

**UNION SECURITY IN WASHINGTON STATE  
COLLECTIVE BARGAINING AGREEMENTS**

*Fair Share Fees are Not Fair*

By Jami Lund  
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## *“Fair share” fees are not fair*

Despite claims of democracy and volunteerism, officials of the National Education Association (NEA) have candidly acknowledged that the union depends on the ability to collect membership dues through mandatory payroll deduction. Given the choice, many educators would not join the union. That is why union officials try to negotiate contracts that allow them to collect mandatory fees from members and non-members alike.

Are these fees fair and accurate? Experience shows they are not and many teachers are working under contracts that deny them the right to exercise free speech and enjoy true representation of their best interests.

### **DISTRICT CONTRACTS MAY PUNISH TEACHERS WHO EXERCISE RIGHTS**

Contractual provisions that require both union members and non-members to pay union fees as a condition of employment are called “union security” clauses. Washington law allows for such provisions, though they are illegal in nearly half the states in the nation. Union security clauses are negotiated in collective bargaining contracts with school administration.

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In a union security district, those who decline to join the union are still required to pay an “agency fee” for workplace representation. Union officials justify this requirement by suggesting that without it many educators would be tempted to benefit from the union’s representation without paying their fair share. This claim might carry more weight if the non-member agency fee was limited to workplace representation activities. Unfortunately, it is not.

The US Supreme Court says *any* imposition of an agency fee is an infringement on First Amendment rights because Americans have the right to choose whether or not to be “associated” with a union. However, the court permits agency fees to be imposed on non-consenting employees to the extent that the fees cover the cost of workplace representation.

### **HOW FAIR ARE AGENCY FEES?**

Leaving aside the question of whether or not someone should be forced to pay for services from a monopoly provider, just how fair are the fees the Washington Education Association (WEA) imposes on non-member teachers?



*“In America we should not be penalized for our political beliefs. Yet that is exactly what the WEA does to teachers.”*  
*Michael Coon, 5<sup>th</sup> grade teacher, Puyallup.*

Union officials typically set the agency fee at 100% of regular dues. Yet, of the \$50 million collected from Washington teachers each year, only a portion is necessary for workplace representation. WEA’s annual dues average \$745 per teacher, but can be as high as \$937. Nothing in law limits the amount the union may charge for dues.

Many educators disapprove of the political and ideological—or simply unnecessary—use of their mandatory dues. Courts have ruled that compelling employees to finance political contributions violates their freedom of speech.

## **UNION OFFERED REFUND IS NOT THE ANSWER.**

Courts require unions to provide a refund for non-members who do not wish to pay for activities unrelated to workplace representation. However, making refunds available and actually distributing them are two different things. It is true that even under a union security clause, teachers have certain limited rights when it comes to their money, but unions have not made it easy to assert these rights.

For example, this year the NEA calculates that 45% of the money it takes from teachers is spent on activities not related to workplace representation and bargaining. At the state level, the WEA



calculates that 27% is spent on extraneous activities. But unless the teachers give up their workplace rights and strictly adhere to union procedures, this [possible] refund is kept by the unions. A look at the process used by union officials to “provide refunds for teachers” demonstrates why few teachers know about their right to a refund and why it is so difficult to obtain it.

***It is difficult for teachers to find out about their right to a refund.***

*“At the orientation, the district union representative told me that dues would be extracted from my paycheck whether I signed the paperwork or not. He told me that my only choice was to be an agency fee payer, which meant that I would still be paying essentially the same amount of money, but I would have no legal protection from the district administration.” Paige Eichelman, High school teacher, Olympia.*

- School districts generally do not inform employees of their rights under a union security clause.
- Union officials often lead new teachers to believe they are required to sign up for the union.
- Teachers who question their union membership are often told the agency fee is equal to regular dues, but they are not informed of their right to a refund.
- Many teachers are told they will lose their legal liability protection if they opt out of the union.

***An “all or nothing” dilemma is presented to employees.***

- Teachers who join the union are not allowed to choose local representation alone, but are required to pay dues to local, regional, state and national affiliates.
- Educators do not have the option of simply paying a reduced fee covering only workplace representation costs.
- In order to maintain the right to vote and speak out on workplace issues teachers must remain a union member and fund the entire union agenda.
- WEA officials withhold liability insurance and legal counsel from non-members, despite the fact it only costs the union about \$4 per teacher per year for the insurance and the NEA is willing to cover agency fee payers.

***It takes effort and persistence to get refund.***

- Some district contracts try to prevent teachers from giving up their union membership outside arbitrary time parameters.
- The union is required by case law to notify agency fee payers of their rights, but does so in a complex seven-page legal memo with the first two pages dedicated to soliciting union members.
- Agency fee payers are given a 30-day window to request their refund. This window of opportunity changes each year.
- The agency fee payer—no matter how long he or she has been a non-member—must request a refund every year. A one-time authorization (like the one used by WEA to sign members up) is not permitted for those who resign and want refunds for unauthorized spending.
- The burden of crafting a letter with the legal language required to obtain a refund is on the agency fee payer.

