



THE HISTORY OF
Minnesota's
Teachers' Unions

FROM 1861 UNTIL TODAY

KIM CROCKETT AND CATRIN THORMAN | FEBRUARY 2019

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Kim Crockett is director of EducatedTeachersMN and vice president and senior policy fellow at Center of the American Experiment. She received her Bachelor of Arts degree in philosophy from the University of Minnesota (*cum laude*) and a law degree from the University of Pennsylvania Law School where she was a member of the Journal of Law and Economics and founded the Penn Law Federalist Society. Prior to joining the Center, Kim served as corporate counsel to a national bank and had a long legal career in commercial real estate law. Her research, writing and advocacy focuses on government unions and labor law, public pensions, the Metropolitan Council (regional government and transit) and the impact of the Refugee Resettlement Program on the state and local budgets. Kim regularly consults with state and national policymakers and contributes commentaries to the *Star Tribune*, *Pioneer Press*, *The Wall Street Journal*, *National Review Online* and newspapers across Minnesota. She is a frequent guest speaker at area chambers and on radio and television.



Catrin Thorman is co-director of EducatedTeachersMN and a policy fellow at Center of the American Experiment. She received her Bachelor of Arts degree in political science from Azusa Pacific University (*summa cum laude*) and later on received her teaching credentials in Arizona, where she taught 5th grade general education and 6th grade Latin. Catrin then used her classroom experience to transition into education policy research and writing at the California Policy Center before joining American Experiment in 2017.

Cover Photo:

"Girls' playground, Harriet Island." St. Paul, Minnesota, circa 1905. Detroit Publishing Company.



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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Peter Zeller at Peter.Zeller@AmericanExperiment.org or 612-338-3605.
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Introduction

Minnesota played a key role in advancing the idea of collective bargaining for public school teachers in the United States. The first teachers' strike in the nation took place in the state in 1946. While that strike was illegal, less than three decades later Minnesota passed the Public Employee Labor Relations Act (PELRA)¹ in 1972 and amended it in 1973 to allow for a limited right to strike.

The goals and philosophical views of the early teacher associations—the Minnesota Education Association (MEA) and the Minnesota Federation of Teachers (MFT)—varied in significant ways, but generally the idea was to improve the pay and working conditions for teachers and to raise the standards of the teaching profession. And as today, the argument was made that advancing the cause of teachers, and public education, would improve the welfare of children, and the nation itself.

Minnesota, from the early days of teachers' associations, has been hotly contested territory for the national players in the labor movement: down to the local level, the National Teachers Association (NEA) and the American Federation of Teachers (AFT) competed with one another for teachers' votes to represent them across the state. Philosophical differences and different affiliations prevented the state affiliates of the national unions from merging into one new teachers' union. Dick Mans, president of MFT in 1984, believed the merger of the two national unions would bring significant “political clout” to teachers' unions. “I have a dream that someday these two teacher organizations will be merged into one new teachers' union,” said Dick Mans.² But Martha Lee Zins, president of MEA in 1984, was not as keen on a merge between AFT and NEA. “Dick's dream is obstructed by philosophical differences between the organizations, which must be resolved before we can make substantive progress,” she said.³

Because the MFT affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), MEA officials were concerned “they would lose their identity in a labor federation and find that nonteachers were speaking for teachers.”⁴ Statewide bargaining for a master contract was supported by the MEA and opposed by the MFT.⁵ Other differences on the subjects of merit pay and competency testing divided the two Minnesota unions. The MEA had strong reservations about both, whereas the MFT was more willing to include them in contract negotiations. On political spending levels, the MEA exceeded MFT's political action committee funds by 10 times the amount.⁶

In 1991, merger talks began between MEA and MFT, culminating in a merger in 1998 to create Education Minnesota. The MEA/NEA and MFT/AFT merger was the first of its kind in the country and is why members hold memberships with and pay dues to the NEA, AFT and the trade union AFL-CIO (AFT and AFL-CIO are aligned).⁷

¹ Public Employment Labor Relations Act, Minnesota Statute §179A (1971). The Public Employee Labor Relations Act (PELRA) was modeled after the National Labor Relations Act (NLRA).

