



# Workplace Democracy?

**Today's K-12 teachers  
did not vote for  
Education Minnesota.**

**KIM CROCKETT AND CATRIN THORMAN**

**Educated  Teachers**  
**INFORMED • EMPOWERED**





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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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## Today's K-12 teachers did not vote for Education Minnesota.

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### Introduction

Teachers in Minnesota's K-12 schools are exclusively represented by a union and collective bargaining framework that has not been evaluated by teachers or lawmakers since its formal enactment in 1971. Teachers have not had the opportunity to vote for, or against, union representation in many generations. Education Minnesota, the state's teachers' union, simply comes with the job.

Until recently, teachers who did not belong to the union were forced, as a condition of employment, to pay about 85 percent of dues to, in theory, just cover the cost of collective bargaining. Yet these teachers could not vote on the result of that collective bargaining—the union contract. The U.S. Supreme Court ruled on June 27, 2018 that the practice of charging “fair-share” fees violated the First Amendment rights of all public employees, including teachers.<sup>1</sup>

Because Education Minnesota has exclusive representation rights as a matter of law, the union collectively bargains on behalf of both members and non-members. But teachers have no way to assess their exclusive representative relationship

with Education Minnesota, despite the union's stated “commitment” to “workplace democracy” as one of its core, institutional objectives. According to its constitution, “Education Minnesota shall be committed to democracy in the workplace and within the organization.”<sup>2</sup>

What does this statement mean in practical terms for classroom teachers? As for democracy within the union *organization*, teachers who belong to the union are eligible to vote on the contract negotiated by the union with their employer; members also get to vote on local union representation, which in turn leads to representation at union conventions. But *workplace* democracy turns out to be a very limited idea. As described below, teachers in the workplace today have never voted on whether the union, which has the *exclusive* power to represent all teachers including non-members, has represented them well.

Voting data from secret-ballot certification elections for unions' exclusive representation rights is collected by the Bureau of Mediation Services (BMS), a state agency established in 1969. BMS determines the appropriate collective bargaining unit and exclusive representative for employees. Out of the

330 school districts currently in existence, BMS has a record of a certified teachers' union at 318 schools.<sup>3</sup> But not all teachers in these districts were given the opportunity to vote for their union when it was certified, or subsequent to certification.

From 1957 to 2017, only 58 out of the 318 school districts on record at BMS held a secret-ballot certification election for exclusive union representation of teachers.<sup>4</sup> That is only 18 percent over a 60-year period. Furthermore, as detailed below, most of those elections occurred during the 1970s. Outside of elections, districts recognized the teachers' union as the exclusive collective bargaining agent through grandfathering, joint request, or voluntary recognition—none of which require a vote from teachers.

Teachers who are members of the union pay dues that support the state-level union, Education Minnesota, and a local union. A portion of their dues is also sent to two national unions: the National Education Association (NEA) and the American Federation of Teachers (AFT).<sup>5</sup> AFT is also affiliated with the AFL-CIO. Moreover, employers throughout the state collect union dues from employee paychecks on behalf of the union just like taxes, premiums for insurance or pension and other retirement contributions.

