that figure includes retired teachers, substitutes and students who are not required to pay dues but may do so voluntarily. It reported 5,658 agency fee payers but did not specify how many are teachers and how many are ESPs.¹⁹

Prior to *Janus*, Education Minnesota was obligated to send a “Hudson Notice” to any teacher or ESP who opted out of union membership. The notice name came from another First Amendment case, *Chicago Teachers Union v. Hudson*, brought by a teacher challenging nonmember or agency fees, and applied to all public-sector unions.²⁰

To calculate agency fees, the union was supposed to report “chargeable” and “non-chargeable” union activities to teachers who opted out of union membership.²¹ Chargeable activities were only supposed to include expenses associated with collective bargaining and yet, as described below, a recent “Hudson Notice” from Education Minnesota includes certain “chargeable activities” that sound like professional development and others that are clearly political (non-chargeable).

¹⁸ Reid Wilson, “Union membership rises, but rate at all-time low,” *The Hill*, January 21, 2018, <https://thehill.com/homenews/state-watch/369814-union-membership-rises-but-rate-at-all-time-low>, and Bureau of Labor Statistics, “Union Members Summary,” January 2018, <https://www.bls.gov/news.release/union2.nr0.htm>.

¹⁹ In October of 2018, Education Minnesota told the *Star Tribune* that 5,000 teachers were agency fee payers, and no longer paying fees following *Janus*. Erin Golden, “Education Minnesota’s election strategy: Get more teachers to vote. In high-stakes election, Education Minnesota is focusing on its own members,” October 27, 2018. The union said it would not reveal changes in membership until required to do so under the law. <http://www.startribune.com/education-minnesota-s-election-strategy-get-more-teachers-to-vote/498796581/>.

²⁰ This 1986 case required unions to tell nonmembers how their fees were set and spent. The Court said that unions only had to provide agency fee payers with “an adequate explanation of the basis for the fee.” In other words, even though First Amendment rights were being violated by the union, the Court did not set a very high reporting bar for the union to meet, presumably relying on Congress and state legislators to pass a more exacting standard via legislation. Unfortunately, Congress and Minnesota have failed to raise the standards following *Hudson*.

²¹ Education Minnesota, “National Education Association Chargeable and Nonchargeable Audited Expenditures for the 2014-2015 Fiscal Year,” National Education Association, June 2016, <https://www.educationminnesota.org/EDMN/media/edmn-files/benefits/membership/2016-Fair-Share-Documents.pdf>.

Here are some examples of “chargeable” activities in the Hudson Notice’s “Advocacy and Outreach” section.

Conducted the Minority Leadership Training Program and Women’s Leadership Training Program. Provided diversity, social justice, LGBTQ, bullying, sexual harassment, cultural competency, and ELL training to assist Association, leaders, and members. Coordinated the engagement of Human and Civil Rights State Coordinators to support greater connection to the human and civil rights and social economic justice work occurring at the national, state, and local level. (Chargeable audited expenditures: \$763,176)²²

Even though fair-share fees have been ruled unconstitutional, we include this recent history to explain how they worked, and to demonstrate that Education Minnesota and its national affiliates used nonmember fees to engage in very controversial social and political issues.

Remember, fair-share fees were only supposed to cover the direct cost of collective bargaining to compensate the union as the exclusive agent for representing nonmembers. As demonstrated by the examples from the Hudson Notice, the union took an expansive view of what could be charged to nonmembers, thereby abusing the trust placed in them by the Court in the 1977 *Abood* case.

Even when a chargeable activity is not blatantly political, the overall goals of Education Minnesota are unapologetically political and very partisan. A quick visit to the union’s website in the fall of 2018 reveals a “Get Out the Vote” effort and a list of endorsed candidates. All but one are Democrats.

The Minneapolis Federation of Teachers’ (MFT) website features this statement regarding union dues: “Dues equal power. Dues are what make the union run. Without dues we don’t have an organization that can bargain contracts, be politically active, or effectively advocate on behalf of education professionals and students.”²³

Education Minnesota’s website pitches membership benefits by saying, for example, “We track legislation, keep you informed and arm you with the resources you need to influence public policy.”²⁴ That is a great service for teachers who want to lobby elected officials, or just stay informed, but teachers should not be coerced into funding it.

The Court explained why the Constitution demands this high standard.

In simple terms, the First Amendment does not permit the government to compel a person to pay for another party’s speech just because the government thinks that the speech furthers the interests of the person who does not want to pay.²⁵

²² Education Minnesota, “National Education Association Chargeable and Nonchargeable Audited Expenditures for the 2014-2015 Fiscal Year,” National Education Association, June 2016, <https://www.educationminnesota.org/EDMN/media/edmn-files/benefits/membership/2016-Fair-Share-Documents.pdf>.

²³ Minneapolis Federation of Teachers, “Union Dues Member vs Fair-share,” MFT 59, <https://www.mft59.org/index.php/about-mft-59/membership-dues-fairshare/union-dues-member-vs-fair-share>.

²⁴ Education Minnesota, “Advocacy,” <https://www.educationminnesota.org/advocacy>.

²⁵ *Janus v. AFSCME*, 585 U.S. __ (2018), p. 14.

After all, the cost of collective bargaining agreements directly affects taxes and spending; this was the central theory of both the *Friedrichs* and the *Janus* case, and it was embraced by the Court in *Janus*.

Free-Rider: The Local Union Option. Teachers are now free to choose whether to financially support the national, state and local teachers’ union. But there are no “menu” options where a teacher or ESP can choose, for example, whether to join one or both of the national affiliates (NEA and AFT), Education Minnesota, or just the local union. It is all or nothing. Educators who chose not to join the union, report feeling conflicted either because they have been labeled a “free rider” and put in conflict with colleagues, and/or because while they do not want to support the political agenda of the state and national unions, they would like to support the local



Mary Shapiro:

Mary Shapiro is a 35-year Minnesota veteran teacher. She remembers a time when union representation wasn't political at all.

union. A popular solution is for educators to resign from Education Minnesota and its affiliates, then send a voluntary donation to the local association. This solves the “free rider” problem and keeps the money local.²⁶

Mary Shapiro, a 35-year Minnesota veteran teacher, remembers a time when belonging to a union meant being part of a “local only” association concerned almost entirely with improving working and learning conditions in her school.

“When I first started teaching, union representation wasn’t political at all. The union’s role was mainly to help address problems with somebody in HR or something like that,” she says. “When the union stuck to business, like helping with our salaries and working conditions, it was fabulous.”

²⁶Note: If the majority of employees in a collective bargaining unit want a local union but do not want to be affiliated with Education Minnesota (and the NEA/AFT), they would need to decertify the incumbent union through an election. That is a separate issue from *Janus* and is governed by state statute.

Mary recalls a teacher friend who objected to teaching content that conflicted with her own Christian principles. The union sent a negotiator to work out a solution. And while Mary would receive a list of political candidates endorsed by her local union, it was never delivered with the level of intensity or expectation as it is today.