² Austin Wehrwein, “Teachers' Unions in Minnesota Pledge Unified Front, Amid ‘Courtship’ Talk,” *Education Week* (1974), www.edweek.org/ew/articles/1984/10/31/05610038.h04.html.

³ Ibid.

⁴ Ibid.

⁵ We note that Minnesota eventually adopted a master contract.

⁶ Austin Wehrwein, “Teachers' Unions in Minnesota Pledge Unified Front, Amid ‘Courtship’ Talk.”

⁷ Education Minnesota. “Celebrate Labor History Month,” *Education Minnesota*, <https://www.educationminnesota.org/news/minnesota-educator/2016-17/0517/Celebrate-Labor-History-Month>.

Timeline: The History of Organizing Teachers in Minnesota

In 1861, almost 100 educators in Rochester formed the Minnesota State Teachers Association, with a name change to Minnesota Education Association, or MEA, in 1876.⁸

The name change signified an enlargement of the association to include not just teachers but employees in other departments of the educational field.⁹

On the national level, MEA affiliated itself with the National Education Association.

In 1909, the Minneapolis Teachers' Retirement Fund Association, the first retirement fund, was established for Minneapolis teachers and principals by the Minneapolis School District.¹⁰ That retirement fund was eventually merged into a state-wide fund, the Teachers Retirement Association, or TRA. The only remaining independent retirement fund is the St. Paul Teachers Retirement Fund.¹¹

In 1918, the Minnesota Federation of Teachers, which began as the Grade Teachers Organization in 1898, formed. On the national level, MFT aligned with the American Federation of Teachers and the American Federation of Labor and Congress of Industrial Organizations.

According to Henry Winkels, the former executive secretary of MFT, the MFT was formed for:

- Purposes of greater effectiveness in accomplishing objectives for teachers at the legislature.
- Mutual assistance among locals in problems common to Minnesota.
- Raising the standards of the teaching profession by securing the conditions essential to the best professional service.
- Promoting the welfare of the children of Minnesota by providing progressively better educational opportunities for all.¹²

National Influence on Collective Bargaining

In 1935, Congress passed and President Franklin D. Roosevelt signed the National Labor Relations Act (NLRA), which declared it the policy of the U.S. to encourage “the practice and procedure of collective bargaining.”¹³ The NLRA, also known as the Wagner Act, only governs private-sector labor issues, but it was the model for states when they adopted state-based labor laws to govern public-sector unions like Education Minnesota. The National Labor Relations Board (NLRB), an independent federal agency, was formed to protect the right of private-sector employees to organize and mediate labor issues under its jurisdiction.¹⁴

President Roosevelt championed the cause of collective bargaining in the private sector during his long administration, but he was adamantly opposed to collective bargaining and organizing for public-sector employees.

In 1937, FDR acknowledged that government employees, like private-sector employees, needed “fair and adequate pay, reasonable hours of work, safe and suitable working conditions, development of opportunities for advancement, facilities for fair and impartial consideration, and review of grievances.”¹⁵ FDR, however, declined an invitation to celebrate an

⁸ Education Minnesota, “Celebrate Labor History Month.”

⁹ John N. Greer, *The History of Education in Minnesota* (Washington, D.C.: U.S. Government Printing Office, 1902), 59.

¹⁰ Education Minnesota, “Celebrate Labor History Month.”

¹¹ Both retirement funds for teachers are seriously underfunded. TRA’s reported funding ratio is 75.59% and St. Paul’s is 63.25%. Both funds have been receiving large infusions of direct cash from Minnesota’s general fund to stabilize the funds in a (so far failed) attempt to make up for a shortfall in contributions (deficiencies) since about 2000. The funds have also used overly optimistic assumptions about the assumed rate of return on investments, and faulty assumptions when calculating future liabilities. In short, the promises made to teachers have not been funded so the funds are operating from a deficit position. These shortfalls were not caused, but made worse, by the financial crisis of 2008-2010 and remain unresolved today. The Center will address teacher retirement funds in a separate paper.

¹² Henry Winkels, *The Minnesota Federation of Teachers: Who we are. What we stand for.* (St. Paul: Minnesota Federation of Teachers, 1966), 4.

