



**Technical Employees' Association
of King County**

TEA	Wastewater	Transit	2017 Arbitration Decision	Contact us
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August 1, 2018

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1. New Date & Place for Next Regular Meeting and Janus Amendments to Bylaws Vote – August 23

TEA activities have intensified over the last couple of months with the Supreme Court's Janus decision on June 27 (see discussion under item #2) that requires changes to the TEA Collective Bargaining Agreements and the TEA bylaws. A member vote is required to change the bylaws to conform with the Janus decision.

TEA Board members agreed to move the August Regular meeting back to Thursday, August 23 in the Transit General Manager's Conference Room, on the 4th floor of King Street Center, to allow more time for drafting bylaw revisions, for legal review of the changes, and for members to review. The day and room change is needed due to lack of available, large conference rooms on Wednesday, the day before.

Article XII of the bylaws only requires a vote by members present at a special meeting. Because the proposed change is significant, the Board has decided to distribute ballots to all members who are eligible to vote, and the votes will be collected up until 12:15 on August 23, at which point the voting will be closed.

Proposed changes will be made to the following sections:

- Deleting references to “Fair Share” members and replacing the term with “nonmembers”;
- Establishing that existing TEA members can opt out of paying dues, at which point they will become nonmembers;
- Establishing that new members will need to opt in to joining TEA and paying for union membership;
- Confirming what rights non-dues-paying members or “nonmembers” will have; and
- The reason and method for assessing service fees if TEA is asked to represent a nonmember on an individual disciplinary issue.

Important Note:

The ballot will have a summary of the changes on one side, and the “yes” and “no” boxes on the reverse. To see the proposed changes within the context of the full bylaws members will need to visit the TEA website at “teaseattle.org” and review the document there. (As of the date of this TEA Times the changes are still under review. The revised bylaws will be posted on the website for review at the latest by August 9, 2018, which is two weeks prior to the vote on August 23, 2018.)

The changes will be found in the sections on Definitions (Article III), Membership (Article V), Privileges / Obligations (Article VI), Dues and Levies (Article X).

This post-Janus situation is unusual in that even if the amendment does not pass by a majority of votes, TEA will still need to change its conduct to conform with the new legal environment. This special situation—where a judicial decision makes part of the bylaws illegal—is not specifically addressed or anticipated by the procedures in the bylaws. To fix that oversight, the Board will revise the amendments and revisions section of the bylaws but not during this round.

2. Janus Decision Q&A

At the July 18 regular meeting, Alton Gaskill presented the key points of the Janus v. AFSCME Supreme Court decision and provided this link to the case: supremecourt.gov/opinions/17pdf/16-1466_263j.pdf A summary of the meeting has been uploaded to the TEA website and a series of questions and answers on the decision can be found below. The County has already requested a list of TEA members who are "Fair Share", in other words members who previously chose to not pay dues, but TEA currently does not have any such members.

As a result of the Janus decision, TEA has to amend its bylaws to be legal and consistent with the decision. Currently the bylaws require TEA membership as a condition of employment and this is no longer legal.

One part of the Janus decision recognizes that unions have a right to charge nonmembers "service fees" if they ask the union to represent them on an individual matter. The TEA Board seeks to assert that right, consistent with a legal opinion by Cline and Associates, to ensure that the union is protected from the financial burden to represent non-members. This is discussed in more detail in the Q&A, below.

Since the release of the "Janus v. AFSCME" decision by the US Supreme Court last month, we've been receiving some member questions about the decision and how it affects TEA and member obligations to pay dues or agency fees in lieu of dues. We've consulted with our lawyers, Cline and Associates, and they've helped us develop this Q and A that we hope will bring you current on "Janus" and what it means.