***Union-calculated refunds are often low-ball and determined without accountability.***

- Even though in 2002 the NEA was willing to refund 45% of its agency fee, without a federal lawsuit it would be impossible to verify the NEA actually spent the remaining 55% of its \$250 million annual budget on collective bargaining, contract management or grievance assistance.
- The ability to “challenge” the refund and get verification of the union’s calculations is a process heavily stacked against the agency fee payer.

***What incentive does the union have to make refunds easy for agency fee payers?***

Evidently, the union’s perverse incentive to maintain high-membership rolls with the accompanying unlimited funding of mandatory payroll deductions leads to practices which frustrate assurances that fair-share fees are not harmful to district employees.

**WORKPLACE REPRESENTATION IS WEAKENED BY UNION SECURITY**

Teachers are forced to choose between giving up their right to participate in issues that affect their contracts and supporting political and ideological activities they may not agree with. Teachers who choose to protect their free speech rights are barred from holding union office and their views are minimized in union publications such as the monthly newsletter.

Ironically, the current practices associated with union security clauses also result in a failure to serve teachers’ workplace interests. With the deck stacked against teachers who are unwilling to see their rights violated through forced dues, union officials have little reason to be accountable to their needs.

School board members who want to protect employees from the harms this article discusses can make union security an issue in the next round of contract negotiations. It would be interesting to see what concessions the union is willing to make to maintain its compulsory fees.

## CASE STUDY



*By Ken Eikenberry*

I went to the Federal Way headquarters of the Washington Education Association in May 2002 to attend an “impartial hearing” on behalf of a teacher who was challenging the WEA’s mandatory fee. Frankly, having visited the old Soviet Union as a guest of the Procurator General, I believe their administrative hearings were more fair than the WEA process.

In districts with a “union security clause” in the contract, teachers who are not members of the union are still required to pay mandatory fees equal to regular dues, but they cannot vote on their own contracts or run for union office, and the union withholds their legal liability insurance.

A 1986 U.S. Supreme Court decision entitles these teachers to a refund of dues spent by the union on political and ideological activities, but the union does not make this easy.

As a former state attorney general, I was astounded by the one-sidedness of the WEA’s arbitration process for teachers who want to know how much of their fee is spent on activities that cannot be charged to non-members.

The hearing was held during school hours on a weekday when most teachers, presumably, could not attend. A battery of attorneys was on hand for the union to counter any claims a teacher might make. The arbitrator was hired by the WEA with no input from the other side. Teachers challenging the WEA were not permitted to see any of the union’s evidence before the hearing, nor were they allowed copies of the materials.

**“The prospect that public school teachers are forced to support political causes they don’t agree with is perhaps the largest institutionalized civil rights violation that remains in our country.”**

If any public agency conducted itself the way the WEA does, there would be an outcry heard across the nation. The prospect that public school teachers are forced to support political causes they don’t agree with is perhaps the largest institutionalized civil rights violation that remains in our country.

It’s time for school board members to look past the WEA’s election clout and protect Washington’s teachers from forced political speech. Tolerating this kind of union manipulation and abuse of the fair hearing process is unacceptable.

*Ken Eikenberry, semi-retired, is a former Washington State Attorney General.*

## **INNOVATIVE SOLUTIONS: FAIRNESS WITHOUT INJUSTICE**

Discussed below are alternatives that would help resolve competing interests between individual rights and common benefits and ensure fairness for all participants.

### ***Discard union security***

This is the strongest guarantee that teachers' rights will be protected and puts the burden on the union to provide top-quality services teachers are willing to purchase. Administrative duties and legal liabilities are eased in districts that do not have a union security contract.

### ***Agency shop fees paid to the local union only***

Contracts can allow teachers who do not want to be members of all four union levels to pay a "local only" agency shop fee. The Quincy School District is an example.

### ***Allow automatic "objector" status for all agency fee payers***

Under current practice, teachers will not receive their agency fee refund from the union unless they object in writing to the extraneous charges. District contracts could establish standing objector status for agency fee payers and require the union to provide automatic refunds.

### ***Require union disclosure as a condition of having union security***

Much like corporations have a duty to stockholders, district contracts can refuse to grant union security provisions unless the union discloses its activity and spending to all teachers who are covered by the contract. "Chargeable" (workplace representation) and "non-chargeable" (extraneous spending) expenditures would be the most obvious information of interest to employees working under a union security contract. Notification of rights could also be required.

### ***Annual notification of employee rights***

Contracts can require that all employees in the represented workgroup receive notification in their September paycheck explaining their right to pay an agency fee and to receive a refund from the union for the portion of the fee not used for workplace representation.

Information about what services, benefits, discrimination protection, and legal liability protection are offered by the district outside of union membership should also be provided.

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## **EVERGREEN FREEDOM FOUNDATION**

The Evergreen Freedom Foundation is a non-profit public policy research organization. In recent years we have had the opportunity to assist school district employees in holding union officials accountable to members' rights.

As a result of our research and efforts, WEA officials have been required to return approximately \$530,000 to school employees, and the union has been fined \$500,000 by state authorities.

More information about the problems and alternatives related to union security clauses is available from the Evergreen Freedom Foundation. Please feel free to contact us at:

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