¹³ National Labor Relations Act, 29 U.S.C. §§ 151-169 (1935).

¹⁴ From the National Labor Relations Board (NLRB) website: “The National Labor Relations Board is an independent federal agency that protects the rights of private sector employees to join together, with or without a union, to improve their wages and working conditions... The Board has five Members and primarily acts as a quasi-judicial body in deciding cases on the basis of formal records in administrative proceedings. Board Members are appointed by the President to 5-year terms, with Senate consent, the term of one Member expiring each year,” <https://www.nlr.gov/who-we-are>.

¹⁵ Franklin D. Roosevelt, “Letter on the Resolution of Federation of Federal Employees Against Strikes in Federal Service,” *The American Presidency Project* (1937), <https://www.presidency.ucsb.edu/node/208681>.

anniversary of the National Federation of Federal Employees by sending a now famous, and oft-quoted, letter to explain why he opposed public-sector collective bargaining and the right to strike.

All Government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of Government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with Government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress... Particularly, I want to emphasize my conviction that militant tactics have no place in the functions of any organization of Government employees. Upon employees in the Federal service rests the obligation to serve the whole people, whose interests and welfare require orderliness and continuity in the conduct of Government activities. This obligation is paramount. Since their own services have to do with the functioning of the Government, a strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of Government until their demands are satisfied. Such action, looking toward the paralysis of Government by those who have sworn to support it, is unthinkable and intolerable...¹⁶

FDR's position was widely shared by liberals, conservatives and even labor leaders like AFL-CIO President George Meany.

On December 4, 1955—the eve of the merger between the American Federation of Labor (AFL) and the Congress of Industrial Organizations (CIO)—the *New York Times* published an article by AFL-CIO President George Meany which echoed President Roosevelt.

Certain business leaders may consider “big government” or socialism more of an immediate threat to their interests than communism. Are they allowing themselves to be deluded by their own propaganda to the effect that organized labor in this country is in favor of big government or the nationalization of industry? Nothing could be further from the truth. The main function of American trade unions is collective bargaining. It is impossible to bargain collectively with the government. Unions, as well as employers, would vastly prefer to have even Government regulation of labor-management relations reduced to a minimum consistent with the protection of the public welfare.¹⁷

George Meany, known for taking a stand against socialism and communism, was perhaps less eloquent than President Roosevelt, but his views on collective bargaining were well known: he argued for collectively bargaining in the private sector as a way for employees to share in the profits they helped produce by their labor. He opposed collective bargaining in the public sector because there are simply no profits to bargain over.

The American Liberty League, made up of Democrats opposed to Roosevelt's New Deal, opposed the NLRA and encouraged employers to refuse to comply with the NLRB.¹⁸ The effort by the League and other civic and business groups to defeat the NLRA ended when the Act was held to be constitutional by the Supreme Court in *National Labor Relations Board v. Jones & Laughlin Steel Corporation* in April 1937.

¹⁶ Franklin D. Roosevelt, “Letter on the Resolution of Federation of Federal Employees Against Strikes in Federal Service,” *The American Presidency Project* (1937), <http://www.presidency.ucsb.edu/ws/index.php?pid=15445>.

¹⁷ George Meany, “Meany Looks Into Labor's Future,” *New York Times*, December 4, 1955, <http://www.nytimes.com/1955/12/04/archives/meany-looks-into-labors-future-meany-looks-at-labors-future.html>.

¹⁸ The American Liberty League was a conservative, national protest organization formed in 1934 by anti-Roosevelt Democrats to protest the New Deal and promote the small-government ideals of Jeffersonian Democracy. The League was led by Democrats with strong business connections, especially Al Smith (the 1928 Democratic presidential nominee), Jouett Shouse (former high party official), John W. Davis (the 1924 Democratic presidential nominee), John Jacob Raskob (former Democratic National Chairman and the foremost opponent of Prohibition), and Dean Acheson (future Secretary of State under Harry Truman), along with many industrialists, notably members of the Du Pont family. The liberal New Dealers considered it their greatest enemy.

