



MEMORANDUM

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Unions and Union Dues

The ACLJ frequently receives questions regarding an employee's First Amendment rights and their obligations to a labor union. As a general rule, no employee, whether in the private or public sector, can legally be required to join a union and pay full union dues. Yet, in many states, an employee can be forced to pay certain union dues or be fired.

Public Employees

Federal law guarantees employees of the federal government, including postal service employees, the right to refrain from union membership. 5 U.S.C. § 7102 (federal employees generally); 39 U.S.C. § 1209(c) (postal employees). A public employee who opts out of union membership is still covered by the collective bargaining agreements negotiated between the employer and the union. Thus, a public employee still reaps the benefits of the collective bargaining agreement (*e.g.*, wages, vacations, pensions, health insurance) despite not joining the union. A public employee who is not a member of the union may not, however, be able to participate in union elections, meetings, votes, or other union activities. Unions may not discipline nonmember public employees.

Nonmember Public Employee Rights Regarding Union Dues for Political Activity

The Supreme Court in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), held that public employees that elect not to join a union can only be required to pay a fee (*i.e.* "agency

fee” or “fair share fee”). The agency fee equals the employee’s share of what the union can prove is related to collective bargaining, contract administration, and grievance adjustment. The agency fee “must (1) be ‘germane’ to collective bargaining activity; (2) be justified by the government’s vital policy interest in labor peace and avoiding ‘free riders’; and (3) not significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop.” *Lehnert v. Ferris Faculty Ass’n*, 500 U.S. 507, 520 (1991). Activities that generally will not meet this test are political or ideological activities; lobbying not related to the collective bargaining agreement; public relations; illegal strikes; and “members only” benefits. *See, e.g., Locke v. Karass*, 555 U.S. 207 (2009); *Lehnert v. Ferris Faculty Ass’n*, 500 U.S. 507 (1991); *Ellis v. BRAC*, 466 U.S. 435 (1984); *Abood*, 431 U.S. 209; *Pirlott v. NLRB*, 522 F.3d 423 (D.C. Cir. 2008).

Generally, public union members do not have a right to prevent the use of their dues for political activities with which they disagree. Therefore, in order to prevent the political use of union dues, an employee may need to resign from the union. The Supreme Court has held that, when one elects not to join a union or resigns, the union must provide certain procedural safeguards, including: (1) an agency fee audit; (2) an opportunity to challenge the fee before an impartial decisionmaker; and (3) the right to escrow a challenged fee. *Chi. Teachers Union v. Hudson*, 475 U.S. 292, 310 (1986).

“Right to Work” States: State Employees’ Rights Regarding Union Membership

State or local government employees’ rights depend on the state for which the employee works. If the employee is a member of a “Right to Work” state, the employee has the right to refrain from union membership and cannot be required to pay any union fees unless the employee voluntarily joins the union. To date, twenty-two states and one territory have passed Right to Work legislation. These include Alabama, Arizona, Arkansas, Florida, Georgia, Guam, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. However, public employees in states that do not have “Right to Work” laws may be required to pay union dues, but cannot be required to pay any more than the agency fee as discussed above.

Private Employees

Nonmember Private Sector Rights Regarding Union Dues for Political Activity

Private employees, with the exception of those in the airline and railroad industries, *see below*, are covered by the National Labor Relations Act (the Act). 29 U.S.C. §§ 151–169. Under the Act, union members can resign their membership at any time for any purpose. *Pattern Makers v. NLRB*, 473 U.S. 95 (1985). Like public employees, private sector employees cannot be required to pay more than the agency fee. *Comm’n Workers v. Beck*, 487 U.S. 735 (1988). The Supreme Court has held that private sector employees who elect not to join a union but who are required to pay union dues as a condition of employment have a right under the Act to object and obtain a reduction of the compulsory union dues for those expenses used for purposes other than collective bargaining, contract administration, and grievance adjustment. *Id.*

The National Labor Relations Board (NLRB), which enforces the Act, has ruled that the Act does not require private unions to provide the same safeguards as public unions. Instead, the act requires unions to: (1) inform employees of the right to be nonmembers; (2) inform employees that nonmembers have the right to reduced fees; (3) provide sufficient information for employees to make an informed membership decision; (4) disclose procedures for filing objections; and (5) if employees object, inform them of the reduction percentage, the calculation basis, and the right to challenge these figures. *Cal. Saw and Knife Works*, 320 N.L.R.B. 224 (1995), *aff’d* 133 F.3d 1012 (7th Cir. 1998).