But later, Mary's local union aligned itself with the Minnesota Education Association (MEA), and Mary recalls, "It started getting super political. That's when it all kind of fell apart. We were given a listing of candidates that we should vote for, and where once it was suggested, it was now a directive, and an 'if you go against it, then you're out of the loop' type thing."

The local union's direction and focus continued to shift as the state and national unions exerted their influence into her local union. Mary says her union was now more concerned with matters that either had nothing to do with education or distracted it from fulfilling its main mission of serving teachers and kids. The MEA began pushing "a lot of politics on the kids and the curriculum; and a lot of what I call 'immoral stuff.' That's when it really started making me mad."

Mary also discovered her union took an active role in supporting organizations that opposed her beliefs—and financially supported them with her dues.

"I was just furious. I wrote my union representative a letter. I didn't hear back from her. So, that was the turning point for me," says Mary, who retired several years ago after teaching numerous high school subjects, including English as a second language, theater, and dance. "I think we need to encourage teachers to hold the union accountable and say, 'This isn't your job. Your job is to help us in the classroom and help us negotiate our salaries and benefits.' That is what unions are supposed to do. And I think all the political involvement distracts from their purpose."²⁷

How Union Dues are Collected: Increased to “Resist” *Janus*. Union dues are the union's main source of revenue. But, as noted above, the union does not actually collect dues; the district employer does it for the union at no charge. Dues are deducted by the school district directly from teachers' paychecks and deposited for the union. Just like taxes and other deductions, teachers never see that money.

Other states have adopted what is called "paycheck protection." This means that any government union, like Education Minnesota, must invoice and collect its own dues. As a result, teachers and other public employees are more aware of what they are paying the union, and thus more likely to think about the value they receive from union representation and hold the union more accountable for increases in dues and spending decisions.

²⁷ Mary Shapiro, "Stories," EducatedTeachersMN.com, originally published by "For Kids & Country."

In the summer of 2017, several months before the Supreme Court announced it would hear the *Janus* case, Education Minnesota and the NEA told local union representatives it increased fees for 2017-2018 by \$14 (\$11 went to Education Minnesota; \$3 to the NEA). The union told site representatives²⁸ the increase in dues would be used to circumvent the effects of the *Janus* case by getting all teachers to sign an auto-renewal union card, among other efforts.²⁹

Education Minnesota attempted to minimize the loss of members with a “renewal” campaign. The union filled out a renewal agreement for all members and fair-share payers and distributed them to site reps around the state (who are responsible for getting all teachers to sign the document) and launched a PR campaign on television and via social media (e.g., the “Power of We”).

The 2017 renewal agreement was a carefully worded attempt to contractually bind teachers and at least frustrate, if not defeat, the anticipated *Janus* decision. At the time, Education Minnesota said it was a one-time fee, but there was no reduction in the annual dues for 2018-2019. In fact, the dues went up again by \$7 a year.

Here is what the link on the front page of Education Minnesota’s website said.

Renew Your membership. Show your commitment to our union. We’re asking all active members to show administration, students, communities and each other that we are committed to working together to improve public education.³⁰

But here is the union card fine print, written in a font so small and faint, that it is difficult to read.

I agree to submit dues to Education Minnesota and hereby request and voluntarily authorize my employer to deduct from my wages an amount equal to the regular monthly dues uniformly applicable to members of Education Minnesota or monthly service fee, and further that such amount so deducted be sent to such local union for and on my behalf. **This authorization shall remain in effect and shall be automatically renewed from year to year, irrespective of my membership in the union, unless I revoke it by submitting written notice to both my employer and the local union during the seven-day period that begins on September 24 and ends on September 30.** Such revocation will take effect on October 1 in the year in which I submit the revocation.³¹ [Emphasis added]

²⁸ One of the authors of this paper, Kim Crockett, was contacted by a teacher who is a site rep for the union in 2017. The teacher, who wishes to remain anonymous, explained the dues increase and what she had been told by Education Minnesota. Crockett reported the story in *The Wall Street Journal*, October 3, 2017, <https://www.wsj.com/articles/unions-act-as-if-theyve-already-lost-1506983855>.

²⁹ In response to the op-ed, Education Minnesota and its local affiliates claimed that the increase of \$14 in 2017-2018 is a one-time increase, <https://www.educationminnesota.org/advocacy/attacks-on-unions/Attacks-on-unions-and-public-education>. The Bloomington Federation of Teachers said the one-time increase would be used to “fight the attacks on collective bargaining at the national, state and local levels,” <https://sites.google.com/site/bloomingtonbft/BFT-News>.

³⁰ Education Minnesota, “Renew Your Membership,” <https://www.educationminnesota.org/home>.

³¹ Education Minnesota, “2017-18 Application for Active Membership Education Minnesota,” <https://www.educationminnesota.org/member-benefits/join-us/join/Apply-renew>.

After the Court announced it would hear the *Janus* case in 2018, Education Minnesota sent out the following news release.

ST. PAUL, Minn. Sept. 28, 2017 – The U.S. Supreme Court said Thursday it would hear *Janus v. American Federation of State, County and Municipal Employees*, marking the latest chapter in a decades-long campaign by powerful conservative foundations to weaken unions of public employees. Education Minnesota President Denise Specht released the following statement in response.

“Decent people working in union are the best chance for the middle class to tear down the obstacles to success the wealthiest few have put in our way,” Specht said. “The handful of billionaires behind the National Right to Work Foundation and the State Policy Network know it. They will say, or do, anything to take out the labor movement. *Janus* is just their latest attempt.”

“The billionaires and their foundations pay for lawsuits like *Janus* and right-to-work laws because they want to weaken unions by forcing them to provide expensive services for free,” Specht said. “Educators and other people who work for the public see through the rhetoric. We’re prepared, unified and ready to resist on behalf of the parents and communities who depend on us.”³²

What the union was attempting to do is contractually bind teachers with an auto-renewal clause, so that even if a teacher resigns during the prescribed, narrow seven-day window, he or she will have to resign again the following year. And to persuade educators—using the overheated rhetoric of class struggle—that it is in their best interest to stay in the union.

It remains to be seen if Education Minnesota will claim that teachers and ESPs who resigned in 2018 must do so again in 2019.

What is clear is that the union does not want teachers to choose for themselves whether to give money to Education Minnesota, NEA, or AFT. They are not confident that when given a choice, teachers will remain in the union. The union will have to adjust to the reality that members now have a meaningful choice in the matter. This will be good for the union and educators alike. Instead of taking union dues and members for granted, the union will have to become more customer focused, asking what educators want and need from the union.

³² Chris Williams, “Billionaire Funders using *Janus* to Weaken American Labor,” *Education Minnesota*, <https://www.educationminnesota.org/news/media-resources/news-releases/Billionaire-funders-using-Janus-to-weaken-American>. The “billionaires” referred to in the press release are David Koch and Charles Koch who support all kinds of philanthropic and political causes. The “Koch Brothers” should be familiar to most public employees because they are often used by government unions and the Left as a target for attacks. State Policy Network (SPN) is a loosely affiliated group of independent think tanks that identify as libertarian, conservative, free market and so on. Center of the American Experiment is a member of SPN.

