

PART XVII: UNION SECURITY AGREEMENTS AND AGENCY FEE OBJECTIONS

1. Introduction

The Communications Workers of America policy on agency fee objections is the Union's means of meeting its legal obligations to employees covered by Union security clauses and of effectuating those employees' legal rights as stated in the applicable decisions of the United States Supreme Court (including *Beck v. CWA*) and the companion lower court and labor agency decisions. Under the CWA policy, employees who are not members of the Union, but who pay agency fees pursuant to a Union security clause, may request a reduction in that fee based on their objection to certain kinds of Union expenditures.

CWA contracts generally include “Union Security” or “Agency Shop” language that requires all employees to pay dues – if they are members – or agency fees – if they are not members – in order to maintain their employment. The biggest exception to this rule occurs in “Right to Work (for less)” states where such a requirement is prohibited. In a so-called right-to-work state, the union must represent every employee in the bargaining unit, but cannot require everyone to pay for that representation.

Contracts under the Railway Labor Act (for CWA, these are primarily in the airline industry) can apply agency shop language to all employees even if they are located in a right-to-work state.

The Supreme Court’s *Beck vs. CWA* decision in 1988, set the requirements for private sector unions, like CWA, to allow agency fee payers to object to the payment of fees to support activities not directly related to core representational responsibilities – collective bargaining, contract administration and grievance adjustment. The union is required to prepare an accounting of its expenditures, dividing them into those chargeable and those that are not chargeable to all represented employees and to provide that accounting to any fee payer that objects to such non-chargeable expenditures. Then the union must reduce the fees it charges these agency fee objectors to reflect the share of its expenditures that are not chargeable. Over time, the

non-chargeable portion of CWA's expenses has hovered between 25 and 30% of the Union's total expenditures.

Other decisions apply the concepts behind the Beck decision to airline contracts under the Railway Labor Act (Ellis vs BRAC, 1984) and to employees in the public sector (Chicago Teachers Union v. Hudson in 1986).

2. Definitions

AGENCY SHOP/UNION SECURITY AGREEMENTS

These agreements require workers, who are not union members, to pay an “agency fee” equal to normal union dues, as a condition of employment. Regardless of the wording of the particular contract, none can require the payment of more than this agency fee to retain employment. Workers cannot be required to become members of the union. Certain states have so-called “Right-to-Work” laws that prohibit unions and employers from negotiating such agreements. These laws do not apply to unions organized under the Railway Labor Act, which for CWA, means our members employed by airline companies.

MEMBER

A member is a worker who has signed a union membership card. This status remains in effect until the worker resigns in writing. Regardless of what local bylaws may say, membership is voluntary and the only legal requirement for resignation is that it be made in writing.

AGENCY FEE PAYER

An agency fee payer is a worker who has chosen not to join the union (or has resigned his membership) but who must, under the agency shop/union security language in the collective bargaining agreement, pay agency fees (equivalent to dues) as a condition of employment. Agency Fee Payer is the initial status of any employee under an agency shop agreement –all newly hired workers are agency fee payers. That status remains in effect until the worker signs a membership card.

Agency Fee Payers are represented by the union, but have no say in that representation. They may not attend union meetings, participate in the election of officers, vote for contract acceptance or have any other members-only rights or privileges.

NON-MEMBER

A non-member is a worker who has chosen not to join the union (or who has resigned his membership) who is not required to pay agency fees because there is no agency shop language in the contract.

Non-members are represented by the union, but have no say in that representation. They may not attend union meetings, participate in the election of officers, vote for contract acceptance or have any other members-only rights or privileges.

AGENCY FEE OBJECTOR

An Objector is an agency fee payer who objects to paying more than the costs of collective bargaining, contract administration and grievance adjustment. This status is in effect for one year and must be renewed each year unless the objector explicitly requests that his objection be considered continuous or permanent (applies to private sector only), in which case his objector status will continue to be recognized as long as he remains in the bargaining unit.

BECK OBJECTORS (PRIVATE SECTOR EXCEPT AIRLINES)

Beck objectors are objectors under the Supreme Court's Beck ruling affecting employees organized under the National Labor Relations Act (NLRA).

ELLIS OBJECTORS (AIRLINES)

Ellis objectors are objectors under the Supreme Court's Ellis ruling affecting employees organized under the Railway Labor Act.

HUDSON OBJECTORS (PUBLIC SECTOR)

Hudson objectors are objectors under the Supreme Court's Hudson ruling affecting public sector employees.

CHARGEABLE EXPENSES

Expenses that are “germane to collective bargaining, contract administration and grievance adjustment” are called chargeable because the union can charge an agency fee objector for them.

