

**ALASKA PUBLIC EMPLOYEES ASSOCIATION/AFT
POLICY AND PROCEDURES**

POLICY: *AGENCY FEE PAYERS*

APPROVED: March 28, 1994

EFFECTIVE DATE: March 28, 1994

I. INTRODUCTION

This document sets forth the procedure that will be used to determine the amount of the Agency Fee that local/chapter affiliates of APEA/AFT will charge for the upcoming fiscal year. The procedure is designed to comply with the requirements and appropriate related policies of Alaska and federal law, as set forth in recent court decisions. It will be reviewed periodically and revised as may be necessary to reflect legal developments in this area.

Alaska law permits collective bargaining between Public employers and the Alaska Public Employees Assn./AFT that authorize the employers to deduct a dues amount (fee) from the salary or wages of all APEA/AFT members of the bargaining units for which APEA/AFT is the exclusive representative. The dues are remitted to APEA/AFT on a monthly basis and are to be used to support the Association's work on behalf of its members with regard to their employment relations with their employer. Members who choose not to be members of APEA/AFT must still pay what is called an "Agency Fee" amount.

Federal law has required that Agency Fee payers who file an objection to paying full dues shall only have to pay for expenses that are germane to the contract. Expenses considered ideological or political in nature are considered nonchargeable expenses and should not be included in determining what an Agency Fee should be. Persons who choose to pay reduced Agency Fees cannot join or must resign from the union. They are still part of the bargaining unit and the union's duty of fair representation still applies to them. However, persons who choose non-member status are not entitled to vote on ratification of contracts, attend union meetings or have a voice in the internal affairs of the union.

II. DEFINITIONS

A. As used in this document, the following terms have the meanings indicated:

- [1] "**AAA**" means the American Arbitration Association;
- [2] "**APEA/AFT**" means the Alaska Public Employees Association/AFT that is recognized as the exclusive collective bargaining representative, respectively;
- [3] "**Agency Fee**" means the fee that an employee in the bargaining unit who does not become a member of the APEA/AFT is required to pay APEA/AFT to offset his or her per capita share of the cost of union activities;
- [4] "**Agency Fee payer**" means an employee in a collective bargaining unit who (1) does not choose to join the APEA/AFT; (2) does not object to the use of his or her service fees for purposes unrelated to the collective bargaining, contract administration and grievance adjustment; and (3) does not object to paying an Agency Fee equal to regular APEA/AFT dues;
- [5] "**Chargeable Expenses**" are those incurred by the Association that reflect the share of the costs of operations of the Associations that are considered necessarily and reasonably incurred for the performance of duties as a representative of the employees in dealing with the employer on labor management issues, including the costs of: negotiation and administering the collective bargaining contract; settling grievances and disputes by mutual agreement, or in arbitration, court or otherwise; activities and undertakings normally and reasonably employed to implement the duties of the association as representative of the employees in the bargaining unit; and the maintenance of the Associations existence.

The following are examples of expenditures classified as chargeable: preparation for and negotiations of collective bargaining agreements; contract administration including investigating and processing grievances, meetings, conferences, administrative, arbitral and court proceedings and pertinent investigation and research in connection with work-related subjects and issues; handling work-related problems of employees; communications with community organizations, civic groups, government agencies and the media respecting the Associations position on work-related matters; maintaining membership; and providing legal, economic and technical expertise on behalf of employees in all work-related matters;

- [6] "**Dues**" means the dues that an employee in the bargaining unit is required to pay to be a member of the Local/Chapter during the service year, including dues that said employee is required to pay to APEA/AFT and

AFT;

- [7] **"Fiscal Year"** means the twelve-month period from July 1 through the following June 30;
- [8] **"Non-chargeable activities"** means activities that are ideological or political in nature and are considered not germane to work-related interests of employees. The term "political" is defined as support for or against candidates for political office of any level of government and any office in the union structure. The term "ideological" is defined as support for or against certain positions that the union may take which are not work-related. The following are examples of Non-chargeable expenditures: Lobbying, electoral or political activities outside the context of contract ratification or implementation; public relations efforts designed to enhance the reputation of the association and organizing;
- [9] **"Class I Objecting Agency Fee payer"** means an employee in a collective bargaining unit who (1) does not choose to join the APEA/AFT; (2) objects to the use of his or her service fees for purposes unrelated to the collective bargaining, contract administration and grievance adjustment; and (3) accepts the reduced Agency Fee as determined by the Association;
- [10] **"Class II Objecting Agency Fee payer"** means an employee in the collective bargaining unit who (1) does not choose to join the APEA/AFT; (2) objects to the use of his or her service fee for uses unrelated to collective bargaining, contract administration and grievance adjustment; and (3) objects to the reduced service fee as determined by the Association.

- B. When it is indicated in this document that a function is to be performed by APEA/AFT, it means "APEA/AFT or its designee."