The question of whether a union can defeat a First Amendment constitutional right with the unilateral terms of a union card is one that the Court will be asked to review in a future case. It was not directly before the Court in *Janus*.

Union Spending: The Union as an Employer. Public-sector unions are not required to file financial disclosure forms under federal or state law; they only do so if they also represent private-sector employees.³³ Education Minnesota falls under that exception and files certain federal disclosure forms stating revenues, general expenditures and membership data. Unfortunately, these disclosure forms, the LM-2 for the U.S. Department of Labor and the 990-tax form for the IRS, provide limited information rather than a full accounting about how revenues are spent by Education Minnesota (and its affiliates).

What about state law? “Under state law, the financial reporting requirements of the public-sector unions are more scant than under federal law. In fact, they are almost non-existent. An overwhelming majority of states impose no financial reporting requirements at all upon the public-sector unions that operate within their state, and only a very small few actively collect any financial data at all.”³⁴ This holds true in Minnesota but that could change if the legislature makes common-sense changes following the *Janus* decision.

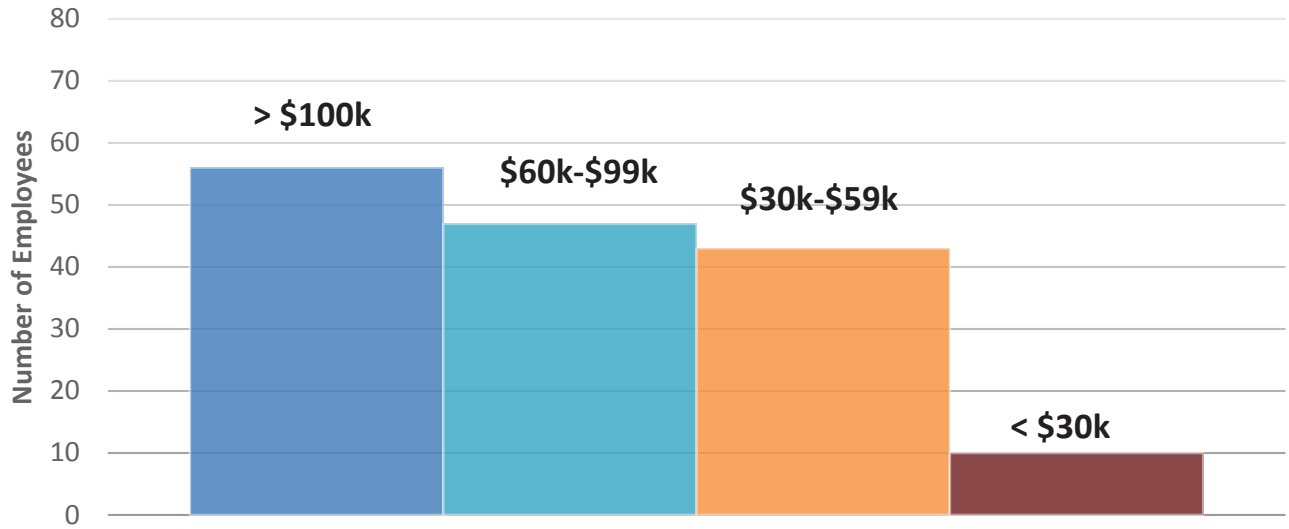
Education Minnesota’s 2016 Staff Costs. The federal filings, while incomplete, do provide useful information about Education Minnesota. One section in Education Minnesota’s 2015-2016 LM-2 financial report details the salaries of 156 employees, from the president Denise Specht who earned a salary of \$184,000 (she received a raise in 2017) to dozens of employees paid \$90,000 to \$180,000 and dozens of operatives who earn much more than teachers in the classroom.³⁵ Figure 1 on the next page shows the breakdown in salary ranges for the year. We note that 56 employees make over \$100,000 a year and 47 make between \$60,000 and \$99,000 a year.

³³ Labor Management Reporting and Disclosure Act of 1959, also known as the Landrum-Griffin Act (LMRDA), <https://www.dol.gov/olms/regs/statutes/lmrda-act.htm>. Federal disclosure laws are under review following the *Janus* case. Unions may drop private-sector bargaining units in order to avoid falling under the LMRDA.

³⁴ Ed Ring, “Understanding the Financial Disclosure Requirements of Public Sector Unions,” *California Policy Center*, June 21, 2012, <http://californiapolicycenter.org/understanding-the-financial-disclosure-requirements-of-public-sector-unions/>. Most labor unions that represent private-sector employees have reporting requirements under the Labor Management Reporting and Disclosure Act. Federal law does not impose any reporting requirements for unions comprised solely of public-sector employees. They are only required to file a 990-tax form with the IRS. More disclosure requirements would promote accountability of public-sector unions. Efforts to require unions to disclose their finances began in the 1950s and were spearheaded by both Robert F. Kennedy and John F. Kennedy. This bipartisan policy reform was even supported by the president of the AFL-CIO at the time, George Meany, <https://www.mackinac.org/22187>.

³⁵ Total disbursements in 2016 for salaries to all 156 officers and employees of Education Minnesota amounted to \$13,126,752; benefits cost an additional \$7,868,293.

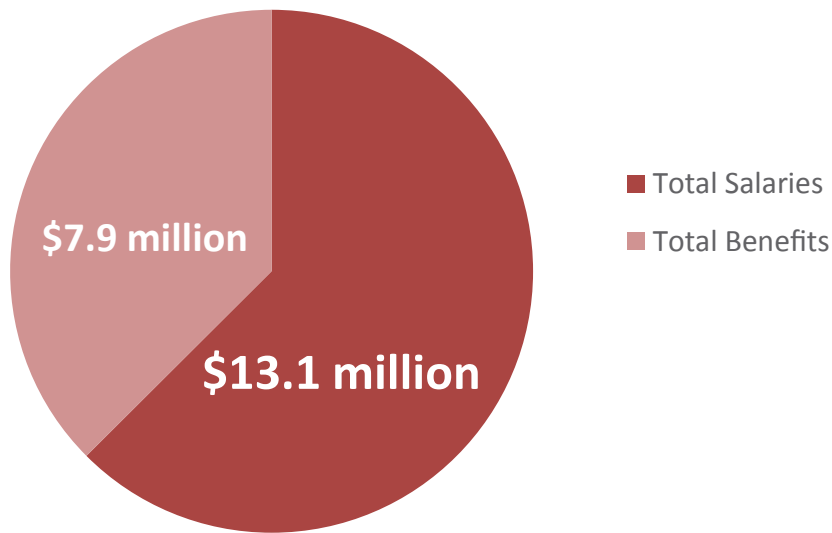
Figure 1: 2015-2016 Salary Ranges for 156 Education Minnesota Employees