The League stated that it would work to “defend and uphold the Constitution” and to “foster the right to work, earn, save, and acquire property.” In its opinion, the Roosevelt Administration was leading the U.S. toward socialism, bankruptcy, and dictatorship. The League spent between \$500,000 and \$1.5 million in promotional campaigns; its funding came mostly from the Du Pont family, as well as leaders of U.S. Steel, General Motors, Standard Oil, Chase National Bank, and Goodyear Tire and Rubber Company. It reached over 125,000 members and supported the Republicans in 1936.

The League labeled Roosevelt's Agricultural Adjustment Administration “a trend toward Fascist control of agriculture.” Social Security was said to “mark the end of democracy.” Lawyers for the American Liberty League challenged the validity of the Wagner Act (National Labor Relations Act), but in 1937, the Supreme Court upheld the constitutionality of the statute. The League faded away and disbanded in 1940. Its role was taken over by the National Committee to Uphold Constitutional Government. http://www.conservapedia.com/American_Liberty_League.

Prior to the April ruling, Roosevelt announced a controversial plan to expand the Supreme Court to as many as 15 judges. Critics argued the president was trying to “pack” the court and neutralize the Supreme Court justices who were expected to find New Deal legislation unconstitutional. The threat of the court-packing plan worked; two members of the Supreme Court revised their opinions about Roosevelt’s program, and the constitutionality of the NLRA was sustained.¹⁹

St. Paul Teachers’ Strike 1946

In 1946, the year before the Taft-Hartley Labor Act passed, nearly 90 percent of St. Paul teachers voted “yes” to engage in the first organized teachers’ strike in the nation. The strike was illegal in Minnesota and would be for another three decades. Teachers who participated risked losing their tenure rights, state teaching certificates and could be subject to discharge.²⁰

Organized by the St. Paul women’s local union of the American Federation of Teachers, the strike lasted nearly six weeks from November 25 to December 27. The teachers who participated in the walkout wanted more funding from city officials for higher salaries and better working conditions. They picketed under the slogan, “Strike for Better Schools.” At the time, St. Paul had no board of education to oversee school funding or policy—schools were under the jurisdiction of the city administration and the mayor and were not financially independent from city government.

In late December of 1946, the strike was suspended after the city’s charter commission approved an amendment to increase school funding. Nineteen years after the strike, the city of St. Paul established a school board and created Independent School District 625.²¹

A similar strike over teacher salaries was voted on in Minneapolis in 1946, but it was averted when Mayor Hubert Humphrey helped the Superintendent and Minneapolis Federation of Teachers negotiate a pay raise. The agreement “provided an immediate \$150-cost-of-living bonus for each of the two thousand teachers and an initial \$40 monthly pay raise beginning January 1 [1947].”²²

Mayor Humphrey was known to deal with labor-management disputes that arose during his time in city hall by using his “Minnesota Formula”:

...[I]n any situation where a breakdown of collective bargaining [was] threatened, a mayorally appointed committee (with equal representation from farm labor and management) would intervene to “eliminate any known inequities in the conditions of work and wage classifications.” This was to be followed by an automatic 10 to 15 percent increase in “straight-time hourly earnings...given in the form of the same cents-per-hour boost to all workers.”²³

Labor laws continued to evolve. The Taft-Hartley Labor Act (1947) was an acknowledgement by Congress that labor unions needed to be held accountable by the employees it represented as an exclusive agent and prevented from coercing employers, third parties, and the public. Like employers, labor unions, too, needed to bargain in good faith.

But what about the basic civil rights of employees?

4) Certain business leaders may consider “big government” or socialism more of an immediate threat to their interests than communism. Are they allowing themselves to be deluded by their own propaganda to the effect that organized labor in this country is in favor of big government or the nationalization of industry?

Nothing could be further from the truth. The main function of American trade unions is collective bargaining. It is impossible to bargain collectively with the Gov-



NEW SEAL—Symbolizing unity, it becomes the A.F.L.-C.I.O. insignia.

ernment. Unions, as well as employers, would vastly prefer to have even Government regulation of labor-management relations reduced to a minimum consistent with the protection of the public welfare.

