



Evaluation Report Summary / July 2013

State Employee Union Fair Share Fee Calculations

Major Facts and Findings:

- Minnesota statutes allow state employee unions to charge a “fair share” fee to an employee in a bargaining unit the union represents if the employee chooses not to join the union.
- Federal court decisions and Minnesota law define union activities that are “chargeable” to nonmembers, but some ambiguity remains.
- State employee unions must provide notices to employees they represent about (1) the amount and calculation method of the fair share fee and (2) procedures to challenge the notification process or the appropriateness of the fair share fee.
- Six of the ten state employee unions in Minnesota spend at least 85 percent of their budget on chargeable activities; as a result, they charge the statutory maximum of fair share fees.
- Two unions we examined closely—the American Federation of State, County, and Municipal Employees Council 5 and Education Minnesota—have reasonable policies to identify chargeable and nonchargeable union activities.

- Recent fair share notices provided by state employee unions generally complied with state law, although some unions did not include all required information.
- Since 2001, the Bureau of Mediation Services has received only four fair share challenges from state employees.
- The Bureau of Mediation Services’ guidelines on chargeable union activities are outdated, and some sections are inaccurate.
- The Minnesota Department of Management and Budget does not provide oversight of state employee unions’ fair share fee calculations or notices.

Recommendation:

- The Bureau of Mediation Services should update its guidelines on chargeable union activities to reflect current Minnesota laws and recent court decisions regarding fair share fees.

State employee unions generally complied with fair share fee requirements.

Only certain union costs—referred to as “chargeable”—may be included in a fair share fee calculation.

The state employee unions we reviewed had reasonable methods to identify and track chargeable costs.

Report Summary

Minnesota law places most state employees in “bargaining units” and allows the employees in those units to be represented by a union in negotiations with the state regarding terms of employment. Currently, ten unions represent more than 43,000 state employees. State employee unions charge the employees they represent fees to carry out various activities. If an employee joins the union, he or she pays member dues; otherwise, the employee typically pays a “fair share” fee.¹

By law, the fair share fee may not exceed 85 percent of regular member dues and must exclude the costs of benefits available only to members. In the most recent year for which data are available, six of the ten state employee unions spent 85 percent or more of their total budget on activities that benefited all employees of the bargaining unit. As a result, their fair share fees equaled 85 percent of their regular member dues, the maximum allowed by law.

Federal court decisions have identified certain activities that are “chargeable” to nonmember employees. These activities typically relate to collective bargaining or benefits that affect all employees in the bargaining unit, regardless of union membership. “Nonchargeable” activities typically include political or member-only activities. Minnesota Rules established by the Bureau of Mediation Services (BMS) identify information that must be provided to employees regarding fair share fees.

¹ Employees of the Office of the Legislative Auditor are not in a bargaining unit and are, therefore, excluded from union representation and the decision to pay union dues or fair share fees.

We conducted an in-depth review of how the American Federation of State, County, and Municipal Employees Council 5 and Education Minnesota calculated their fair share fees. In both cases, we found that the unions had reasonable methods in place to identify and track chargeable and nonchargeable activities and related expenditures.

We also reviewed employee notifications from nine of the ten state employee unions. (The Minnesota Law Enforcement Association refused to cooperate with our request for information.) We found that the unions generally complied with Minnesota’s notification requirements, although in some cases information was missing.

An employee may challenge the fair share fee (on the basis of improper notification or calculation) before BMS. Since 2001, BMS has received only four such challenges from state employees. Three of the four challenges were dismissed; the fourth challenge, based on a religious objection, was settled.

BMS developed guidelines to help identify chargeable union expenses. However, the guidelines are more than 30 years old, inaccurate in places, and do not reflect current state statutes or U.S. Supreme Court decisions. We recommend that BMS update these guidelines.

The Minnesota Department of Management and Budget (MMB) processes deductions from employee paychecks for union dues and fair share fees. However, MMB does not verify fee calculations or ensure that unions provide adequate notice of fair share fees.

Summary of Agencies’ Responses

In a letter dated July 17, 2013, Minnesota Department of Management and Budget (MMB) Commissioner Jim Schowalter wrote, “The finding related to MMB is accurate” and noted that his agency processes deductions for state employee union dues and fair share fees but, “We do not verify the information provided by the unions for deductions nor do we review the calculations.”

In a letter dated July 18, 2013, Minnesota Bureau of Mediation Services (BMS) Commissioner Josh Tilsen wrote, “Generally, BMS believes the Report is accurate and agrees with its findings.” The commissioner agreed that BMS’s guidelines are outdated and said, “This agency has begun the process to prepare a replacement document which will be completed by the end of December 2013.” The commissioner also stated that, “BMS believes that this office is the proper place to house” additional oversight of fair share fees, if the Legislature decides such oversight is warranted.