Source: Education Minnesota's 2015-2016 LM-2 Report

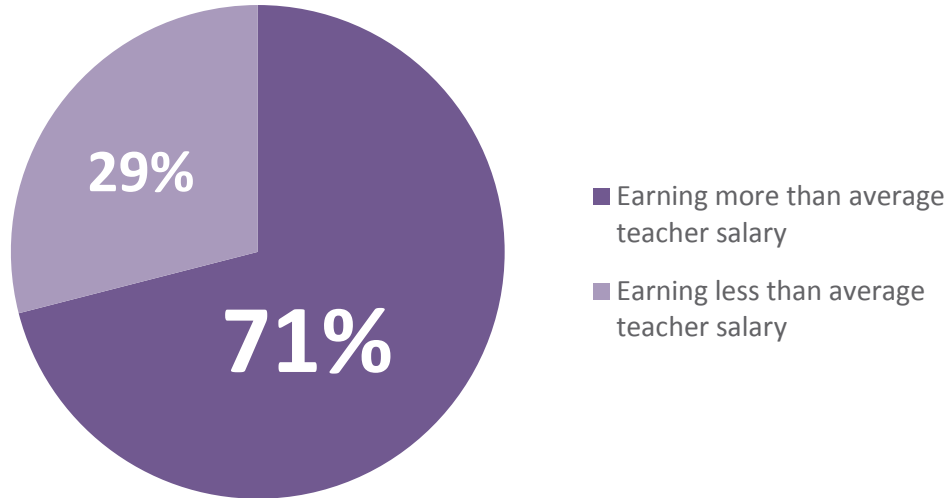
Education Minnesota spent approximately \$21 million on salaries and benefits for its own employees in 2015-2016, an average of \$135,000 per employee, as shown in Figure 2.

Figure 2: 2016 Total Salaries & Benefits for All Education Minnesota Employees (\$135k per employee)



Source: Education Minnesota's 2015-2016 LM-2 Report

Figure 3: Percentage of Education Minnesota Employees Earning More Than 2015 Average Teacher Salary (\$56,913)



Source: Education Minnesota's 2015-2016 LM-2 Report

Seventy-one percent of Education Minnesota employees made more than the average salary earned by a classroom teacher in 2015 (see Figure 3). If you add up salaries, benefits and overhead, Education Minnesota spent approximately \$172,000 a year per union employee.³⁶

Education Minnesota's 2017 Staff Costs. Education Minnesota's 2016-2017 LM-2 details the salaries for 161 employees, including significant salary increases for most employees who earn more than the average teacher salary for that school year (\$57,346). Except for one employee whose salary decreased from the previous year, all employees making over \$100,000 received a salary increase. The smallest salary increase was \$2,146. Below are some of the more noteworthy increases.

- Denise Specht's salary jumped \$5,794 to a total of \$190,316
- An organizer's salary jumped \$15,355 to a total of \$127,830
- A field staff's salary jumped \$12,415 to a total of \$124,817

Accounting for salary increases, more employees made over \$100,000 in 2016 than in 2015, and the number of employees earning between \$30,000 and \$59,000 stayed the same.

³⁶ See Education Minnesota's 2015-2016 LM-2 Annual Report, Schedules 11, 12, 18 and 20. Reported salaries for 156 Education Minnesota officers and employees equaled \$13,126,752. Reported benefits amounted to \$7,868,293. General overhead costs totaled \$5,833,859.

Figure 4: 2016-2017 Salary Ranges for 161 Education Minnesota Employees



Source: Education Minnesota's 2016-2017 LM-2 Report

The Foundation for Excellence in Teaching & Learning. Education Minnesota's Foundation offers grants and scholarship programs to active dues-paying Education Minnesota members, which include classroom teachers, post-secondary faculty, and education support professionals. The Foundation, funded by the \$5 deducted from member paychecks, also offers grants to members who team up with nonprofit organizations that share Education Minnesota's "goals to create systemic change."³⁷ Approximately \$15,000 is available for each year.

The PAC and Other Union Spending: Powerful Political Player. The entire enterprise of Education Minnesota is devoted to the preservation of the union, its power and the advancement of a particular political and social agenda.

³⁷ The mission statement for the Foundation for Excellence in Teaching and Learning is "promoting vision, best practice, and achievement," <http://edmnfoundation.org/about/>. Grant programs include: Classroom-Focused grants and IMPACT grants. Classroom-focused grants of up to \$3,000 are awarded to licensed personnel for projects that improve personnel practice and student achievement. Preference is given to projects that address the needs of diverse students or students at risk of failure, projects that involve partnerships, have measurable or observable outcomes, and are replicable. IMPACT Grants are awarded to projects that support systemic change in the policies and practices that shape teaching and learning. Teachers team up with a nonprofit organization or their local union/school district on IMPACT Grant projects. "This grant program is not designed to accommodate individual classes or improvements to specific curricula; rather, the intent is to influence policies and generalized practices concerning educators and students," <http://edmnfoundation.org/overview/>.

Education Minnesota’s 2015-2016 federal LM-2 report disclosed total disbursements of \$60,356,998 with only \$2.7 million going toward “Representational Activities,” as defined by Education Minnesota.³⁸ In the 2016-2017 report, expenses for “Representational Activities” increased by \$192,979 when compared to the previous year’s spending.

Spending on “Political Activities and Lobbying,” however, increased by \$1.3 million between the 2015-2016 report and the 2016-2017 report. The fact that political spending by Education Minnesota (separate from its PAC political spending) increased by 101.8 percent, even though it was an election year, compared to the 7 percent increase in representational disbursements, suggests the union is more focused on its political involvement than directing that money toward representing its members.

Of the \$1.3 million spent on “Political Activities and Lobbying” in 2015-2016, detail was only provided for \$534,691 of the total disbursements—leaving the majority of these expenditures unaccounted for. Two notable transactions included: \$25,000 to WomenWinning—a women’s advocacy organization “more dedicated than ever” following the Trump presidency to “electing pro-choice women to all levels of public office”³⁹—and \$20,000 to Minnesota Voice—a nonprofit organization directed by Sina Black, who was a Regional Organizing Director on the 2012 “Vote No” electoral campaign to defeat a proposed constitutional marriage amendment to Minnesota’s state constitution.

Education Minnesota also supports other organizations with distinct political and social agendas that are reported under the “Contributions, Gifts and Grants” section of the LM-2.

- The Headwaters Foundation for Justice received \$26,000 for a “Racial Equity Goals Project.” Headwaters reported making general operating grants to Black Lives Matter Minneapolis on its 2015-2016 990-tax form.⁴⁰
- Neighborhoods Organizing for Change (NOC) received \$55,000 for a “Community Needs Assessment.” NOC supports DFL members on the Minneapolis City Council and Black Lives Matter. Under the motto “Resist. Revolt. Unite,” NOC encourages its followers to resist President Trump and the GOP and revolt by “pledg[ing] an act of civil disobedience” and “disobey[ing] the law to keep my friends, neighbors, and family safe from fascist, misogynist, white nationalist actions.”⁴¹

In addition, as mentioned above, Education Minnesota has the Political Action Committee; in 2016 members paid \$15 to the PAC, generating total contributions of \$1.8 million⁴² and in 2018 members paid \$25 to the PAC, generating total contributions of \$2.7 million.⁴³

³⁸ See Education Minnesota’s 2015-2016 LM-2 Annual Report, Statement B- Receipts and Disbursements. Included were four surveys totaling \$84,670 that were conducted by the Feldman Group, Inc., a consulting firm, that states: “We work with Democratic candidates for local, state, and federal office and with unions, associations and not-for-profit organizations,” <http://www.thefeldmangroup.com/>.