Photo Credit: Amy Ridenour, the National Center for Public Policy Research

¹⁹ Net Industries, “National Labor Relations Board v. Jones & Laughlin Steel Corp.- Significance,” *Net Industries*, <http://law.jrank.org/pages/25142/National-Labor-Relations-Board-v-Jones-Laughlin-Steel-Corp-Significance.html>.

²⁰ Cheryl Carlson, “The St. Paul Public Schools Teachers’ Strike of 1946,” *Strike for Better Schools* 43 (2008): 3, https://www.rchs.com/wp-content/uploads/2015/11/RCHS_Summer2008_Carlson.pdf.

²¹ Kris Berggren, “Historic St. Paul Walkout,” *Minnesota House of Representatives Public Information Services* (2011), http://www.house.leg.state.mn.us/sessionweekly/art.asp?ls_year=87&issueid_=90&storyid=2438&year_=2011.

²² William L. Sherman, “The Forgotten Rural Teacher Strikes,” *Country School Journal* 1 (2013), <http://www.countryschooljournal.com/uploads/TheForgottenRuralTeacherStrikes.pdf>.

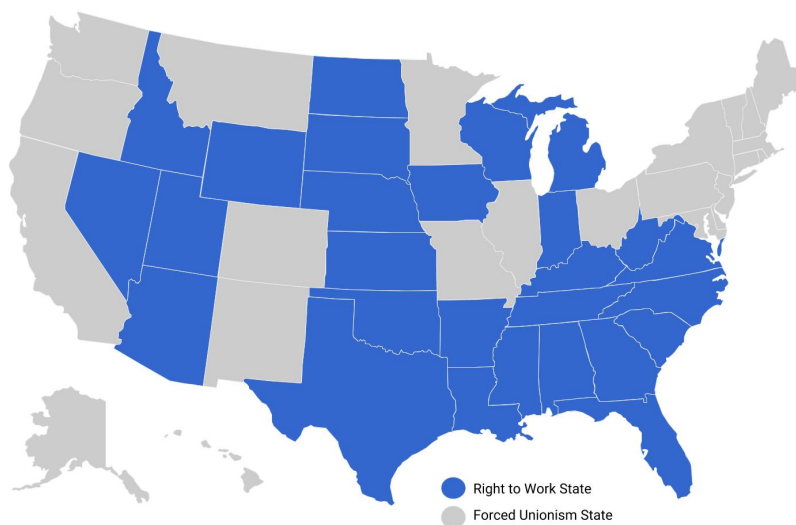
²³ Gary W. Reichard, “Mayor Hubert H. Humphrey,” *Minnesota Historical Society* (1998), <http://collections.mnhs.org/MNHHistoryMagazine/articles/56/v56i02p050-067.pdf>.

According to the NLRB:

The Taft-Hartley Act made major changes to the Wagner Act... new language was added to provide that employees had the right to refrain from participating in union or mutual aid activities *except that they could be required to become members in a union as a condition of employment.*²⁴ The Taft-Hartley Act also created what is called “Right to Work.” The following is an explanation from the National Right to Work Legal Defense Foundation, which has been advocating for the full protection of an employee’s First Amendment rights and Right to Work policies since the 1950s.

A Right to Work law guarantees that no person can be compelled, as a condition of employment, to join or not to join, nor to pay dues to a labor union. Section 14(b) of the Taft-Hartley Act affirms the right of states to enact Right to Work laws.

The 27 states which have passed Right to Work laws are: Alabama, Arizona, Arkansas, Kansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.²⁵



Source: National Right to Work Legal Defense Foundation

Minneapolis Teachers’ Strike 1970

Nearly 25 years later in April 1970, teachers from the Minneapolis Federation of Teachers illegally went on strike for 14 days. Like the first teachers’ strike in St. Paul, Minneapolis educators demanded better salaries, benefits, and work conditions. But not all teachers were supportive of the strike, and the walkout created tension between strikers and non-strikers.²⁶

Minnesota Adopts PELRA

Following the walkout, the Minnesota Public Employees Labor Relations Act (PELRA) of 1971 was enacted, granting public employees in the state the right to bargain collectively. In 1973, PELRA was amended to provide a limited right to

²⁴ National Labor Relations Board, “1947 Taft-Hartley Substantive Provisions,” *National Labor Relations Board*, <https://www.nlr.gov/who-we-are/our-history/1947-taft-hartley-substantive-provisions>.

