

Federal Labor Laws

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XXII. Union Security Agreements

A. Legal Status of Union Security and Related Provisions

1. The fact of recognition or certification of the union provides greater security for the affected workers than is available to the majority of the labor force, which has no meaningful collective voice in establishing wages and working conditions.
 - a. While the existence of a collective bargaining agreement and the right of exclusive representation provide the foundation for union security, union security clauses technically include those clauses which provide some assurance that the union will be financially able to carry out its bargaining obligations.
 - b. To the extent that they are legal, union security clauses are mandatory subjects of bargaining. Of course, an agreement which is unlawful would be an illegal subject of bargaining.
 - c. The negotiation of effective union security agreements is an emotionally charged issue. Many employers and management consultants place a great deal of importance on avoidance of union security, and many members fail to understand or are taught the importance of such agreements for the ability of the union to function effectively.
2. The authority of a union to negotiate union security language in a collective bargaining agreement is derived from the Section 7 rights of workers and the enforcement of those rights through Section 8(a)(3).
 - a. As part of the statutory right to refrain from union activity included in the Section 7 rights of workers, a proviso provides the statutory authority for union security agreements. In pertinent part, Section 7 states:

Employees shall have the right . . . to refrain from any or all [protected activities] except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).¹
 - b. Section 8(a)(3) protects against discriminatory action to encourage or discourage union activity. However, a proviso

¹ 29 U.S.C. § 157.

to Section 8(a)(3) specifically authorizes the negotiation of a limited form of union security agreement. Subject to a variety of limitations, that section authorizes union security agreements that require union membership as a condition of employment. In addition to other limitations discussed in this Outline, that section specifically provides that

- 1) The right to negotiate union security agreements extends only to unions that have established exclusive representative status.
 - 2) Employers may not enter into union security agreement with an organization established, maintained or assisted illegally under Section 8(a)(2).²
- c. Further limits on the enforcement of agreements have been imposed by a number of important Supreme Court decisions, discussed throughout this outline.
3. The law of union security agreements is further complicated by Section 14(b) of Taft-Hartley, which creates an exception to the rule that federal law dictates the parameters of regulation of private sector labor relations. Under Section 14(b), a state may enact and enforce provisions which restrict or prohibit the negotiation of union security agreements.

Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territory law.³

3. Currently, twenty-two states have enacted such so-called "right-to-work" laws.⁴ In addition, the Colorado Labor Peace Act⁵ has similar effects. Under the Colorado statute, members must authorize the negotiation of a union security clause through a referendum.
4. Union security agreements are technically those agreements which require that represented workers support the bargaining representative financially. There are related types of language which also present problems concerning the establishment of dues

² 29 U.S.C. § 158(a)(3).

³ 29 U.S.C. § 164(b).

⁴ Those states are Alabama, Arizona, Arkansas, Kansas, Florida, Georgia, Idaho, Iowa, Louisiana, Mississippi, Nebraska, Nevada, North and South Carolina, North and South Dakota, Oklahoma, Tennessee, Texas, Utah, Virginia and Wyoming.

⁵ COLO. REV. STAT. § 8-3-101 et seq. (1986).

rates, operation of union referral systems, and the collection of dues.

B. Forms of Union Security

1. A "closed shop" is a union security agreement which requires the employer to hire only union members. Closed shops have been illegal since the enactment of Taft-Hartley.
2. A "union shop" agreement is the strongest legal form of union security. Under a union shop agreement, individuals do not have to be union members to be hired, but they are required to join the union after a designated grace period.
 - a. The minimum grace period is 30 days in industries other than construction. In the construction industry, workers can be required to join the union after 7 days. Union shop agreements without the minimum grace period are illegal.⁶
 - b. Union shops are illegal in states with "right to work" laws.
3. An "agency shop" is an agreement under which individuals do not have to join the union to retain their jobs, but they must pay a "representation fee" to cover their share of the costs of union representation.
 - a. The amount charged under an agency shop must be reasonably related to the costs of negotiating, administering and enforcing the collective bargaining agreement.
 - b. Depending on the precise wording of the state law, agency shop agreements may or may not be prohibited by a "right to work" law. In most of the "right to work" states, agency shops are either explicitly outlawed or have been removed from the scope of negotiations through judicial interpretation.
4. A "maintenance of membership" agreement is an agreement under which a person cannot be required to join the union, but once the worker joins, membership must be maintained for the duration of the agreement. Maintenance of membership agreements can include an escape provision, similar to the grace period required under a union shop.
5. Frequently, the various forms of union security clauses are combined or modified to adapt the language to the particular needs of a given situation. Modified union security agreements take a number of different forms, depending on the circumstances. For example, a maintenance of membership clause may be combined with a union shop agreement so that continuing employees are covered by the maintenance of membership agreement while new hires are covered by the union shop.