³⁹ WomenWinning, “Leading Forward: Staying Focused in the Trump Era,” <http://www.womenwinning.org/>.

⁴⁰ See Headwaters Foundation for Justice’s 2015-2016 990 Form, <https://headwatersfoundation.org/sites/default/files/headwatersfoundationforjustice-public990final.pdf>.

⁴¹ Neighborhoods Organizing for Change, “Resist. Revolt. Unite,” <http://www.mnnoc.org/resist>.

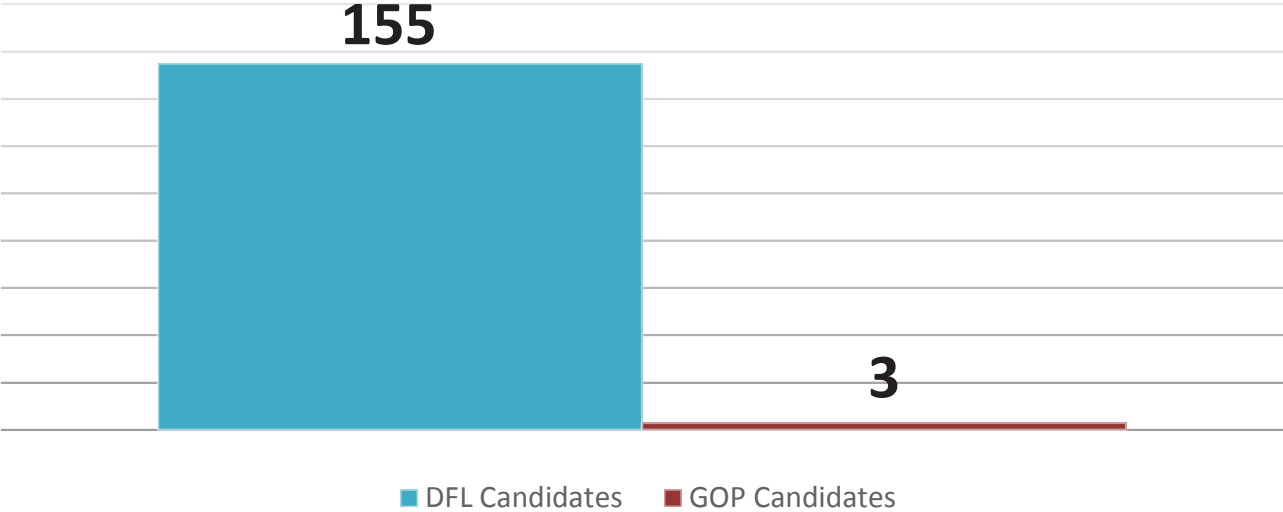
⁴² See Education Minnesota PAC’s Report of Receipts and Expenditures for Political Committee or Political Fund, January 2016 through December 2016, <http://www.cfbreport.state.mn.us/rptViewer/Main.php?do=viewPDF>.

⁴³ See Education Minnesota PAC’s Report of Receipts and Expenditures for Political Committee or Political Fund, January 2018 through October 2018, <https://cfb.mn.gov/rptViewer/Main.php?do=viewPDF>.

The PAC supports, with rare exceptions, Democratic or DFL candidates for elective office and political and social causes that can fairly be described as “left of center” or “progressive.”

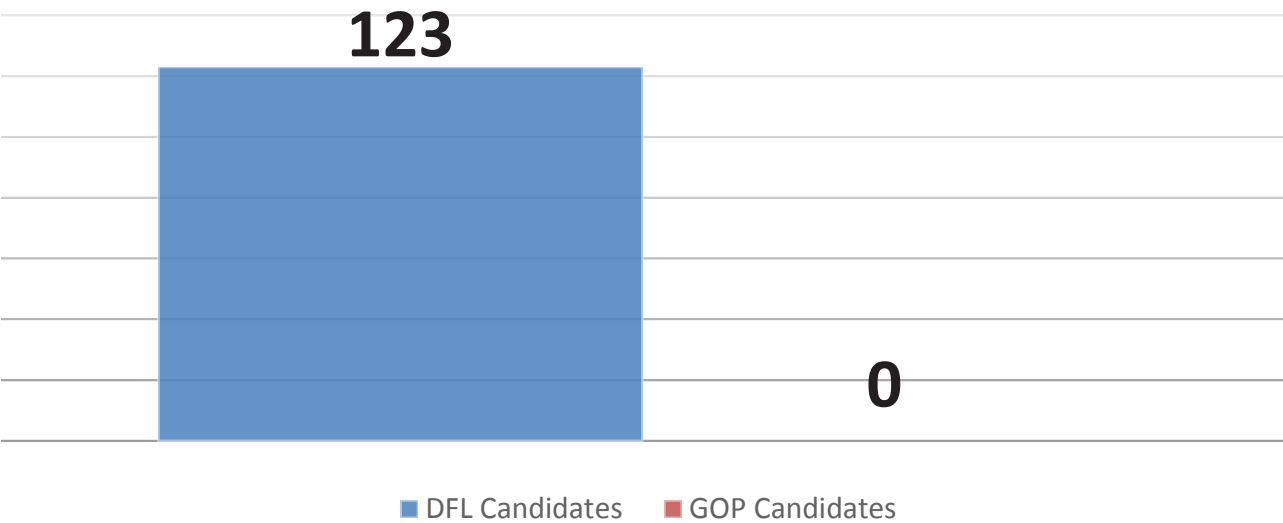
In 2016, for example, Education Minnesota’s PAC financially supported 155 DFL candidates versus only three GOP candidates (see Figure 5). The PAC had to submit an amendment to the report because its previous submission mistakenly entered a contribution to a GOP candidate, dropping the total number of GOP candidates supported from four to three. According to itemized direct contributions in the PAC’s 2018 report, the union only supported DFL candidates.