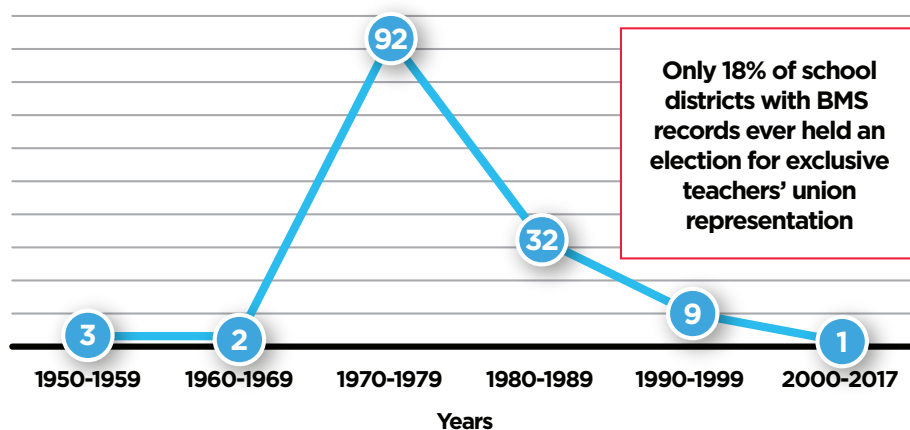
Under current state labor law—Minnesota's Public Employee Labor Relations Act (PELRA) enacted in 1971—teachers have the right to collectively bargain but they do not have a meaningful opportunity to exercise a right their union says it stands for: workplace democracy. Here is a brief history and the state of the law as it pertains to public-sector unions.

**Certification elections and inherited teachers' unions in Minnesota.** PELRA was enacted in 1971

following dramatic and, at that time, illegal strikes. In 1973 it was amended to allow public employees to strike under certain circumstances. PELRA gave teachers and other types of public employees the opportunity to vote for or against being represented by a union in what is called a "certification election." These elections are conducted by secret ballot.

Under PELRA, the union wins a certification election if it gets 50 percent plus one more vote of all eligible votes. Certification elections are held only after 30 percent or more of employees sign union authorization cards and the union files a petition for an election with BMS.<sup>6</sup>

**NUMBER OF SECRET-BALLOT ELECTIONS HELD FOR EXCLUSIVE UNION REPRESENTATION OF TEACHERS**



Source: Archived Certification Data from the Bureau of Mediation Services

**How the teachers' union gained recognition in Minnesota.** Both before and after PELRA's adoption, as noted above, 18 percent of school districts (58 out of 318) held certification elections for exclusive union representation of teachers, with most occurring in the 1970s. But there were many incumbent local teachers' unions that remained the bargaining agent without holding a certification election. Some were affiliated with the Minnesota Education Association (MEA) and others with the Minnesota Federation of Teachers (MFT).

**Grandfathered unions.** Many of these local unions were recognized under a so-called

“grandfather clause.” With no formal showing of interest required, or an election held, “grandfathered” unions represented teachers without giving them a vote in the matter.<sup>7</sup>

**Joint request.** Other local unions were recognized by “joint request.” The union is officially recognized as the exclusive representative through a joint employer/employee request (school district and union) when more than 50 percent of employees support the union. Signed authorization cards substantiating majority support must accompany a “joint request” to BMS.<sup>8</sup>

**Voluntary recognition.** Other local unions were recognized by “voluntary recognition agreements,” or VRAs. The general term VRA refers to a broad range of agreements between an employer and a union. The employer can decide to “voluntarily” recognize the union if the union shows “convincing” evidence through signed authorization cards that an overwhelming majority of teachers want union representation. The employer foregoes an election and accepts the union’s proof that a simple majority of teachers want the union to represent them. The employer then notifies the union and labor board (BMS), and the labor board certifies the union as exclusive representative without a vote by teachers.<sup>9</sup>

**Turf war between NEA and AFT.** There was a prolonged battle between the NEA and AFT over which national union would control Minnesota’s union dues treasure and territory. These turf wars, culminating in nine certification elections in 1991, were not a competition between “yes” votes for union representation and “no” votes against representation. Teachers were asked to pick *which* union they wanted to affiliate with—the Minnesota Education Association (MEA) in association with the NEA

or the Minnesota Federation of Teachers (MFT) in association with the AFT. Yet, only 4,395 teachers voted “yes” for exclusive union representation through nine secret-ballot elections.<sup>10</sup> In some school districts, multiple elections were held before 1991 to see if the exclusive agent would change from MEA to MFT, or vice versa.

The turf wars did not end in a “winner take all” victory. Instead, following a 1998 merger, the MEA and MFT became Education Minnesota which affiliates with both the NEA and AFT. The national unions take a portion of dues revenue from all members (and until June 27, 2018 from agency fee payers).

