

## **SB 175 – Senate Commerce Committee**

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Proponent Testimony

Chairwoman Lynn and Members of the Committee;

Thank you for the opportunity to present testimony today on SB 175. I am Patrick Wright, the Vice President for Legal Affairs at the Mackinac Center for Public Policy in Michigan.

I have organized my written remarks as background on the *Janus v. AFSCME* decision, prior labor law history, and relevant Kansas references as you consider the bill before you.

### **Janus Background**

- Essentially, there are three sources of labor sources of laws: (1) The National Labor Relations Act – enacted by Congress, this covers the private sector like automobile plants; (2) the Railway Labor Act – also enacted by Congress, this covers airlines and railroads; and (3) various states public sector labor laws.

- State labor laws vary. Before *Janus v. AFSCME* was decided, there were three general categories: (1) states that allow mandatory bargaining and agency fees; (2) states that allow mandatory bargaining and prohibit agency fees; and (3) states that prohibit mandatory bargaining thereby rendering the agency-fee question moot.

- Some key labor terms will help the discussion –

**Union security:** Unions desire: (1) to prevent employers from wooing employees to leave; (2) to prevent other unions from raiding the bargaining unit; and (3) to provide a reliable source of funding. The measures unions put in place to achieve these ends are matters of union security.

**Exclusive representation** – whereby a union comes to be the mandatory bargaining agent for a group of employees. Dissenters cannot prevent implementation of bargaining agreement if employer and union agree to one.

**Closed shop** – employee must already be a union member to get a job.

**Union shop** – employee must become a member within a certain period of getting job. Failure to do so can lead to the employee being fired.

**Agency shop** – union can levy fees to non-members employees who are covered by a collective bargaining agreement. Failure to pay can lead to the nonmember employee being fired.

**Right to work** – generally, where a statutory scheme permits exclusive bargaining, but prohibits agency fees.

- Kansas' labor laws related to teachers and state employees are not affected by federal statutes. Both statutory schemes are exclusive representation and because Kansas has a right to work provision in its Constitution, both statutory schemes prevent agency fees.

- **Article 15 § 12 of Kansas Constitution:** Membership or nonmembership in labor organizations. No person shall be denied the opportunity to obtain or retain employment because of membership or nonmembership in any labor organization, nor shall the state or any subdivision thereof, or any individual, corporation, or any kind of association enter into any agreement, written or oral, which excludes any person from employment or continuation of employment because of membership or nonmembership in any labor organization.

- In 1977, the United States Supreme Court decided a case, *Abood v. Detroit Board of Education*, on the constitutionality of agency fees where there was a group of public employees represented by a mandatory bargaining agent. The Supreme Court upheld the use of agency fees. After *Abood* was decided twenty two states either continued or enacted laws that permitted agency fees to be imposed on large groups of public employees.

- In June 2018, the Supreme Court overturned *Abood* in *Janus v. AFSCME*. Now, as a matter of the First Amendment, agency fees are prohibited. This means those 22 state that had permitted agency fees to be imposed on public employees could no longer do so.

- Kansas was not one of those states, so the impact of *Janus* here is that it prevents the state from in the future deciding to allow the imposition of agency fees.

- So, what is the issue here? While agency fees and dues cannot be mandated, employees are allowed to voluntarily agree to make payments to unions. For example, KAN. STAT. ANN. § 75-5501(b), which states:

(b) The director of accounts and reports shall provide, as a part of the system of payroll accounting, a plan for the deduction from the salary or wages of an amount equal to regular membership dues for state officers and employees who are members of the Kansas troopers association or who are in any employee organization which has filed an annual report pursuant to K.S.A. 75-4337 or which has a business agent registered pursuant to K.S.A. 75-4336. Such plan, in addition to such provisions as are negotiated by the director of accounts and reports and the employee organization, shall provide for:

(1) A written authorization-assignment by a state officer or employee prior to any dues deduction from the salary or wages of such officer or employee, which authorization-assignment shall remain effective for not less than 180 days and shall be terminated at any time thereafter upon 30 days' prior notice by the state officer or employee of termination of the authorization-assignment;

(2) change in the amount of regular membership dues to be deducted, but not more often than twice in any fiscal year;

(3) renewal of an authorization-assignment by an officer or employee after termination of a prior authorization-assignment upon 90 days' prior notice by the officer or employee who has terminated a membership dues deduction; and

(4) payment of all moneys deducted each payroll period pursuant to this section to the employee organization less the amount of actual direct expenses incurred by this state for the membership dues deduction.

- In relation to school districts, Kan. Stat. Ann. § 72-2241(b) authorizes deductions:  
  
(b) Written authorizations from employees for deductions from compensation for payments of professional association dues shall remain in effect until modified or revoked in writing by the professional association or the employee, or until the employee's contract of employment is terminated. So long as the written authorization from an employee for deductions for professional association dues remains in effect and upon written notice of an increase in the amount of such dues being given to the board of education or the board of trustees and to all affected employees, the amount specified to be deducted in such written authorization may be increased by an amount deemed necessary by a professional association for a school year. In no event shall the amount of deductions from compensation for payments of professional association dues be increased more than one time in each school year without specific written authorization from the employee for such increase.

Thank you for your consideration of this information and testimony as you consider SB 175.