NON-CHARGEABLE EXPENSES

Expenses that are NOT “germane to collective bargaining, contract administration and grievance adjustment” are called non-chargeable because the union MAY NOT charge an agency fee objector for them.

OBJECTOR YEAR

CWA’s ‘objector year’ runs from July through the following June.

STATEMENT OF CHARGEABLE AND NON-CHARGEABLE EXPENSES

Each year an audit of CWA’s finances is performed by an independent certified public accounting firm. Included in this audit is the development of a Statement of Chargeable and Non-Chargeable expenses which is used to determine the percentage of agency fees that will be reimbursed to agency fee objectors for the coming objector year.

FAIR SHARE/FAIR SHARE PAYER

These terms are sometimes used in New Jersey for agency shop agreements and agency fee payers.

3. CWA Objection Process

- A. The agency fees payable by objectors will be based on the Union's expenditures for those activities or projects "germane to collective bargaining, contract administration, and grievance adjustment" within the meaning of applicable United States Supreme Court decisions.

Among these "chargeable" expenditures are those going for negotiations with employers, enforcing collective bargaining agreements, informal meetings with employer representatives, discussion of work-related issues with employees, handling employees' work-related problems through the grievance procedure, administrative agencies, or informal meetings, and Union administration. In the past, approximately 70-75% of the International Union's expenditures have gone for such activities. The percentages of Local Union expenditures on "chargeable" activities have generally been higher.

Among the expenditures treated as "non-chargeable," which objectors will not be required to support, are those going for community service (including participating in charitable events), legislative activity, cost of affiliation with non-CWA organizations, support of political candidates, participating in political events, recruitment of members to the Union, and members-only benefits (including members-only social events). In the past, approximately 25-30% of the International Union's expenditures have gone for such "non-chargeable" expenditures. The percentages of Local Union expenditures on "non-chargeable" activities have generally been lower.

- B. Objectors will be provided a full explanation of the basis for the reduced fee charged to them. That explanation will include a more detailed list of the categories of expenditures deemed to be "chargeable" **and those deemed to be "non-chargeable," and the independent certified public accountants' report showing the Union's expenditures on which the fee is based.** In addition to any other avenue of relief available under the law, objectors will have the option of challenging the Union's calculation of the reduced fee before an impartial arbitrator appointed by the American Arbitration Association, and a portion of the objector's fee shall be held in escrow while he or she pursues that challenge. Details on the method of making such a challenge and the rights accorded to those who do so will be provided to objectors along with the explanation of the fee calculation.

- C. Objections for the period of July through June must be sent during May. Objections will be honored for one year unless the objection specifically states that it is continuing in nature. Continuing objections will be honored for as long as the agency fee payer remains in the bargaining unit. Agency fee payers who are new to the bargaining unit, or who are returning to the bargaining unit, may object within thirty days of receiving this notice. In addition, employees who resign Union membership may object within thirty days of becoming an agency fee payer. Employees filing these objections in either circumstance should so state that circumstance in their letter of objection. New bargaining unit members are to receive this notice prior to any demand being made upon them for the payment of agency fees. If, however, for any reason a new unit member begins paying agency fees prior to the receipt of this notice, he or she may object retroactively to the commencement of such payments and for the duration of the current annual objection period.

The letter of objection should include name, address, CWA Local number, and employer. Objections must be sent to the Agency Fee Administrator, CWA, 501 Third Street, NW, Washington, DC 20001-2797.

The local is responsible for updating local records of members' request for change to agency fee status.

4. Private Sector: Providing Notice of Employee Right to Object

Upon being notified that a new person has joined the employment rolls at a company or an agency with which CWA has a contract, in a state without a right-to-work law, the office of the CWA's Agency Fee Administrator sends a copy of the Union's "Your Rights With Respect to Union Representation, Union Security Agreements and Agency Fee Objections" statement to the new employee. From this information, an employee can determine whether he wants to become a union member or remain an agency fee payer. The statement is included in the next section.

Substantially the same statement is printed in the first edition of the CWA News published each calendar year. It is also posted on the CWA website at: http://www.cwa-union.org/pages/security_agreements_and_agency_fee_objections

STANDARD PROCEDURE TO OBJECT

Agency fee payers who wish to object for the coming objector year are expected to write to the Agency Fee Administrator during May. Assuming the fee payer is eligible for a fee reimbursement, he will receive an advance check for the non-chargeable portion of the fees that he is projected to pay during the coming objector year. To be eligible, a fee payer must be current on the payment of his fees and must not be a member of CWA.

An Agency Fee Payer may state in his objection letter that his objection is continuous and permanent in nature. In that case, his status will be changed to agency fee objector for all future years – until he leaves the bargaining unit. A continuing objector must stay current with the payment of his fees. If he takes a leave of absence and does not return and start again to pay fees within that objector year, his objector status may lapse and he may have to refile.