- Q:** The US Supreme Court has held that unions, which would include the Technical Employees Association, can no longer charge agency fees, also known as fair share fees, for nonmembers. Is full membership no longer required as a condition of employment, even though TEA's Collective Bargaining Agreements (CBA) currently says that membership in the TEA is required?
- A:** Yes, the Supreme Court held that labor contracts cannot compel full union membership or alternatively "agency/fair share fees" to cover contract negotiation costs. TEA's current labor contracts allow TEA to charge agency fees to non-members and non-members must pay those fees as a condition of employment. These provisions will need to be amended to allow new employees to opt into full union membership.
- Q:** Can a bargaining unit member that does not opt into full union membership by paying dues receive individual representation without charge?
- A:** The Janus case specifically states that the Union owes a duty of fair representation to all of the members of its bargaining unit, regardless of whether the member is a dues paying member, or not. However, Janus allows for the charging of "service fees" for nonmembers who request individualized services from their union. The purpose of this provision is to relieve the burden that paying members of unions would shoulder if the union is required to represent a non-dues-paying member in an individual kind of activity, such as a grievance or classification matter.
- Q:** What are "service fees" and how is that different from what nonmembers used to pay?
- A:** Previously anyone that wanted to opt out of TEA membership was required by the contract to pay a "fair share" amount in lieu of dues that approximated the costs of representing the entire bargaining unit in contract bargaining. An agency or fair share amount was calculated using all the costs incurred to negotiate and enforce the labor contract, and that fee was automatically required of anyone that opted out of membership. A service fee, on the other hand, only relates to the individual representation and is an estimated amount to be held in a trust account and would be required at the time a non-member seeks representation.
- Q:** If "fair share or agency fee" covers all representation and "service charges" are only for individual representation, and that means that "service charges" would be less than dues over time?
- A:** "Agency fees" would normally be about 85% to 95% of full dues. Service charges could be zero if a nonmember never asks for any representation over the course of their entire employment. However, individual service fees would likely to be more than dues if a member needs individualized services. Dues paying members receive individualized services of representation in grievances, arbitrations, and classification actions. As such, paying dues and retaining status as a full member acts like a form of insurance, where everyone pays a small amount in dues to cover legal expenses for contract negotiation and for representation of individual grievances, if an individual matter arises. Our legal advisor, Cline and

Associates, has performed a ten year historical analysis of the legal costs of pursuing disciplinary cases, which revealed legal fees and costs ranged from \$8,000 to \$20,000 for a suspension case, and \$40,000 to \$100,000 for a termination case, with an average of \$60,000. A nonmember would be expected to pay an upfront estimated amount for those expenses and be liable for any additional expenditures of time.

Q: How are service fees determined?

A: TEA and its legal counsel will be developing a dues opt in/out and informed consent form that will define service fees and how they are calculated. The bylaws language as currently proposed state that service fees for the representation of nonmembers shall be estimated with the advice and input of the TEA's legal counsel and will be based on a reasonable good faith estimate of the cost of providing representation on the requested service. If a non-member is disciplined and then asks for representation, they will have to make up front and full payments into a trust account for those estimated costs. Any monies left in the trust account after the matter is closed will be returned to the employee and any shortfall in funds would be the responsibility of the employee to pay. The consent form is intended to convey such details so that employees who want to avoid paying dues would understand the possible extent of what their liabilities could be.

Q: I can see that those are substantial fees. If someone had to pay those full and up front, I don't know too many who would be able to come up with such sizeable amounts of money. But as a practical matter, what would keep a nonmember from rejoining the Association when they realize that they are having job troubles and want to get Association protection?

A: Under the revised bylaws, employees will be allowed to become Full Members at any point after the initial 30-day sign up period, whenever they decide they want representation, but they will have to pay the service charges for representation on any individual issues that exist before or at the time they rejoin. They will also be required to pay the back dues they declined to pay during the time they were a non-member up to a maximum of 12 months.

Q: So someone that drops out of the Association can't rejoin later?

A: They can, they just cannot avoid these service charges, or avoid paying back dues. These requirements are designed to prevent people from going in and out of full membership solely in order to receive benefits without paying dues in on a regular basis. These provisions will assure TEA maintains a sound financial model that is fair to dues paying members.

Q: Someone that opted out without fully understanding all the financial risks and later needed representation later could feel that they did not receive adequate notice. How will TEA help him or her to understand the risks of opting out?

A: That's why we are developing a thorough "informed consent" form as part of the opting in/out process. We intend to ensure that no one will withdraw from TEA or decline to join without being fully informed of the potential risks. For new employees, we intend to meet with them one-on-one to discuss the issue.

Q: Are the employees who decline to pay dues allowed to participate in the Association?

A: No. Only Full Members have a vote on TEA matters or serve on the TEA Board. This includes the contract negotiation committees, elections, and anything else that requires membership votes.

Q: If giving up voting rights and having potential financial exposure to service charges is the consequence to individual bargaining unit members of opting out, why is TEA concerned about losing members?

A: We believe that the media, anti-union special interest groups, and even the employer and other unions will not fully understand that Janus replaced the fair share charge with the necessity for unions to charge non-members for services. We cannot speak as to how other unions are going to handle this but we believe that most members will find it preferable to continue to pay dues. Even if people do not care about their TEA voting rights, the possibility of encountering some type of individual issue does not change and without TEA representation this new union environment potentially carries additional financial risk.

One distinguishing characteristic of TEA is a high standard of advocacy and attorney engagement in grievance and contract enforcement matters. Cline and Associates has performed a ten year review of time spend on grievances and arbitrations matters, e.g., suspensions and termination cases, and this gives us a new understanding of the level of effort involved in defending employees.

Q: If a member doesn't opt back in, can they hire their own lawyer?

A: They can, but not for all circumstances. By law, only the TEA has standing to enforce the Collective Bargaining Agreement, through grievances that go to arbitration. This standing is to make sure that outside parties do not interfere with our contract or take cases to arbitration that the TEA would resolve in a different manner.