III. INFORMATION TO POTENTIAL OBJECTING AGENCY FEE PAYERS

- A. Promptly after May 1 of each fiscal year, APEA/AFT shall prepare for each bargaining unit represented by the APEA/AFT a list of the employees included in said bargaining unit who were Agency Fee payers of APEA/AFT as of May 1. The employees on this list shall be referred to hereinafter as "Potential Agency Fee payers."
- B. Prior to June 1, APEA/AFT shall mail to each Agency fee payer, at his or her home or place of employment, an Agency Fee Report setting forth the amount of the Agency fee that APEA/AFT believes may be charged for the upcoming fiscal year to cover "Chargeable activities." The amount is referred to hereinafter as the "Association-Determined Agency Fee." This memorandum shall explain the basis for the Association-Determined Agency Fee by listing expenditures for each major category of chargeable activity, and also shall inform each Agency Fee payer of the procedure that he or she must follow to challenge the amount of said fee. Together with the aforesaid memorandum, APEA/AFT shall deliver to each Agency Fee payer a copy of this document and such additional information as may be necessary for him or her to gauge the propriety of the Association-Determined Agency Fee, including specifically the following documents:
 - 1. The budget of APEA/AFT projecting expenditures for the upcoming fiscal year;
 - 2. AAA Rules for Impartial Determination of Union fees; and
 - 3. Notice of Class I Objection Form.

- C. Agency Fee payers may not be required, through payroll deduction or otherwise, to pay any portion of a Agency fee in the upcoming fiscal year until after the information referred to in section III(B) above has been delivered to them.

IV. PAYMENT OF THE AGENCY FEE

- A. Upon joining APEA/AFT a member who chooses to be a Agency Fee payer, may at his or her option, elect to pay the Agency fee through either payroll deductions or by direct payment to APEA/AFT. In either event, the Agency fee payer must make the necessary arrangements for payment of the Agency fee no later than 30 days after the first day of employment. A member's failure to timely comply with the provisions of this paragraph shall be good and sufficient grounds for APEA/AFT to declare that Agency Fee payer in violation of the collective bargaining agreement and to request appropriate action by the fee payer's employer.
- B. The date on which a Agency fee payer actually begins to pay the Agency fee shall have no bearing on the amount of the fee that he or she is required to pay. The Agency Fee is a set monthly amount.
- C. Payment of the Agency fee may be made pursuant to a "deduction-escrow-refund procedure" as authorized by the United States Court of Appeals for the Ninth Circuit in Grunwald v. San Bernadino School District, ___ F.2d ___. (9th Cir. 1993). Under this procedure, Agency Fee payers who object to the Associations calculation of the Agency fee shall make payments equal to full unified dues pending the issuance of an impartial arbitrator's finding of the appropriate Agency fee

as provided in Section V.D. of this document. Pending APEA/AFT's recalculation of the amount of the Agency fee pursuant to Section V.D.4. below, the full amount of any fees collected from any employee who has filed an objection to the amount of the fee shall be held in an interest bearing escrow account. Upon issuance of the arbitrator's finding, APEA/AFT will refund with accrued interest the non-chargeable portion (if it is different from the calculated amount) of the fees paid by objecting Fee payers.

V. OBJECTIONS TO THE ASSOCIATION'S DETERMINED AGENCY FEE

- A. Any Agency Fee payer who objects to the use of a portion of his or her Agency Fee for non-chargeable activities may object to the use of said Fee by mailing a notice of objection to APEA/AFT Agency Fee, 211 Fourth Street, Suite 306, Juneau, Alaska 99801; by delivering such a notice to APEA/AFT at said address; or by mailing or delivering such a notice to an alternative address specified in the memorandum to Potential Objectors.

The notice of objection shall be in written form and shall include the objector's name, home address, employer, and a statement that he or she objects to the amount of the Association-Determined Agency Fee. In order to be timely, the notice of objection must be postmarked or delivered on or before the later of June 30 of each fiscal year, or the deadline in the memorandum which is sent to all Agency Fee payers.

A potential Agency Fee payer Objector who does not make a timely objection to the use of his or her dues for non-chargeable purposes waives his or her right to object to such use of Agency fees for the remainder of the fiscal year and will be required to pay the Associations calculated amount for that fiscal year.

- B. The Notice of Objection shall state whether the objector accepts the accuracy of the Association-Determined Agency fee (Class I) or wishes to challenge the accuracy of the Association-Determined Agency Fee (Class II). If the Notice of Objection fails to indicate whether the objector accepts or challenges the Association-Determined Agency Fee it will be assumed that the objector does not wish to challenge the accuracy of the Association-Determined Agency Fee.

- C. ***Class I Objection.***

- [1] An Agency Fee payer who objects to the use of his or her funds for non-chargeable purposes, but accepts the accuracy of the Association-Determined Agency Fee will, upon receipt of his or her timely written objection be promptly issued a rebate, in single lump sum, of the total amount in excess of the Association-Determined Agency Fee that has been deducted to date. Further refunds will be made in advance of the dues being deducted or the monthly dues deducted will be reduced to the appropriate amount.
- [2] A Potential Objector who accepts the Association-Determined Agency Fee waives his or her right to challenge the amount of the fee before an impartial arbitrator and to any future fee adjustments based upon the outcome of the arbitration.

