



FACT SHEET

National Institute for Labor Relations Research

5211 Port Royal Road, Suite 510 • Springfield, VA 22151 • Phone: (703) 321-9606 • Fax: (703) 321-7342 • research@nilrr.org • www.nilrr.org

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‘Compulsory Unionism in Everything But Name . . .’

So-Called Agency-Shop Schemes Would Effectively Repeal State Right to Work Laws

More than 11 years ago, union operatives submitted an internal report to the AFL-CIO Executive Council that assessed how Big Labor might destroy existing state Right to Work laws and stymie the National Right to Work Committee’s increasingly effective efforts to pass new laws.

Within a few weeks, the National Institute for Labor Relations Research obtained a copy of this report, which observed:

In response to many state federations in the twenty-one “right-to-work” states and at the urging of the Department of Organization and Field Services, the AFL-CIO in 1992 approved a shift in strategy to try to put [big] labor on the offensive

While repeal of state “right-to-work” laws remains our priority, the AFL-CIO has authorized state federations in these states to advance “Fair Share” [sic] legislative initiatives. These initiatives would require non-dues paying workers at workplaces under union contracts to pay a[n] . . . agency fee to the local union This new, proactive strategy was adopted for several reasons[, including] the unlikelihood of “right-to-work” repeal in the 21 states that have it; and to force the [National Right to Work Committee] to devote their resources in defending existing laws instead of mounting new campaigns elsewhere.¹

For at least a decade-and-a-half, AFL-CIO union lobbyists have lobbied to impose forced agency fees in Right to Work states while deceitfully claiming they would not destroy state Right to Work laws that protect employees’ freedom not to join a union. But Committee members and supporters and their allies have thwarted all such efforts.

Since 1992, bills authorizing so-called agency fees and other camouflaged varieties of forced union dues have gone down to defeat in Arizona, Georgia, Idaho, Kansas, Louisiana, Nebraska, South Dakota, Tennessee, and several other states.

However, in early 2007, AFL-CIO bosses are poised to try similar forced-fee schemes in Iowa, Nevada, and potentially several other Right to Work states.

¹ AFL-CIO Department of Organization & Field Services, “Status Report, August 1995, State Right-to-Work Legislation,” pp. 8-9. In 2001, Oklahoma became the 22nd Right to Work state. The Institute will gladly provide a copy of the 1995 AFL-CIO report to any interested party.

(page 2)

So-called agency-shop clauses in union contracts compel employees who choose not to join the union to pay fees up to full union dues in order to keep their jobs. In many cases, the monetary difference between the forced fees that union bosses demand and forced dues paid by union members is nominal.²

Clear-sighted commentators on labor relations have long recognized that employees who are forced to pay union agency fees, or be fired, effectively have no legal Right to Work. Nearly four decades ago, the New York *Daily News* editorial page concluded that the agency shop “is compulsory unionism in everything but name”³

Every Right to Work Law Now On the Books Bars Firing Workers For Refusal to Pay Agency Fees

Right to Work laws now on the books in 22 states shield both private and public employees from being forced to join a union or pay union dues in order to keep their jobs. And without exception, courts have ruled that all existing Right to Work laws also prohibit the firing of workers who aren't union members for refusal to pay union fees.

For example, the Supreme Court of North Dakota ruled some time ago that contracts making employment contingent on the payment of forced agency fees violated the state's Right to Work law. The issue was raised in a lawsuit filed by three Fargo foundry workers who opposed their employer's agency-shop deal with local union bosses. The employees were assisted by National Right to Work Legal Defense Foundation attorneys.

In its ruling, *Ficek v. International Brotherhood of Boilermakers, Local No. 647*, the court held:

[T]he North Dakota Right to Work law prohibits the denial of a person's right to work because of an agency-shop provision which requires the payment of monthly dues to a labor organization, and which thus imposes the practical equivalent of compulsory membership in such organization as a condition of continued employment. [Emphasis added.] Thus, the agency-shop provision and the requirement of the dues “checkoff” for nonunion employees in the labor contract involved in the instant case are illegal, void, and unenforceable.