Q: Okay, I have decided that although I do not expect to have any job issues I'm still going to pay TEA dues because I want to have a voice. How do you persuade those who think they will never need the union to pay dues?

A: The analogy that we think makes sense is with house insurance--you do not expect that your house to burn down but you still buy fire insurance. Think of Association dues like "career insurance" – you hope you never need it but not having that insurance is too costly to forego, particularly since not everything is under your control. Many employees who consider themselves outstanding employees can become involved in a disciplinary matter or be the subject of unfair or arbitrary management decisions. TEA does not discuss individual cases except on a "need to know basis", but there are many instances where members of the Association never thought they would need representation until they in fact did.

Q: Do you think that the impact of Janus is overblown? Why do you think the news reports tend to focus on potentially dire impacts on unions?

A: In Washington, a political group funded by the Koch Brothers called the Evergreen Freedom Foundation is sending out mailers to TEA members' homes telling them that they no longer have to pay "union dues." But the mailers do not talk about "service charges" and the potential risk of exposure that employees can have without the union support. Regardless of the Evergreen Freedom Foundation's agenda, our lawyers prepared the dues waiver informed consent form so no one would opt out of paying union dues without realizing what risk they could be taking on, something the Koch foundation may have overlooked in their communication. It is our job to make sure employees hear the union side of the issue and understand how the costs of being union members confers substantial advantages, not just through the collective bargaining for wages and benefits, but for representing individual full members free of charge on personal matters. We believe it is worth the dues, or else we wouldn't be volunteering our time to lead the union. We anticipate that most of our members will not change their current dues paying status and will remain full members. TEA expects the impact on TEA revenues that the Janus decision creates will have minor impacts to TEA over time.

TEA also appreciates the tremendous dedication and support to labor that its members have shown, as well as their understanding of the role of unions to assure a high level of wages, benefits and working conditions that unions fight for every day.

3. Proposal to End Initial Assessments

Also at the last Regular Meeting on July 18, 2018, Alton Gaskill presented the idea of ending the initial assessments. The Board has discussed ending it for two principal reasons. First, that TEA's projected revenues and expenses will be just about balanced by removing the initial assessments and there is a healthy amount over and above our project expenses currently. The idea has been discussed over the years but was never implemented because it was difficult to figure out how to end it equitably. Second, the Board can anticipate that new employees will be faced with the decision to opt in to union membership at the same time that the initial assessment imposes a one-time fee that is 12 times the employee's hourly wage and therefore much larger than the monthly dues amount. In a sense the Janus decision has stimulated a lot of good discussion amongst Board members about what opportunities are available to encourage new employees to join TEA. The Board is likely to vote on the issue in the next week or two.

4. Dues Review Committee Briefing

At the next Regular Meeting on August 23, 2018, Sally Turner, Treasurer, will be making a presentation on the assumptions, methodology, and results of the Dues Review Committee's study of projected revenues and expenses. The study was initiated because of the trend to growing more revenues than expenses leading to a growing reserve of funds, and because the retirement of long-term employees and hiring of new employees was expected to change the revenues over time.

5. Annual Meeting Moved to October 17, 2018: Election and Vote on Revised Bylaws

TEA's Annual Meeting will be on October 17, 2018. Because of the intensity of TEA Board activities, the Board decided to delay the Annual Meeting by a month.

As usual, there will be an election of officers to the Board: President, Vice President and Secretary. In addition, as part of the balloting, members will be asked to approve the bylaws revisions that the Bylaws Committee worked on in late 2017 and early 2018. In anticipation of the member vote on the bylaws, Gillian Zacharias, Secretary and head of the Bylaws Committee, will make a presentation about proposed changes at the September 19 Regular Meeting.

Full Members are highly encouraged to consider running for one of the Board positions. The deadline for nominations is September 26 (15 working days prior to the election). Nominations should be given in writing to either the Nominating Committee or to a work group Representative.

Please also consider volunteering to help out with the Annual Meeting. Watch for the next issue of TEA Times for more information on the meeting and the bylaws revisions.

6. Next Regular Meeting

As noted above, the next monthly meeting will be held on **Thursday, August 23, 2018 in the Transit General Manager's conference room on the 4th floor of King Street Center, noon-1PM.**

Join the meeting by phone: 206-263-8114. Conference I.D. 986139.

Please contact [Gillian Zacharias](#) if you have a specific agenda item you'd like to add.

TEA Board

Alton Gaskill, President
Michael Sands, Vice President
Gillian Zacharias, Secretary
Sally Turner, Treasurer
Roger Browne, Wastewater Bargaining Chair
Jerry Williams, Transit Bargaining Chair
Ken Madden, Council of Representatives Chair