⁶ E.g., *Sheet Metal Workers Local 12 (Robroy Industries, Inc.)*, 205 NLRB 25 (1973).

C. Obligations of Membership under Union Security Agreements

1. While a union shop agreement may require, on its face, that a person become and remain a member of the union as a condition of employment, the Supreme Court has limited the effective obligations of membership.
 - a. All that the union can require is that a "member" under a union shop pay dues and initiation fees.⁷ An individual may become a "financial core" member, "joining" the union only to the extent required to maintain employment under a union shop agreement.
 - b. Financial core members have elected not to become full members of the union. As a result, they are exempt from internal union discipline and assessment.⁸ They may also be excluded from the rights of full participation in the union.
 - c. Non-payment of dues and fees is the only basis on which a person can be terminated under a union security agreement. If a full member is expelled from the union, that individual is relieved of any obligation to pay dues under a union security agreement.⁹
 - d. However, a full member who has been subject to internal union discipline less than expulsion (fines, suspensions, etc.) is still obligated to pay dues under a union security agreement. The member cannot be terminated for failure to pay the fine, but can be required to continue payment of dues.¹⁰
 - e. If a worker has attempted to join the union and been denied membership, for reasons other than payment of dues, the union security agreement cannot be enforced against that worker.
 - f. Signing a dues check-off authorization form constitutes tender of dues.¹¹ The worker cannot be fired for the company's failure to forward deducted dues to the union.
 - g. Prior to termination of a member for non-payment of dues, the union must provide notice and an opportunity to make up

⁷ *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963).

⁸ *E.g., Hotel & Restaurant Employees Local 54 (Atlantis Casino Hotel)*, 887 F.2d 28 (3rd Cir. 1989).

⁹ *Transportation Workers (Johnson Controls World Services, Inc.)*, 326 NLRB 8 (1998).

¹⁰ *Boilermakers (Kaiser Cement Corp.)*, 312 NLRB 218 (1993).

¹¹ *Ferro Stamping & Manufacturing Co.*, 93 NLRB 1459 (1951).

the deficiencies to include the exact amount owed and how the amount was determined.¹²

- h. It is the obligation of the union to collect dues, not that of the individual. If the worker has offered to pay dues, but the union fails to accept them, the worker has fulfilled his or her obligations.
2. The amount of dues that can be collected under a union shop or agency shop agreement is limited by the Supreme Court decision in *Communication Workers v. Beck*.¹³ The union may collect initiation fees and regular dues only to the extent that the dues and fees are related to the regular costs of collective bargaining and contract administration for the bargaining unit covered by the union shop agreement.
- a. The union has an obligation to notify all employees covered by a union security agreement of their right to become financial core members and to object to the amount of dues chargeable under the *CWA v. Beck* decision. The obligation of the union is to notify all unit members of these rights at least once, when the union first attempts to obligate the payment of dues.¹⁴
 - b. Failure to provide the required notice is a violation of the union's duty of fair representation. The notice given must:
 - 1) inform the worker of the right to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction of fees for such activities,
 - 2) provide sufficient information to enable the worker to intelligently decide whether to object, and
 - 3) inform the worker about internal union procedures for filing objections.¹⁵
 - c. In a further clarification of the duty of the union to inform workers of their rights under *CWA v. Beck*, new employees and financial core members must be informed of the amount of the reduction of dues chargeable to objectors. For Beck objectors, the notice must include:

¹² *Philadelphia Sheraton Corp.*, 136 NLRB 888 (1962).

¹³ 487 U.S. 735 (1988).

¹⁴ *Paperworkers (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995).

¹⁵ *California Saw & Knife Works*, 320 NLRB 224 (1995). See also, *Teamsters Local 579 (Chambers & Owen)*, 350 NLRB No. 87 (2007), and *Teamsters Local 492 (United Parcel Service)*, 346 NLRB 360 (2006).