**BMS**  
BUREAU OF MEDIATION SERVICES  
State of Minnesota

**IN THE MATTER OF A PETITION FOR  
DETERMINATION OF AN APPROPRIATE  
UNIT AND CERTIFICATION AS  
EXCLUSIVE REPRESENTATIVE**

December 20, 2000

Education Minnesota, Pine Point, Ponsford, Minnesota  
- and -  
Independent School District No. 25, Ponsford, Minnesota

BMS Case No.: 01-PCE-412

PREPARED BY: Geraldine A. Ryan  
Representation Specialist

**CERTIFICATION OF EXCLUSIVE REPRESENTATIVE**

The tabulated results of a certification election conducted in the above-captioned matter by an agent of the Bureau of Mediation Services reveal that an exclusive representative has been selected:

ELIGIBLE EMPLOYEES	(8)
VOTES FOR EDUCATION MINNESOTA, PONSFORD	(5)
VOTES FOR NO REPRESENTATIVE	(0)
<b>TOTAL VOTES TABULATED</b>	<b>(5)</b>

Based on these election results, **IT IS CERTIFIED THAT THE EDUCATION MINNESOTA, PONSFORD, MINNESOTA**, is the exclusive representative for the employees falling within the appropriate unit of:

All teachers as defined by Minn. Stat. 179A.03, subd. 18, who are employed by the Pine Point School District No. 25, Ponsford, Minnesota, excluding supervisory employees, confidential employees, principals and assistant principals, and other employees excluded by the Public Employment Labor Relations Act.

Source: Archived Certification Data from the Bureau of Mediation Services



In a 2016 study, “Unelected Representatives: 94 percent of Union Members Never Voted for a Union” James Sherk demonstrated that the problem of “inherited unions” and a lack of representation is not unique to states like Minnesota or the public sector. It is a national problem.

Workers are legally represented by unions in workplace negotiations. In theory, this legal representation is legitimized through a democratic process in which workers vote in favor of union representation. ***In practice, only 6 percent of those covered by unions under the National Labor Relations Act (NLRA) have ever voted for union representation.*** In some cases, National Labor Relations Board (NLRB) rules allow unions to organize workplaces without majority support or even an election. Unions do not have to stand for re-election after being formed, and it is difficult for workers to request a decertification election to remove an unwanted union. As a result, most current U.S. union members are represented by unions they had no say in electing.<sup>11</sup> (Emphasis added.)

**Secret-ballot elections 2000 to 2017.** Only five teachers have voted in a certification election across all school districts from 2000-2017, according to available teachers’ union data from the Bureau of Mediation Services. That certification election was held in the tiny Pine Point Public School District (Becker County) in 2000 with five votes in favor of exclusive representation by Education Minnesota out of a total of eight eligible votes.

**Education Minnesota Membership before *Janus*.** As of August 2017, Education Minnesota had 88,225 members. The voting membership includes Active Professionals (66,840) and Active Education Support Professionals (ESPs) (7,724). Non-voting members include Reserves (91), Substitutes (177), Students (5,986), and Retired (7,407). Also listed are Agency Fee or “Fair-Share” Payers (6,534) who were not considered members and did not get voting rights, even on the contracts they paid to have negotiated on their behalf.

The U.S. Supreme Court’s ruling on *Janus v. AFSCME* eliminated two non-member categories: “fair-

share” fee payers and religious objectors. Following the decision, public-sector employers in Minnesota immediately stopped deducting fees from those employees.

From the 2004-2005 school year through the 2016-2017 school year, Education Minnesota gained 4,822 new (net) eligible voters. Of that total, 3,354 were teachers; the rest were ESPs. Since the only recent and last recorded teachers’ union election was in Pine County in 2000, we can conclude that none of these 3,354 new teachers had a vote in who would represent them.