In addition to the check paying the non-chargeable portion of future fees in advance, an objector also is provided a copy of the Statement of Chargeable and Non-Chargeable Expenses, on which the percentage attributable to non-chargeable expenses is based.

Locals with private sector agency free payers are responsible for a current chargeable/non-chargeable audit at least every three (3) years. This audit should be certified by a CPA and submitted to the Agency Fee Administrator.

Forms and Instructions are available at the CWA Local Forms webpage at <http://www.cwa-union.org/for-locals/forms>.

WHEN A NEW HIRE OR A RESIGNING MEMBER BECOMES AN OBJECTOR

A new employee who does not sign a membership card remains an agency fee payer. A member who resigns becomes an agency fee payer.

Once an agency fee payer has received the notice of his right to object, he has 30 days from his receipt of that notice to send a letter to the Agency Fee Administrator stating his objection. If this occurs in the middle of the objector year and the agency fee payer has begun to pay monthly fees, he will receive a check in the next several weeks for an amount equal to the non-chargeable portion of the fees he is projected to pay during the balance of the current objector year. He is expected to continue to pay the full amount of agency fees each month.

Locals are responsible for responding to the provisionally eligible list of all agency fee objector applicants for the objector year. This list will determine if the applicant is eligible for reimbursement.

5. Public Sector – General

Agency Fee Payers

In June of each year, all agency fee payers who work for public sector employers are sent a letter notifying them of their right to object to the union's spending of their fee payments for non-chargeable expenditures. Within 35 days from the date of that letter, an agency fee objector must respond to the Agency Fee Administrator's office stating, in writing, their objection to such spending.

All eligible objectors will be mailed a check reimbursing them in advance for the non-chargeable portion of their projected fees for the coming objector year. A copy of the National Union's Statement of Chargeable and Non-Chargeable Expenses and the Local Union's audit of its expenses will be included with that check. Objectors are expected to continue to pay their full agency fees each month.

Locals are responsible for submitting their Chargeable calculations annually. Forms and instructions are available at the CWA Local Forms webpage at <http://www.cwa-union.org/for-locals/forms>. A reminder from the Agency Fee Administrator will be sent annually in December. This annual audit is used in calculating the agency fee objector's reimbursement,

Locals with public sector agency fee payers (excluding New Jersey) are responsible for annual local chargeable/non-chargeable audits. This audit should be prepared and certified by a CPA. This audit should be submitted to the Agency Fee Administrator as soon as practicable but **no later than March 1st**. This audit will be used in combination with the National Audit in determining public political objectors' advanced refund (excluding New Jersey).

Locals are responsible for responding to the provisionally eligible list of all agency fee objector applicants for the objector year. This list will determine if the applicant is eligible for reimbursement.

Challenges

The letter that accompanies a check sent to an objector, in the public or private sector, includes language which notifies him that, in addition to any other avenue of relief available under the law, He/She has the option to challenge the calculation of the non-chargeable percentage on which his check amount was based. If he initiates such a challenge, an impartial arbitrator will be appointed by the American Arbitration Association to review the calculations and the process by which his charges were determined.

6. Public Sector – New Jersey

Agency Fee Payers

Under the New Jersey law governing employee relations in the public sector, agency fee payers may not be charged more than 85% of the amount that members pay for dues to the Union. In May of each year, each fee payer is sent an accounting of chargeable and non-chargeable spending in the prior fiscal year, by the National Union and by the local union that represents them. The fee payer receives a summary of his payments and, if non-chargeable expenditures exceed 15% of total expenditures, he will also receive a check equal to the difference as a percentage of the fees he is projected to pay during the coming year. Fee payers are expected to continue to pay their full agency fees each month.

Locals with New Jersey Agency Fee Payers are responsible for submitting chargeable/non-chargeable audits annually. Forms and instructions are available at the CWA Local Forms webpage at <http://www.cwa-union.org/for-locals/forms>. Locals will be provided an annual reminder from the Agency Fee Administration in December.

The local audit should be prepared and/or certified by a CPA. This audit should be submitted to the Agency Fee Administrator as soon as practical but **no later than March 1st**. This audit will be used in combination with the National Audit in determining New Jersey Political Objectors' advance refund.

Challenges

A fee payer in New Jersey does not need to file an objection to receive this "Fair Share" payment. He may, however, challenge the calculations. Generally, such challenges are heard by New Jersey's Public Employee Relations Commission, though a fee payer may opt to have an arbitration overseen by the American Arbitration Association.

7. Enforcing Union Security Language

CWA contracts generally include “Union Security” or “Agency Shop” language that requires that all employees pay dues – if they are members – or agency fees – if they are not members – in order to maintain their employment.

