

MASSACHUSETTS TEACHERS ASSOCIATION

DIVISION OF LEGAL SERVICES

2 HERITAGE DRIVE, 8TH FLOOR
QUINCY, MASSACHUSETTS 02171-2119

GENERAL COUNSEL

IRA C. FADER

DEPUTY GENERAL COUNSEL

RYAN M. LEACH

617.878.8000

1.800.392.6175

FAX: 617.248.6921

STAFF COUNSEL

MATTHEW D. JONES
RICHARD A. MULLANE
LAURIE R. HOULE
QUESIYAH S. ALI
RYAN P. DUNN
ASHLEY F. WALTER
MARK A. HICKERNELL
JONATHAN M. CONTI
JENNIFER L. MACDOUGALL

PARALEGAL

KATHY NAGLE
SARAH B. KELLEY

TO: MTA Affiliate Leadership
FROM: Ira Fader, MTA General Counsel
DATE: September 20, 2019
RE: "Freedom to Join Act"

Congratulations!

For the past year, a coalition of the major labor unions representing Massachusetts public employees has worked on getting a bill passed that would redress the U.S. Supreme Court's anti-union decision in *Janus v. AFSCME*. On September 18, 2019, the Massachusetts House of Representatives voted 154-1 to override a veto by Governor Charles Baker, and the Massachusetts Senate followed suit the next day, voting 39-1 to enact the bill. With substantial leadership provided by the MTA, the union-backed bill is now law. We are calling it the "Freedom to Join Act."¹

I. What does the Freedom to Join Act do?

Janus was an attack on "union security" aimed at a union's financial health.² The new law has several major provisions that will enable the MTA and our affiliates to replace the "security" of agency fee with new forms of union power.

(A) Unions are guaranteed access to bargaining unit members as a matter of law.

1. The employer must allow the exclusive representative to:
 - a) Meet with all unit members on the premises during the workday.
 - b) Conduct worksite meetings during non-work periods.

¹ The bill has gone by several names during the legislative process. The MTA and other unions call it the "Freedom to Join Act," although its formal (and somewhat misleading) title is "An Act Relative to Collective Bargaining Dues." A link to the full bill is provided in the toolkit.

² This attack by well-financed anti-union forces continues across the country — including here in Massachusetts, where the National Right to Work Legal Defense Foundation has asked the U.S. Supreme Court to overturn our major victory in the *Branch* case. (See July 10, 2019, General Counsel Advisory.)

- c) Meet with newly hired employees at the time of hire or, for school employees, even before school starts.
- 2. The employer must provide the union with updated contact information for all bargaining unit members.
- 3. The union can now easily meet and communicate with bargaining unit members at the workplace.
 - a) Email system: you have a right to use the employer's email system for union-related communications.

Cautionary note: Do NOT use the employer's email system to share information you wouldn't want your employer to see. The employer can view all email traffic on its system.
 - b) Employer Premises: You have a right to use the public facilities for union meetings.

(B) New payroll deduction rules.

Unions can have a membership contract that creates a one-year dues obligation, even if the individual drops membership in the middle of a year. However, each local can decide whether to continue collecting dues and for how long, up to one year. The employer must honor the membership requirement set by the local, up to one year, through the use of payroll deduction.

(C) The personal contact information of every public employee is no longer accessible to third parties as a public record.

- 1. Most public employers maintain the home address, home phone and/or mobile phone numbers, and personal email address of each employee. This information is now private and non-disclosable to others.
- 2. Anti-union entities financed by deep pockets outside Massachusetts will have a harder time spreading misinformation about union membership to employees at their homes or on their private email accounts or cellphones.
- 3. The union as the democratically elected "exclusive representative" is entitled to the contact information.

(D) Costs to non-members. The *Janus* decision suggested that a union could charge a non-member for the direct costs of grieving and arbitrating the non-member's contractual case. The Freedom to Join Act amended Chapter 150E to let unions charge the non-member for reasonable costs if they choose to do so.

At meetings over the summer, the MTA's Executive Committee and Board of Directors have started a discussion about this issue that will continue at the October 2019 Board meeting. The Executive Committee this past summer voted unanimously to recommend to the Board of Directors that the MTA not charge non-members, and direct locals not to charge non-members until at least June 2020, when the Board would receive a report on the implementation of the law. The Board will complete its discussion in October.

Whether to charge non-members for providing direct services is controversial. On the one hand, it reduces the problem of free ridership by non-members. On the other, it alters a fundamental principle of exclusive representation that the union grieves and arbitrates on behalf of all, not one. A grievance or arbitration outcome is about the contract, not just one individual. In addition, charging a fee for service is a negative incentive to join the union. Further, creating a "membership-light" category could undermine allegiance to *All In* full-dues membership and to our collective power. Non-members are already excluded from many privileges and benefits of union membership at the MTA and local levels.

II. What are our next steps at the state and local levels?

To make the most of the rights and protections in the new law, local leaders should:

- a) Demand an up-to-date employee list in writing from the employer. A sample request is included in this toolkit.
- b) Remind the employer that it must (i) inform you of a new hire within 10 days after the prospective employee accepts the offer of employment; (ii) provide you with contact information within that time frame; and (iii) allow you to meet with the new employee within 10 days of the starting date, either individually, in groups, or at new employee orientation meetings.
- c) Schedule a meeting with the employer to discuss the law's numerous provisions. The employer needs to ensure that all necessary personnel are aware of new requirements. For example:
 1. Payroll officers need to know the new payroll deduction rule.
 2. Supervisors and administrators need to understand the union's rights to communicate with members and to use public resources to this end.
 3. Central administration should know that personal contact information is now foreclosed from public disclosure.
 4. The union's right to use the employer's email system needs to be discussed.
- d) Use the MTA's new membership application and dues deduction forms (unless your CBA provides otherwise).