Figure 5: 2016 Political Candidates Supported by Education Minnesota PAC



Source: Education Minnesota PAC’s 2016 Report of Receipts and Expenditures

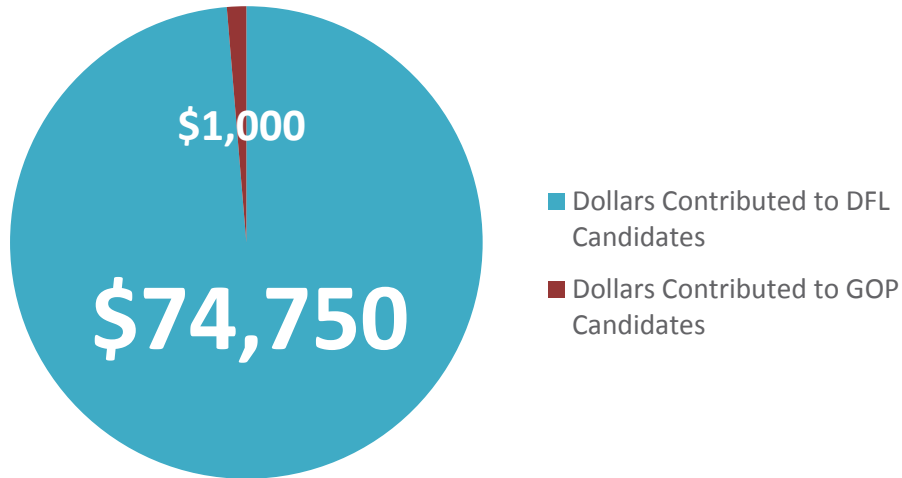
Figure 6: 2018 Political Candidates Financially Supported by Education Minnesota PAC



Source: Education Minnesota PAC’s 2018 Report of Receipts and Expenditures

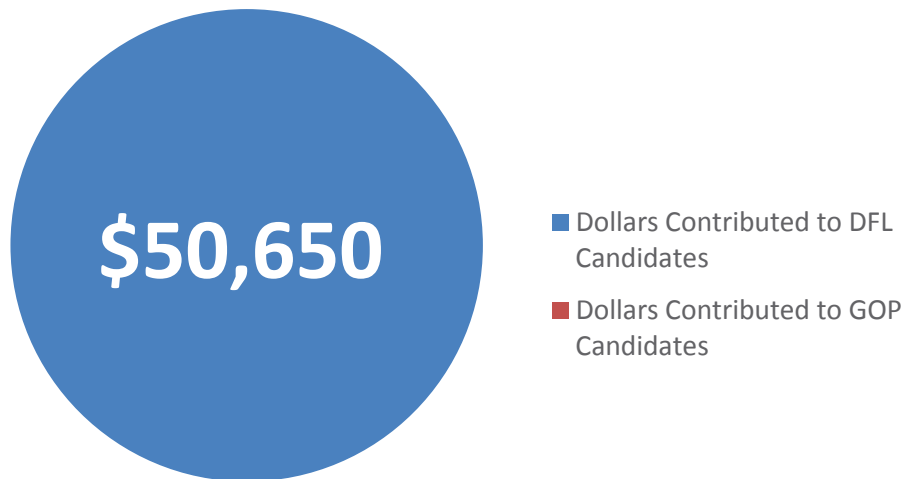
In 2016, direct contributions to DFL candidates amounted to nearly \$75,000 compared to the \$1,000 directly contributed to GOP candidates (see Figure 7). DFL candidates in 2018 received \$50,650; the PAC did not report any direct contributions to GOP candidates (see Figure 8).

Figure 7: 2016 Direct Contributions to Political Candidates by Education Minnesota PAC



Source: Education Minnesota PAC's 2016 Report of Receipts and Expenditures

Figure 8: 2018 Direct Contributions to Political Candidates by Education Minnesota PAC

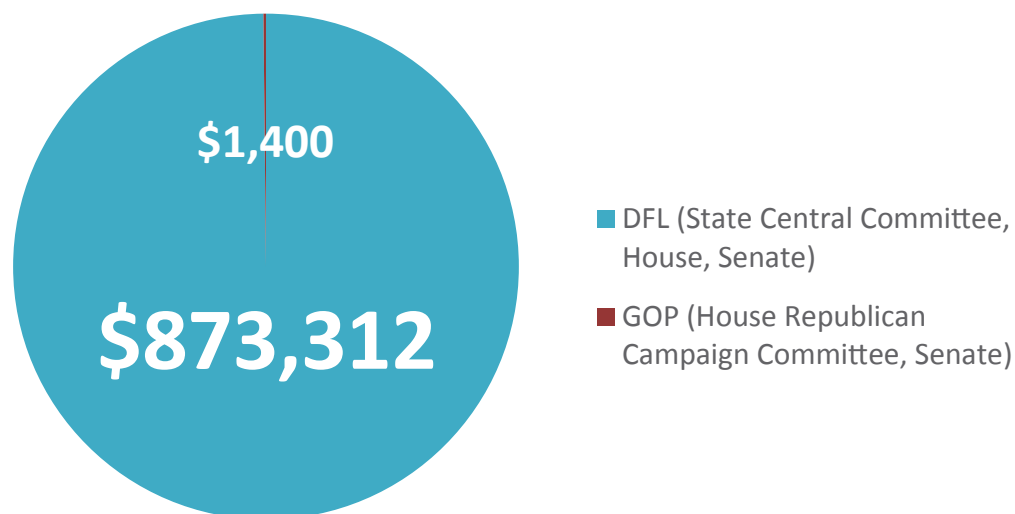


Source: Education Minnesota PAC's 2018 Report of Receipts and Expenditures

Besides direct contributions, the PAC reports expenditures that go toward promoting political candidates mainly through phone banking, advertisements, radio ads, and printing and postage. In 2016, just over \$468,000 was spent to advocate for DFL candidates (including nearly \$28,000 to promote Hillary Clinton), with around \$2,400 spent on GOP advocacy.

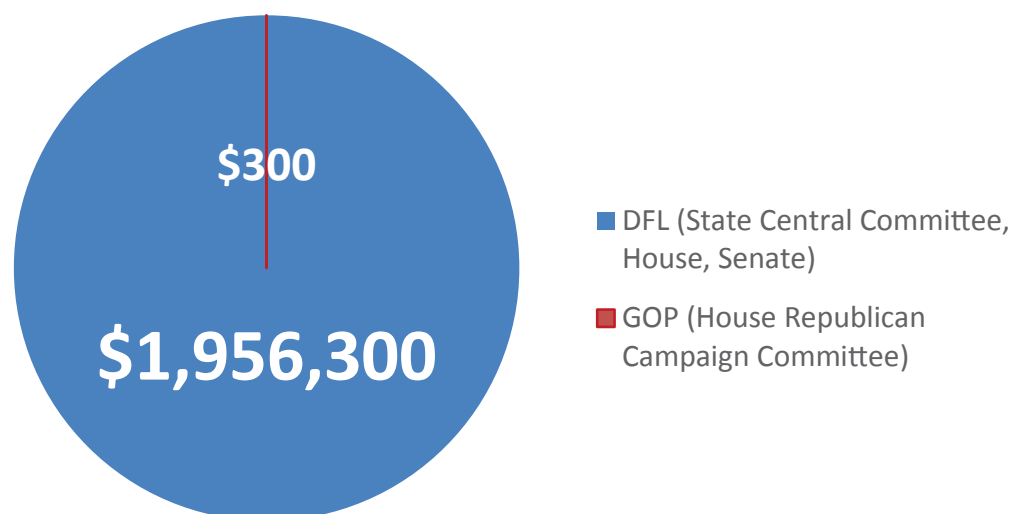
DFL political affiliates, such as the DFL House Caucus and DFL Senate Districts, received \$873,312 in contributions (cash and in-kind donations) in 2016 compared to the \$1,400 that went to the House Republican Campaign Committee and the GOP Senate Victory fund (see Figure 9). In 2018, all but \$300 out of \$1,956,300 was contributed to DFL political affiliates (see Figure 10).