Under Agency Shop language in a collective bargaining agreement subject to or the National Labor Relations Act (in non-right to work states) or the Railway Labor Act or state laws governing public sector employees, the Union has the right to require all employees who are members to pay dues and all non-members to pay fees of an equivalent amount to support the activities of the Union. If a non-member – an agency fee payer - does not wish to support the Union’s activities not directly related to representation, he may declare himself an agency fee objector, as described in detail earlier in this section.

All agency fee payers are obligated to pay fees. Agency fee objectors may have the fees they pay reduced to exclude the cost of non-representational – non-chargeable – expenses. Objectors are still obligated to pay the chargeable portion of their fees.

If an agency fee payer does not pay the fees he is obligated to pay under the agency shop contract language, whether or not he has declared himself to be an objector, the Union may ultimately enforce that language by requiring the employer to terminate the worker’s employment for non-compliance with the terms of the collective bargaining agreement.

CWA’s process for enforcing agency shop language has three steps:

1. The Friendly Reminder Letter sent to the employee by the local
2. The Stern Warning Letter sent to the employee by the district
3. The Termination Letter sent to the employer by the district

Sample letters follow:

LETTER 1 - FRIENDLY REMINDER

To be sent 30 days after the obligation to pay fees has gone unmet

Dear **[Agency Fee Payer]**:

According to our records, you are not paying dues or agency fees. As you know, paying an amount equivalent to dues is a condition of employment pursuant to **[cite appropriate section of the contract.]**

To help you meet your obligation, I am sending you another payroll deduction card. Please fill it out and send it back to me in the self-addressed stamped envelope and I'll see to it that [employer] gets it right away. If you have already completed one of these cards, please fill out another one anyway because the first one is likely lost in the system.

You also have the option of paying cash dues each month. If this interests you, please call me and I will advise you the exact amount of your monthly payment and where to send it.

If you have any questions or concerns, please call me and I will be happy to talk to you.

Sincerely,
Local Officer

Enclosures: Your Rights With Respect to Union Representation, Union Security
Agreements and Agency Fee Objections brochure
Payroll deduction card
Return envelope

LETTER 2- STERN WARNING

To be sent 30 days after the Friendly Reminder letter has been sent and ignored. Usually sent by District Vice President. NOTE: wording is important and should not be changed.

Dear **[Agency Fee Payer]**:

I am writing to you about a very serious matter that could affect your future employment. Please attend carefully to this letter. If you have any question about its meaning, you should contact me for clarification.

The collective bargaining agreement between CWA and [employer] contains a union security clause generally requiring, as a condition of employment, that all covered employees tender to the Union an amount equal to the periodic dues uniformly required as a condition of Union membership beginning on the thirtieth day following the beginning of employment. The legal significance of this clause is explained more fully in the enclosed brochure. If you have not already received a copy of the collective bargaining agreement, you may do so by requesting one from me.

The information from your employer indicates that you have been covered by the collective bargaining agreement and that for a period exceeding **X** months you have not been paying agency fees.

Periodic union dues, which serve as the basis for calculating your agency fee obligation, are ____% of your normal pay. Our records indicate that you owe \$_____ per month for the period X months **[maximum of three]** preceding this letter for a total due of \$_____. While CWA may be legally entitled to collect fees covering a longer period, in the interest of quickly settling this matter, the Union is willing to accept this amount as full payment of all back fees you may owe. You may pay the back fees in three equal installments over the next three months, or you may pay them in one lump sum. In addition to paying these back fees, you must begin paying agency fees as they come due, i.e., no later than the last day of each month.

To make arrangements for paying agency fees, contact me at the Local office on **[phone number]**. If you have not contacted the Local within 45 days of the date of this letter and made suitable arrangements to pay the back fees and begin paying fees each month, **CWA will contact your employer to request that you be discharged from employment.**

If you believe that our records are in any way incorrect or if you have any questions, please call me immediately.

Sincerely,
District Officer

Enclosure: Your Rights With Respect to Union Representation, Union Security Agreements and Agency Fee Objections brochure
cc: CWA Agency Fee Administrator, Local Union Officer

LETTER 3 – TERMINATION REQUEST:

To be sent to employer after Stern Warning letter has gone unheeded. Usually sent by the District Vice President

Dear **[Employer Representative]**:

This is to request enforcement of the union security clause in your collective bargaining agreement with CWA.

[Name of worker], an employee covered by the agreement, after having been fully informed of the obligation to pay agency fees and given a reasonable opportunity to tender such payments, has refused to do so. Please take the necessary steps to discharge **[Name of worker]** for failure to meet this requirement of employment.

Sincerely,
District Officer

cc: **[Name of worker]**
CWA Agency Fee Administrator, Washington DC
Local Union Officer