- 1) A detailed explanation of the categories of expenses and the basis for the reduced dues amount. The explanation must include a list of functional activities and the percentage of expenditures for each activity that is chargeable or nonchargeable.
 - 2) The identity of organizations with which the union is affiliated and shares dues and fees, how much of such income is shared, how those affiliated organizations use those funds, and the percentage of the activities of the affiliates that are chargeable and nonchargeable.¹⁶
- d. It is an unfair labor practice under § 8(b)(5) for a union to charge excessive or discriminatory dues and fees under a union shop agreement. Factors considered § 8(b)(5) are the impact on the affected worker's income, the practices of other unions in the same field, the motive for the action, the uniformity of obligation to pay and the purported economic reasons.¹⁷
3. The contractual language of the union security agreement does not have to include all of the limitations derived from the *NLRB v. General Motors* and *CWA v. Beck* decisions of the Supreme Court. The language of the agreement is not unlawful simply because it calls for a covered employee to become a member in good standing. The right of an individual to become a financial core member under *General Motors* and to pay a reduced amount of dues under *CWA v. Beck* must be communicated to employees, but not necessarily through the language of the contract itself.¹⁸

D. Religious Objectors

1. Since 1980, workers with legitimate religious beliefs which prevent them from joining or contributing financial support to a labor organization have been permitted to remain non-members even if the union has negotiated a union shop agreement.¹⁹
 - a. The first recognition of "religious objectors" occurred in the health care amendments of 1974, which allowed an alternative to membership to religious objectors in that industry.

¹⁶ *Teamsters Local 166 (Dyncorp. Support Services Operations)*, 333 NLRB 1145 (2001), on remand from, *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000).

¹⁷ See, e.g., *Television Broadcasters Studio Employees local 804 (Triangle Publications, Inc.)*, 315 F.2d 398 (3rd Cir. 1963), *Boilermakers Local 749 (Sequia Employers Council)*, 192 NLRB 502 (1971), *Television & Radio Artists (WBEN, Inc.)*, 208 NLRB 377 (1974).

¹⁸ *Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998).

¹⁹ 94 Stat. 3452 (1980), amending 29 USCA § 169.

- b. The religious objector exception applies only to persons who are members of and adherents to "established and traditional tenets and teachings of a bona fide religion, body or sect which has had historically held conscientious objections to joining or financially supporting labor organizations."²⁰
2. If a worker qualifies as a religious objector, the individual may not be forced to join or pay dues to the union. However, the collective bargaining agreement may require that the individual pay to a non-religious, non-labor charity a sum equal to the dues and fees which are required of members.
 - a. The collective bargaining agreement may include a list of at least three qualified charitable organizations, from which the individual may select one for receipt of the required contributions.
 - b. If the collective bargaining agreement does not specify qualified charitable organizations, the individual may choose the organization to receive the payment, but it must still be a non-religious, non-labor organization.
3. The union may charge the religious objector a reasonable fee to cover the actual costs of representation, if the union represents the objector in the grievance and arbitration process.

E. Related Provisions

1. Dues checkoff agreements are not a form of union security, but they are directly related to the efficient operation of the union security provisions. Under a checkoff agreement, dues and initiation fees are automatically deducted from the pay of the member by the employer for transmittal to the union.
 - a. A dues checkoff agreement must have the individual sign an authorization for the required deduction. The authorization may be made irrevocable for a period of one year or the duration of the contract, whichever period is shorter. The checkoff authorization may also be self-renewing.
 - b. An individual who has signed a valid authorization has tendered dues, under a union shop agreement. If the employer fails to transmit the dues to the union in a timely fashion, it is a problem for the union to resolve. The individual has fulfilled his or her obligations.
2. Hiring halls and referral systems, under which an employer agrees to only those applicants who are referred through a union hiring

²⁰ In *Wilson v. NLRB*, 920 F.2d 1282 (6th Cir. 1990), *cert. denied*, 112 S.Ct. 3025, 140 LRRM 2624 (1992), the Sixth Circuit Court ruled that §19 was unconstitutional as limited to those belonging to a "bona fide" religion.

hall, are legal. The referral system of the union must serve both members and non-members in a nondiscriminatory manner.

- a. Although a hiring hall must serve members and nonmembers without discrimination, reasonable rules for determining the order of referral are valid. For example, referring workers in order of seniority in the industry or unit would be enforceable.²¹
 - b. Referral systems are most common in industries which are characterized by casual or intermittent employment, such as the construction trades and interstate trucking.
3. Pre-hire agreements in construction trades, are another form of agreement which are related to union security. Under Section 8(f), a construction contractor may enter into an agreement with a union prior to hiring any workers or prior to any showing that the union represents the majority of the workforce. These agreement are of a different type than the traditional collective bargaining agreement.

F. Deauthorization

1. Under §9(e)(1), the union security agreement of a collective bargaining agreement may be voided by majority vote of the workers in the affected bargaining unit.
2. The procedures in these "deauthorization" or UD cases are similar to other NLRB representation cases, except for the requirement that a majority of votes in the entire unit must be cast in favor of deauthorization.

²¹ *E.g., Teamsters Local 357 v. NLRB (Los Angeles-Seattle Motor Express)*, 275 F.2d 646 (DC Cir. 1960).