Figure 9: 2016 Contributions to Political Parties by Education Minnesota PAC



Source: Education Minnesota PAC's 2016 Report of Receipts and Expenditures

Figure 10: 2018 Contributions to Political Parties by Education Minnesota PAC



Source: Education Minnesota PAC's 2018 Report of Receipts and Expenditures

The PAC's 2016 disbursements also included over \$1 million to political committees and political funds. These organizations and funds align with left-wing ideologies and overwhelmingly support Democratic or DFL candidates. Figure 11 shows the amount Education Minnesota's PAC contributed to each organization or fund and gives a brief description of each recipient in 2016.

Figure 11: 2016 Contributions to Political Committees & Political Funds by Education Minnesota PAC



Source: Education Minnesota PAC's 2016 Report of Receipts and Expenditures

As of September 30, for the 2018 mid-term election, the *Star Tribune* reported the following on PAC spending.

[T]he union was anticipating the Supreme Court's [*Janus*] ruling and subsequently, a possible drop in membership. To maintain its numbers, Education Minnesota would need to fortify its membership and bank accounts. Last year, the union increased the amount deducted from each member's annual union dues for its political action committee from \$15 to \$25....

Though the union has members who belong to both political parties, Education Minnesota has historically been one of the DFL's most powerful allies. This year, its slate of candidates for major state offices is exclusively DFL, and its sizable campaign contributions have gone almost entirely to candidates and committees on the political left. (Through September, the union's political action committee gave roughly \$1.2 million to DFL campaigns and committees, \$62,653 to local Education Minnesota political organizations and \$300 to the House Republican Campaign Committee.)

The higher political fees for members have helped the union raise more campaign cash this year than in previous midterm election cycles; by September, the Education Minnesota PAC had raised more than \$2.7 million. That's more than double what it raised in the entire year in both 2010 and 2014.⁴⁴

While the teaching profession as a group leans left,⁴⁵ teachers in Minnesota are split between the GOP, Independents and the DFL, with heavy concentrations of Democrats in the cities of Minneapolis and St. Paul and the Arrowhead, and heavy concentrations of Republicans outside the metro area. Excluding the core cities, the metro area is more evenly split between the two parties. And of course, some teachers view themselves as Independents.⁴⁶ But even if all teachers were Democrats, and fully embraced the same political ideology as Education Minnesota (and NEA and AFT), wouldn't it be more appropriate for teachers, and other public employees, to make a voluntary donation to the party and candidates of their choice in a transaction entirely separate from the collection of union dues?

⁴⁴ Erin Golden, "Education Minnesota's election strategy: Get more teachers to vote. In high-stakes election, Education Minnesota is focusing on its own members," *Star Tribune*, October 27, 2018, <http://www.startribune.com/education-minnesota-s-election-strategy-get-more-teachers-to-vote/498796581/>.

⁴⁵ Verdant Labs, "Democratic vs. Republican Occupations," *Verdant Labs*, 2016, http://verdantlabs.com/politics_of_professions/index.html. This analysis is possible because the Federal Election Commission (FEC) provides data that reveals who made what contribution to which political campaign, when they contributed, how much they contributed, what they call their occupation, and other info. Verdant Labs aggregated that data and applied a simple formula for each occupation... A caveat with this methodology is that it is assumed Democrats and Republicans contribute at a similar rate to each other within each profession. In other words, Verdant Labs assumed that a 75/25 split of contributions by Democratic teachers vs. Republican teachers translates to a 75/25 split of Democratic vs. Republican teachers in the general populace. If it is actually the case that, say, Republican teachers are looser with their wallets and have a higher per capita contribution rate, the ratio for that profession will be a bit skewed. Thus, the ratios should be viewed as approximate. (Quoted from http://verdantlabs.com/politics_of_professions/index.html.)

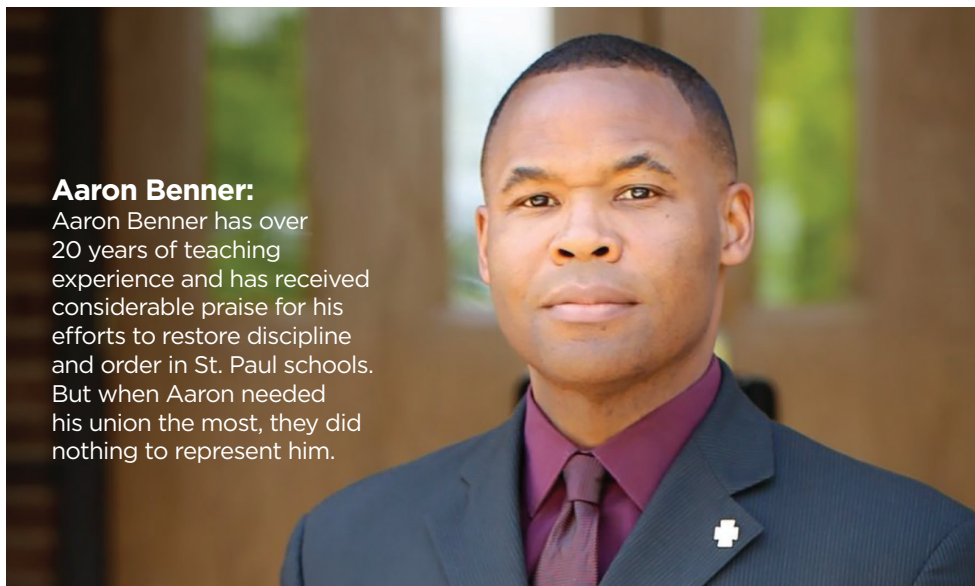
⁴⁶ See, "2016 General Election for U.S. President Official Results by County," Office of the Minnesota Secretary of State, <http://www.sos.state.mn.us/media/2818/us-president-results-map-margin-by-county.pdf>. We recognize these voting results are not exclusively teachers, but do confirm where there is a political divide.

After all, even within the DFL, there are hotly contested races and policy debates. Why are teachers forced to support candidates or issues that the union prefers, in effect spending against and undermining their own political preferences? Teachers, for example, who supported presidential candidate Bernie Sanders in 2016 were forced to support Hillary Clinton and the DNC. And teachers who supported one of the Republican candidates were forced to support Hillary Clinton and the DNC. What about teachers who did not support any candidate?⁴⁷

Education Minnesota paints itself as a leading advocate for minority students and teachers alike. One teacher's story is painful proof that the teachers' union, despite massive revenues, is not a reliable partner when teachers need help, even when it means that classrooms are no longer safe for students or teachers.