Just this August, the Arizona Court of Appeals similarly ruled in favor of the City of Phoenix's position that the imposition of forced agency fees or forced union dues under any other label on municipal employees would violate the Grand Canyon State's Right to Work law. (Foundation attorneys had filed a friend-of-the-court brief supporting the city's position.)

In *AFSCME, Local 2384 v. City of Phoenix and the City of Phoenix Employment Relations Board*, the Arizona court found:

The fact that the Union's proposed “fair share” [sic] fee may be less than the amount of full Union dues is a distinction without a difference; it is the compulsion and not the amount that is

² For example, Teamsters Local 117 union officials in Tacoma, Wash., recently told a number of Alan Ritchey, Inc. employees who were union nonmembers that they would have to fork over agency fees amounting to 98.7% of full union dues in order to keep their jobs. See “Teamsters Union Slammed With Federal Charges for Threatening to Have Workers Fired for Resisting Formal Union Membership,” National Right to Work Legal Defense Foundation news release, November 6, 2006. The release may be read at www.nrtw.org – the Foundation's web site.

³ “Windfall for the Unions,” New York *Daily News*, February 26, 1969.

(page 3)

important. Article 25 of the Arizona Constitution and Arizona's "right to work" statutes prohibit the Union's . . . proposal. As a result, the proposal is not a proper subject of collective bargaining between the City and the Union.

Agency Shop Evolved Largely 'as A Practical Attempt to Avoid the Effect of State Right-to-Work Laws'

A careful review of the historical record shows that labor union officials developed the agency-shop concept largely as a device to circumvent state prohibitions against compulsory unionism. The fourth edition of *The Developing Labor Law*, the single-most important resource for attorneys in the labor-management relations field, makes this point plainly:

The *agency shop* . . . evolved both as a theoretical alternative to compulsory union membership under a union-shop agreement and as a practical attempt to avoid the effect of state "right-to-work" laws [emphasis added]. Agency-shop agreements typically provide that employees, as a condition of continued employment, must either become members of the union, with the attendant dues obligation, or pay the union a service fee. . . . [The agency shop's] legal nature is essentially the same as the statutory [forced] union shop . . .⁴

Is the "agency" shop somehow less objectionable than the unabashed forced-unionism shop, as Big Labor apologists contend? Is it a bona fide compromise, representing the middle ground between the forced-unionism shop and full Right to Work protections?

The answer to the foregoing questions is, "No!"

According to the U.S. Supreme Court, the "agency" shop is the only form of compulsory unionism authorized by our principal federal labor law, the National Labor Relations Act (NLRA). The Court has held that, even in non-Right to Work states, employees cannot be required to become formal members of labor unions and submit to union discipline. States have the authority to prohibit all types of forced union dues and fees. In states without Right to Work laws, workers who resign from the union or never join can only be forced to pay a reduced union agency fee rather than full forced dues.

The nation's highest court, in *NLRB v. General Motors Corp.* 373 U.S. 734 (1963), declared that union membership – if made a condition of employment – "is whittled down to its financial core." That means, regardless of whether a forced dues-paying worker is called a union agency-fee payer or a "financial-core union member," he or she cannot be forced to pay full union dues, and those dues cannot be spent on politics or electioneering. Financial-core members cannot legally be forced to bankroll any more union activities than can forced agency-fee payers.

Union 'Representation Is Foisted On Workers – Not Vice-Versa'

Union officials and their allies sometimes imply or claim flat out that forced agency fees are justified because federal labor law "forces" union officials to negotiate contract terms for employees who choose not to join a union. For example, a one-page anti-Right to Work diatribe that was published in the AFL-CIO's national newsletter a few years ago brazenly contended:

⁴ Patrick Hardin and John E. Higgins, Jr. (editors-in-chief), *The Developing Labor Law*, Bureau of National Affairs, Washington, D.C., 2002, Volume II, p. 2001.