## Conclusion

Given that most of the teachers’ local unions were recognized in the 1970s either by grandfathering, joint request, or voluntary recognition, and a smaller number by actual certification elections, it is fair to conclude that, Pine Point School District notwithstanding, the percentage of teachers in the classroom today who voted for (or against) the current union representation is zero, or nearly so.

When you accept a teaching job in Minnesota, you accept the exclusive representation of the union whether you are a member or not. If you do not, you do not get the job. Even after the *Janus* decision, it is that stark a choice. ●



## Endnotes

1 *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466, 585 U.S. \_\_\_\_ (2018), eliminated “fair-share” or “agency” fees. It is a landmark First Amendment and labor law case concerning the right of public employees to choose whether to financially support a union, and the power of labor unions to collect fees from non-union members. Public-sector employers and unions must now get an employee’s affirmative consent before deducting any money from a paycheck. Union membership is no longer a condition of employment. The case was decided on June 27, 2018.

2 Education Minnesota, “Education Minnesota Constitution & Bylaws,” *Education Minnesota* (2017), [https://educationminnesota.org/EDMN/media/edmn-files/about/governance-documents/2017\\_RC\\_FinalAmended\\_C-B\\_Booklet.pdf](https://educationminnesota.org/EDMN/media/edmn-files/about/governance-documents/2017_RC_FinalAmended_C-B_Booklet.pdf).

3 The 330 school districts include public independent districts and special school districts (i.e., Minneapolis and St. Paul). Not all school districts have teachers’ union certification data records on file with BMS. According to BMS, this could be due to school district mergers or because the school districts and/or teachers’ union never petitioned BMS to help with mediation, bargaining unit determinations, or bargaining unit certification elections.

4 The passage of PELRA in 1971 granted public employees in Minnesota the right to bargain collectively, but unions were recognized as the bargaining agent prior to PELRA under the Minnesota Labor Relations Act.

5 Teachers paid \$247.56 to the two national unions and \$471.00 to the state union for the 2017-2018 school year. Local dues vary, but the local union only gets around 21 percent of total dues. State dues increased in 2018 to \$478.

6 A petition for decertification (removal of exclusive representation) requires 30 percent of teachers covered by the bargaining unit to petition Minnesota’s labor board, BMS, to hold a decertification election. The election determines whether a simple majority of employees no longer wish to be represented by the union. But as a practical matter, decertification of a teachers’ union (including the local affiliate of Education Minnesota and the national affiliates) is just a theory: a petition has never been filed in Minnesota. Minnesota is one of several states that has all teacher contracts on the same two-year schedule. The commencement date (July 1) and termination date (June 30) are the same in every school district.

7 Like many of the nation’s labor laws, “grandfathering” has a less than honorable origin; its use dates to the post-Civil War era when white voters were exempt from literacy tests imposed on black Americans. Many labor laws, including the minimum wage, were adopted to exclude blacks and other minorities from the job market. See, Thomas C. Leonard, “Illiberal Reformers: Race, Eugenics, and American Economics in the Progressive Era,” *Princeton University Press*, 2016.

8 Public Employment Labor Relations Act, Minnesota Statute §179A (1971).

9 Ibid.

10 In 1991, 4,395 teachers voted between affiliates of the two national unions for exclusive representation; three “blank” ballots were submitted. Data was pulled from archived certification data at BMS, the Bureau of Mediation Services.

11 James Sherk, “Unelected Representatives: 94 percent of Union Members Never Voted for a Union,” *The Heritage Foundation*, August 30, 2016. Also see, J. Justin Wilson, “Job Tenure and Union Elections: Non-voting Union Membership in the Private Sector, 1964 to 2009.” Wilson estimates that 7.36 percent of current unionized employees voted in favor of the union that represents them, [https://www.unionfacts.com/downloads/Union\\_Tenure\\_Elections.pdf](https://www.unionfacts.com/downloads/Union_Tenure_Elections.pdf).



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