The Rights of Railway or Airline Employees

Private railway and airline employees are covered by the Railway Labor Act (RLA). 45 U.S.C. §§ 151–188. They are not protected by state “Right to Work” laws. *See Railway Employees’ Dep’t v. Hanson*, 351 U.S. 225 (1956). However, they cannot be forced to join a union unless the collective bargaining agreement contains a provision that requires union membership or dues as a requirement of employment. Regardless, railway and airline unions cannot compel nonmember employees to contribute dues toward a political cause. *See Ellis v. BRAC*, 466 U.S. 435 (1984). Nonmembers may object to their dues being used for anything other than those expenses directly related to bargaining and administrative costs. *Int’l Ass’n of Machinists v. Street*, 367 U.S. 740, 774–75 (1961).

Resigning Union Membership and Objecting to Dues for Political Activities

All union members, regardless of whether they work for a private employer or the government, have the right to resign their union membership. *Abood*, 431 U.S. 209 (public); *Pattern Makers*, 473 U.S. 95 (private). To resign from membership, the employee should send the union a written letter stating his/her intent to resign effective immediately and should object to any compulsory dues being used for political activities. It is important to note that automatic payroll deductions for union dues may not cease immediately upon objection. In some instances, the resignation may not be effective until the end of a certain time period authorized in the union agreement. Employees should check with their employer for when they may resign from automatic payroll deductions.

Nonmember employees retain employee benefits negotiated as part of their collective bargaining agreement (e.g., wages, vacations, pensions, health insurance), and unions are still required to fairly represent nonmembers in all collective bargaining matters. *See, Vaca v. Sipes*, 386 U.S. 171, 177 (1967); *Ford Motor Co. v. Huffman*, 345 U.S. 330, 337 (1953). However, by resigning membership or never joining the union, nonmember employees may not be able to participate in union elections, meetings, votes, or other union activities. Additionally, nonmembers are not subject to union rules and discipline.

Religious Objection and Redirecting Union Fees to Charity

Federal law, under Title VII, protects nearly all employees from religious discrimination. 42 U.S.C. § 2000e et seq (covering federal, state, and municipal employees, employees of private employers with fifteen or more employees, and employees who are members of a union with fifteen or more members). An employer or union covered by Title VII must reasonably accommodate an employee's religious beliefs unless doing so would create an "undue hardship." Unfortunately, the Supreme Court has interpreted "undue hardship" to mean even a minimal cost to the employer or union, or if the accommodation compromises workplace safety, decreases efficiency, infringes on other employees' rights, or requires other employees to do more than their share of potentially hazardous or burdensome work. *See TWA v. Hardison*, 432 U.S. 63 (1977). Considering this low standard, employees should work diligently with their employer or union to find a solution that is the least inconvenient or costly to the employer or union.

However, “[w]hen an employee’s religious practices do not permit compliance with [paying dues to a union], the labor organization should accommodate the employee by not requiring the employee to join the organization and by permitting him or her to donate a sum equivalent to dues to a charitable organization.” 29 C.F.R. 1605.2(d)(2). Frequently, the collective bargaining agreement provides a list of acceptable charities from which religious objectors may choose. Although an employee may request that his/her dues go to a charity outside this list, ultimately, if the union has provided the employee a reasonable accommodation, the union is not obligated to allow the employee to donate to the charity of his/her choice. *See Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 69 & n.6 (1986). If the union and employer do not, however, offer to accommodate an employee’s religious beliefs, the employee may file a charge with the Equal Employment Opportunity Commission within 180 days of the discrimination.