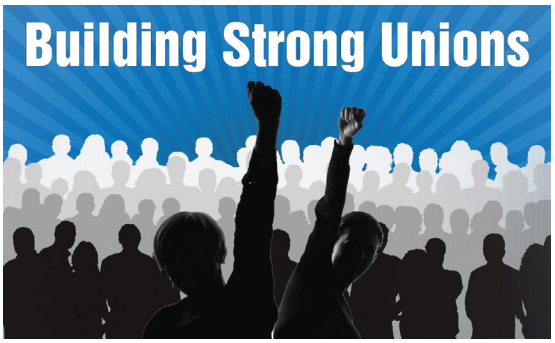

LEGAL GUIDANCE ON 2018 UNION BILLS

This is a summary of legal guidance prepared in April 2018 by Dmitri Iglitzin of Schwerin Campbell Barnard Iglitzen & Lavitt. Unions affiliated with the Washington State Labor Council, AFL-CIO may request a copy of Iglitzen's full legal memorandum by emailing ***jkendo@wslc.org****.*

HB 2751 — Deduction of Union Dues and Fees

If an affiliate has a union security clause in its contract, the affiliate no longer needs to provide the employer with (or assert the existence of) written authorization from the employee, in order to have the employer deduct dues or fees from the employee's paycheck and transmit those to the union.

No memorandum of understanding between the union and the employer is necessary to have this go into effect on June 7, 2018. It is self-executing. Moreover, even if the existing CBA requires the employer to deduct dues or fees from paychecks when (or "only when") the employees have provided written direction that it do so, this law supersedes that. The existing CBA language will instantly become irrelevant.

Federal law requires unions to accept a lower amount from fee-payers than from members. This law does not change that. If it is not already clear to our employers that we are only seeking the lower rate from nonmembers of the union, and do not want the employers to deduct full membership dues from those workers, we should make sure employers understand that.

If a decision in *Janus* strikes down the ability of public employers to compel the payment of any money to unions from objecting employees, the new law will stay in effect, but at that point, it will not be capable of being applied lawfully to employees who *have objected to the payment of fees to the union*. But it will apply to all other employees, both card-signers and people who have signed no membership card at all, but have not objected.

Worst case scenario, if a bad decision in *Janus* is particularly broad, the law might become even more limited, such that public employers will not be permitted to deduct dues or a fee equivalent to dues from any employee who has not *affirmatively opted in*, e.g., by signing a membership card.

Importantly, one predicate requirement for the mandatory action by the employers in deducting fees/dues from wages is the existence in the CBA of a "union security provision," i.e. a provision requiring payment of dues or fees from all or some workers covered under the contract.

In anticipation of a bad decision in *Janus*, we recommend that unions obtain contractual commitments (e.g. in an MOU) from their employers that they will enforce employee authorization cards consistent with their terms, such that we will be able to demand that the employer continues to deduct union dues from employees, even if those employees have sought, prematurely or outside of a window period, to revoke their authorization. The existence of this MOU will qualify as a "union security provision" allowing this new law to be applied (absent a worst case decision in Janus) to everyone who has not "opted out."

Because of the uncertainty related to the *Janus* decision, it is hard to recommend any model language at this point. But if a union wants to bargain new language that takes a possible bad decision in *Janus* into account, we

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would recommend making sure to have *some* kind of union security provision in every contract, even a "maintenance of membership" provision, plus language that says something similar to:

> To the extent possible under federal law, the employer must deduct from the payments it makes to each bargaining unit member the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues.

That way, whatever happens in Janus, unions will benefit to the maximum extent possible from the new law.

HB 6229 — New Employee Orientation

This new law requires employers to provide unions "reasonable access" to new employees. Reasonable access means within 90 days of the employee's start date, for no less than 30 minutes, while the employee is on the clock.Nothing in the law prohibits an employer from agreeing to longer or more frequent employee access.

Like HB 2751, this law will go into effect on June 7, 2018. That means affiliates do not need to negotiate an MOU covering this issue in order to benefit from it. However, the law invites such a negotiation. So the union will want to bargain about precisely when the access to the new employee will be provided, how the employer is going to explain what the access opportunity is about (note: employees will only be told that they may take advantage of this opportunity, they cannot be required to meet with the union), where the meetings will take place, whether the employer will require the orientation to take place with more than one new employee at a time, etc.

HB 2669 — Adding Part-Time Employees to State Civil Service

For most purposes, this law will affect civil service rights that are not directly related to union contract rights and provisions. However, to the extent that union contracts currently refer to civil service rights and clarify (or specify) the extent to which workers may (for example) elect to pursue grievances through the civil service procedures, those contracts should be modified (via an MOU) to make sure that the same benefits that the union has negotiated for existing civil service employees applies to part-time employees.

To the extent that contracts exist that include "only civil service personnel," unions may seek to accrete the newly civil-service covered part-time employees into those units, either via an election or though a unit clarification process.

ESB 2669 — Port District Professionals

As a result of this law, port district professionals are now fair game for organizing. Although the statute only outright bars port districts from including within the same bargaining unit *professional personnel and port supervisory personnel*, we think it is unlikely that port districts will voluntarily agree to accrete professional employees into currently existing bargaining units of non-supervisory employees. And it is an unanswered question whether PERC will even think that inclusion of professional employees into a group of non-professional non-supervisory employees is appropriate through an election or unit clarification process. Most likely, what employers will expect, and PERC will approve, are separate units consisting only of newly organized professional employees.

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The timing and scope of the pending U.S. Supreme Court decision on Janus will affect how some of these laws are applied and implemented, particularly for HB 2751 re: Deduction of Union Dues and Fees. Dmitri Iglitzen's full 5-page memo describes some of those scenarios (request a copy by emailing ***jkendo@wslc.org****), but the WSLC recommends the affected public-employee unions get advice directly from Iglitzen or their own attorney/counsel.*