²⁵ National Right to Work Legal Defense Foundation, “Right to Work Frequently Asked Questions,” *National Right to Work Legal Defense Foundation*, <http://www.nrtw.org/right-to-work-frequently-asked-questions/>.

²⁶ Minnesota Historical Society, “1970 Minneapolis Teachers’ Strike,” *Minnesota Historical Society*, www.mnhs.org/library/tips/history_topics/83teachersstrike.php.

strike. Supreme Court cases heard in the mid-1970s and 1980s shaped the power of unions and what they could (or could not) demand. In the *City of Madison Joint School District No. 8 v. Wisconsin Employment Relations Commission*,²⁷ it was ruled that a state may not constitutionally require school boards to prohibit non-union teachers from speaking against agency shop agreements at public meetings. Non-union teachers' free speech rights were supported.

The legal issue addressed in the 1977 Supreme Court case *Abood v. Detroit Board of Education* was whether requiring public employees to pay agency fees to keep their jobs violated their free speech rights protected under the First Amendment. The Court rejected this argument, upholding a closed union shop for the public sector, ruling that so-called agency fees (or fair-share fees) were constitutionally valid "insofar as the service charges are applied to collective-bargaining, contract administration, and grievance-adjustment purposes." The Court, however, held that "a union cannot constitutionally spend [objectors'] funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as a collective-bargaining representative."²⁸

Again, Minnesota played a pivotal role in setting collective bargaining rights for the nation in the 1983 case *Knight v. Minnesota Community College Faculty Association*. The plaintiff argued exclusive representation of public employees by a union was unconstitutional because it forced its members to associate with a political action organization.²⁹ The Court affirmed a lower court decision that rejected these arguments and confirmed the right of the union to receive a "fair-share" fee.

A year later in 1984, the Supreme Court upheld a Minnesota labor law that was challenged in *Minnesota State Board for Community Colleges v. Knight*. The law, in effect, barred non-union members from participating in their public employers' "meet and confer" sessions with the employees' exclusive bargaining representative. The Court reversed a lower court decision that ruled this law deprived non-members of their First Amendment right of free speech on the premise that non-union members "have no constitutional right to force the government to listen to their views."³⁰

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 the 1977 case *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. 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.³¹

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. The following is Justice Alito writing for the majority of the Court.

²⁷ *City of Madison Joint School District No. 8 v. Wisconsin Employment Relations Commissions*, 429 U.S. 167 (1976), www.law.cornell.edu/supremecourt/text/429/167.

²⁸ *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), <https://www.law.cornell.edu/supremecourt/text/431/209>. As discussed here and below, the holding in the *Abood* case was challenged before the Supreme Court in 2016 and overturned in 2018.

²⁹ *Knight v. Minnesota Community College Faculty Association*, 571 F. Supp. 1 (Minn.1982), <https://www.courtlistener.com/opinion/1494303/knight-v-minn-community-college-faculty-assn/>.

³⁰ *Minnesota State Board for Community Colleges v. Knight*, 82 U.S. 898 (1984), <http://caselaw.findlaw.com/us-supreme-court/465/271.html>.

³¹ 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.html>.

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.³²

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"³³ 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 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.³⁴

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.³⁵

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.

³² See, *Janus v. AFSCME*, 585 U.S. __ (2018), pp. 48-49.

³³ *Ibid*, p. 4.

³⁴ See, *Janus v. AFSCME*, 585 U.S. __ (2018),

³⁵ *Ibid*, p. 47.

For example, 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.

Final Thoughts

The nation’s highest court has been, and will continue to be, significant in defining and limiting collective bargaining rights. But under federal law, Minnesota is free to craft its own approach to labor law.

The history of teacher unionization in Minnesota outlines why educators felt compelled to unionize their workplace. Minnesota played a key historical role in teacher unionization in the 19th and 20th centuries, but it is time to ask how PELRA and the union might better serve the needs of teachers in the classroom today.



Minnesota's Think Tank

8421 Wayzata Boulevard ★ Suite 110
Golden Valley, MN 55426

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