(page 4)

“By [federal] law, unions must represent all workers – members and nonmembers – in contract negotiations and other workplace issues.”⁵ On its face, this claim is simply false.

As *Roberts’ Dictionary of Industrial Relations*, a basic reference book for any student of U.S. labor law, shows clearly, nothing in federal law prevents union officials and employers from negotiating contracts in which “the employer recognizes the union for its members only.” Under the entry: “Bargaining Agent, for Members Only,” *Roberts’ Dictionary* even offers a sample members-only contract clause: “The employer recognizes the union as the collective bargaining agency for all of its employees who are members of the union on all matters affecting those employees who are members.”⁶

Moreover, a 2005 book by pro-forced unionism academic Charles Morris – glowingly “blurbed” on its dust jacket by AFL-CIO Executive Vice President Linda Chavez-Thompson – has established that, during the first decade after the enactment of the original NLRA in 1935, “[m]embers-only bargaining . . . was perhaps as prevalent as majority-exclusivity bargaining,”⁷ in which union members and nonmembers alike are forced to accept the union as their bargaining agent if they wish to keep their jobs.

Union officials like John L. Lewis and Philip Murray of the Congress of Industrial Organizations (or CIO, one of two precursors of today’s AFL-CIO) entered into thousands of contracts recognizing a CIO union as the “collective bargaining agent [only] for those employees who were its members [emphasis added].” According to Dr. Morris, Mr. Lewis, Mr. Murray, and countless other union officials found members-only contracts “useful” in businesses where, despite their NLRA privileges, they were unable to impose monopoly bargaining.

However, as industry after industry where members-only bargaining was once the norm succumbed to Big Labor demands for monopoly bargaining, all but a tiny handful of union officials ceased to see members-only bargaining as “useful.”⁸

But a series of U.S. Supreme Court decisions, including two key rulings issued after Congress had adopted NLRA amendments in 1947 and 1959, have affirmed that members-only bargaining remains permissible under the law if union officials choose this option.⁹ Dr. Morris’ book, entitled *The Blue Eagle at Work*, strongly favors union monopoly power over employees, but nevertheless endorses members-only bargaining as a means for union officials to get their foot in the door at hard-to-organize businesses.

No one who is the least bit familiar with Dr. Morris’ writings would call him a Right to Work supporter. Nevertheless, he has amply demonstrated that Big Labor’s “forced to represent nonmembers” excuse for forced agency fees is a complete fraud.

The reason union officials today hardly ever bargain contracts that cover union members only isn’t because they can’t. Rather, union officials treasure their monopoly-bargaining privilege and the power and money they derive from it. Monopoly bargaining, often euphemistically called “exclusive

⁵ “‘Right to Work’ States Are Really Restricted Rights States,” *America@Work* (AFL-CIO), February 2003, p. 21.

⁶ Harold S. Roberts, *Roberts’ Dictionary of Industrial Relations: Revised Edition*, Bureau of National Affairs, Washington, D.C., 1971, p. 45.

⁷ Charles J. Morris, “Back to the Future: Reviving Minority-Union Collective Bargaining Under the National Labor Relations Act,” *Labor Law Journal*, Summer 2006, pp. 61-70.

⁸ Morris, *The Blue Eagle at Work: Reclaiming Democratic Rights in the American Workplace*, Cornell University Press, Ithaca, N.Y., 2005, pp. 26-31, 81-88, *passim*.

⁹ For more information on this topic, see Stan Greer, “Union Representation Is Foisted on Workers – Not Vice-Versa,” National Institute for Labor Relations Research study, 2004.

(page 5)

representation,” gives union officials uncontested power to negotiate over pay, promotions, work rules and layoffs for all workers in a bureaucratically-determined “unit.”