Aaron Benner is an outstanding Minnesota teacher who knows firsthand what happens when students, and teachers, feel unsafe in the classroom.

“Safety is critical,” he says. “Learning suddenly is on the back burner, everything goes out the window once the classroom has been compromised. Instead of looking at the teacher, you’re looking over your shoulder. You’re not focused on learning, you’re focused on survival.”



Aaron's students were subjected to that kind of anxiety after he was punched by a student. When Aaron attempted to do the obvious and discipline the boy—who Aaron emphasizes is a good kid who simply made a bad mistake—he discovered he was forbade from doing so because of a new “racial equity” disciplinary policy pushed by the Saint Paul School District.

⁴⁷ According to *USA Today*, “About one in five American Federation of Teachers (AFT) members who cast a ballot voted for Trump, the union’s leader estimated. Among the larger National Education Association (NEA), which comprises more than 3 million members, more than one in three who voted did so for the billionaire developer, early data show.” <https://www.usatoday.com/story/news/2016/11/23/election-unions-teachers-clinton-trump/94242722/>.

Aaron believed so strongly that the new policy was hurting his students that he pushed back against it, eventually going public with his concerns.

“I had great classroom management, my students knew that once they crossed that classroom threshold there were rules,” Aaron says. “Then someone from the outside suddenly says there aren’t any rules. The looks on my students’ faces spoke so loudly, they were saying ‘this is not right.’”

Just as Aaron was fighting to protect his students he was confident his union would do the same for him, a logical expectation since unions often cite worker protection as a main reason and benefit for the dues they collect forcibly from members.

And like so many employees, he was soon to discover his confidence was misplaced. When the school district began to harass Aaron, going to the grotesque length of intimating he had physically abused a child, his union not only did not support him but actively participated in the harassment.

“My union rep tried to have me plea to one of the investigations which made it clear to me that my union was complicit with the district,” Aaron says. “My union made me dispensable because they were bargaining for a new contract and my complaining was making it hard for the union to bargain with the district.”

Incredibly, after Aaron’s appearance on national TV, his union president informed him that she was forced by the district to write a critical statement about him. Later, she was apologetic and remorseful, but Aaron was beyond shocked by this revelation.

“My problem with my union is that they sat back and allowed the Saint Paul School District to harass me and did nothing,” Aaron says. “They took my union dues and did nothing to represent me.”⁴⁸

The union argues that its strength comes from member unity (e.g., the “Power of We” and “Union Strong”) and that this strength translates into better contracts and working conditions for its members. Each educator must judge whether the union has performed or will perform when a teacher most needs its help, and weigh all of that against the cost of union membership, and the fact that union dues go to support the most powerful DFL political organization in the state.

The Promise of *Janus*: Undoing Forty Years of Neglect. Following the landmark case *Janus v. AFSCME*, teachers and other K-12 employees have been presented, for the first time in over forty years, with a legal choice about whether to financially support the teachers’ union. But the actual choice before teachers and other public employees does not yet meet the high standard required under the Constitution, as described by the Court in *Janus*. The ill-effects of forty years of neglecting the First Amendment rights of public employees, and forty years of guaranteed funding for public-sector unions, cannot be addressed or undone overnight.

⁴⁸ Aaron Benner, “Stories,” EducatedTeachersMN.com, originally published by “For Kids & Country.”

Education Minnesota’s unilateral membership terms, including the narrow seven-day window to resign union membership, the deduction of dues including PAC and Foundation money by school districts and its role as the exclusive bargaining agency, are just a few examples of how the teachers’ union enjoys a privileged position. It should be balanced by, for example, employers informing district employees about their *Janus* rights and enforcing the Court’s clear demand for new procedures that demonstrate an educator’s waiver of his or her constitutional right by freely consenting to pay membership dues.

The Court in *Janus* changed the default from public employees “opting out” to “opting in” to union membership. The State of Minnesota’s public employers, caught between a rock (the *Janus* case) and a hard place (public-sector unions), is relying for now on the pre-*Janus* default and the unions to tell them who is a member and who has resigned.

The *Janus* case is just the start of bringing that balance to the complicated relationship between the teachers’ union, K-12 employees and school districts. Brave teachers have already come forward to challenge the status quo in court, but revisions in the law are required by the state legislature and Congress to ensure that the burden of enforcing the law is not on teachers and ESPs.

We expect the courts, at a minimum, to enforce *Janus* by finding the barriers to public employees resigning from the union unconstitutional, and requiring the union to collect money for its PAC separately from dues deductions on an entirely voluntary basis.

The legislature can also help by requiring public employers and unions to document the affirmative consent of union members, by requiring, for example, a copy of the union card with a certified waiver of their First Amendment rights. The legislature should also require Education Minnesota to collect its own dues; this would introduce some accountability to members for how dues are spent on collective bargaining, lobbying and electioneering.

State and federal disclosure rules, passed by Congress in 1959, are wildly out of date, ignoring how public-sector unions have grown into powerful political and financial institutions that impact not just the lives of public employees but all citizens. Disclosure laws should be updated to bring transparency and accountability to union members—and the public that ultimately funds public-sector unions with tax dollars. Then educators can make an informed choice about membership and our government can make common sense rules to protect the rights of employees and taxpayers alike.

Given the power of public-sector unions to affect state and national elections, and therefore policies affecting the regulation of unions, it will take brave legislators to lead the effort for legislative reform. This has, however, already occurred around the country. When the Court heard Mark Janus’s case in 2018, 28 states already had “right to work” laws that empowered teachers and other public employees to decide whether they wanted to financially support a union.

While the picture is incomplete, Education Minnesota’s political spending and political priorities demonstrate what is commonly understood: Education Minnesota is a powerful, political actor, using its cash, organization and privileged position inside the educational system to support or attack candidates, conduct issue campaigns, and lobby the state legislature and Congress on K-12 curriculum, student discipline poli-

cies and teacher pensions, licensing and evaluations. What is not commonly understood is how far to the left the teachers' union has moved, and that public-sector union finances and activities are neither transparent nor complete.

Minnesota's educators should be provided with a comprehensive picture of the finances and activities of the agent that has a legal right, and corresponding obligation, to exclusively bargain on their behalf, whether they are full members or not. Without that information, it is hard to make a fully informed decision about membership or to judge whether the union is doing a good job of representing all teachers and ESPs.

Aside from these structural impediments, the most powerful force preventing teachers from exercising their First Amendment rights, aside from not knowing about their *Janus* rights, is a work culture that often favors the teachers' union, and anxiety about what the union will do if a teacher resigns. Some teachers are also concerned colleagues will not respect a decision to resign, or that resigning will cause misunderstandings. No one wants to be called a "free rider" or be out of step with the culture at work.

The promise of *Janus* is that teachers and other educators will, in the near future, have a meaningful choice about union membership. A meaningful choice requires real leadership from teachers who are willing to exercise their constitutional rights and demand accountability from Education Minnesota in the courts and in the legislature.



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