Union Monopoly Bargaining Economically Detrimental to Many Talented Employees

Big Labor’s “forced representation” excuse for forced fees is wrong not only because union officials may opt for members-only bargaining, but also because of the plain fact that many talented and hardworking employees are economically harmed, rather than helped, by union monopoly bargaining.

Since far more employees nationwide are currently subject to monopoly-bargaining contracts negotiated by affiliates of the National Education Association (NEA) teacher union than contracts negotiated by affiliates of any other union, the NEA serves as an excellent example. Union officials attending the NEA’s summer 2000 convention passed a resolution acknowledging that union policy “opposes providing additional compensation” for hard-to-fill teaching positions in critical subject areas like math and science. They also passed a resolution declaring their categorical opposition to “any . . . system of compensation based on an evaluation of the education employee’s performance.”

NEA locals across the country zealously adhere to these collectivist policies. For example, in 2002 officials of an NEA union affiliate in Nebraska succeeded in rendering null and void a \$2350-a-year “bonus” granted to shop teacher Matthew Hintz when he was hired by the Crete School District in August 2000.

The district, serving a community located several miles southwest of Lincoln, wanted to pay Mr. Hintz more than the \$21,650 starting salary to which bosses of the Crete Education Association (CEA/NEA) were willing to agree.

Mr. Hintz was the only qualified applicant still interested in the job, and he had 10 years professional experience. The school district was concerned he might go elsewhere if it offered less than the \$24,000 for which he was asking. Therefore, the district offered Mr. Hintz a permanent “bonus” to cover the difference between the salary he sought and what the CEA brass would allow.

CEA officials promptly filed a complaint with the Nebraska Commission of Industrial Relations. The battle ultimately went all the way to the Nebraska Supreme Court. And on December 13, 2002, a unanimous court accepted the arguments of teacher union lawyers and found that the district had indeed paid Mr. Hintz too much. Justices ordered that a \$2350 pay cut be implemented immediately. According to the Omaha *World-Herald*, teacher union lawyer Mark McGuire hailed the ruling as a “victory for collective bargaining.”¹⁰

Although teacher union officials in several states have in recent years suffered bad PR as a consequence of taking flagrantly anti-teacher stands like the one professed by Mr. McGuire, NEA affiliates continue to fight hard against efforts to offer teachers with badly needed skills more in order to fill vacancies with qualified applicants.

¹⁰ Robyn Tysver, “School Can’t Woo Teachers With Bonuses, Duck Pacts,” Omaha *World-Herald*, December 14, 2002.

(page 6)

This fall, for example, Massachusetts Teacher Association (MTA/NEA) union bosses are resisting a proposal by 48 Bay State school superintendents to “offer cash incentives to attract math and science teachers, both of whom are in short supply.”¹¹

Individual Worker Is Best Judge Of Whether or Not He or She Benefits From Unionization

Of course, in most cases across the country, teacher union bosses are able to block higher pay for teachers with special skills without suffering any ill publicity, because intimidated school boards and other elected officials, knowing full well how nasty the reaction will be, never bring up the idea in the first place. Union opposition to higher pay for certain workers or groups of workers in other public-sector jobs and in the private sector also generally goes unpublicized.

In the final analysis, therefore, as long as government-authorized monopoly bargaining remains the law of the land, the best public policy is to leave it up to the individual worker to decide if he or she benefits, economically and otherwise, from being unionized. The individual worker – not the employer, the government bureaucrat, fellow workers, or the union official – is the best judge in this matter.

Decades of experience in Right to Work states shows that the overwhelming majority of employees who sincerely believe they benefit from union monopoly bargaining are glad to pay for it. Those workers who are so foolishly short-sighted that they refused to pay for truly beneficial representation are so few in number that public policy may safely leave them alone.

For that reason, reinstating forced union dues in any Right to Work state, either through overt repeal of the Right to Work law or through effective repeal via the agency shop, would be unjust and disastrous for employees, employers, and other citizens.

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¹¹ “Coaching + Math = Success,” unsigned editorial, Boston *Globe*, November 30, 2006.