- D. ***Class II Objection.***

- [1] If any timely objection is filed that challenges the accuracy of the Association-Determined Agency Fee, APEA/AFT shall promptly (1) ask the AAA to appoint an arbitrator experienced in public sector labor relations to hold a hearing to determine the percentage of the APEA/AFT budget for the service fee year that will be expended for chargeable activities, and (2) provide the AAA with a list containing the name, home address, employer, and relevant Local/Chapter for each employee who has filed a timely Class II objection. The hearing shall be held in Juneau, Alaska, unless otherwise specified in the memorandum sent to all Agency Fee payers who have objected to the Association-Determined Agency Fee calculation, at a location and on a date to be mutually determined by the arbitrator unless otherwise mutually determined by all parties. The arbitrator shall submit to APEA/AFT and each employee on the list a report that indicates the percentage of the APEA/AFT budget for the fiscal year that the arbitrator has determined shall be expended for chargeable activities.
- [2] Except as otherwise provided in this document, all matters relating to the arbitrator's determination of the percentage of the APEA/AFT budget that shall be expended for chargeable activities, including, without limitation, the selection of the arbitrator, the conduct of the hearing, and the issuance of the report, shall be dealt with in accordance with the AAA Rules for Impartial Determination of Union Fees.
- [3] Any Agency Fee payer who enters the bargaining unit after June 30, but before APEA/AFT's recalculation of the amount of the Agency fee pursuant to Section V.D.4. below and does not become a member of APEA/AFT

within 30 days of such entry, shall promptly thereafter be provided with the information referred to in Section III.B. above. If said employee mails or delivers a notice of objection, pursuant to Section V.A. above, within thirty days after being provided with the information, APEA/AFT shall, to the extent practicable, arrange for the full amount of his or her Agency fee to be placed in the escrow account and for him or her to have an opportunity to participate in the hearing before the arbitrator.

[4] Recalculation of Amount of Agency Fee.

a. Promptly after receipt of the arbitrator's report, APEA/AFT shall utilize the following procedure to recalculate the amount of the Agency fee that each Chapter/Local may charge for the fiscal year to Agency Fee payers who have filed a timely objection:

1. The percentage of the Local/Chapter budget that the arbitrator determined shall be expended for chargeable activities during the service fee year shall be applied to the Local/Chapter portion of regular dues to obtain a dollar figure;
2. The percentage of the APEA/AFT budget that the arbitrator has determined shall be expended for chargeable activities during the service fee year shall be applied to the APEA/AFT portion of regular dues to obtain a dollar figure;
3. The percentage of the AFT budget that the arbitrator has determined shall be expended for chargeable activities during the service fee year shall be applied to the AFT portion of regular dues to obtain a dollar figure;
4. The dollar amounts obtained pursuant to paragraphs 1, 2 and 3 above shall be totaled.

The aforesaid total is referred to hereinafter as the "Impartially-Determined Agency Fee."

b. No Agency Fee payer who has filed a timely Class II Objection shall be required to pay more than the Impartially-Determined Agency Fee. Based upon the Impartially-Determined Agency Fee, APEA/AFT shall allocate the money, including interest, in the escrow account. If the Impartially-Determined Agency Fee is less than the Association-Determined Agency Fee, APEA/AFT shall reduce appropriately the amount paid for the service fee year by all Agency Fee payers who have filed a timely objection by reimbursing said Agency Fee payers for any excess amounts that they may have paid to that date and/or reducing future fee payments. If the Impartially-Determined Agency Fee is larger than the Association-Determined Agency Fee, the amount paid for the service fee year by Agency Fee payers who have objected to the amount of the Association-Determined Agency Fee shall be increased to the amount of the Impartially-Determined Agency Fee.

c. If an objecting Agency Fee payer is paying his or her Agency fee by payroll deduction, APEA/AFT shall, within thirty (30) days of the issuance of the impartial arbitrator's decision pay to each employee in a single lump sum the total excess amount that has been deducted to date. Further refunds will be made in advance of the dues being deducted or a reduced payroll deduction amount will be instituted to reflect the Impartially-Determined Agency Fee.

VI. MISCELLANEOUS

- A. The determinations made by the arbitrator shall be used to calculate the amount paid by all Agency Fee payers who file a timely objection, including Agency Fee payers who because of late entry into the bargaining unit are not afforded an opportunity to participate in the hearing held pursuant to section IV.B above.
- B. APEA/AFT shall be bound by the determinations made by the arbitrator and may not challenge said determinations in any other forum. APEA/AFT may take the actions set forth in section V.D. above, notwithstanding the fact that one or more objecting Agency Fee payers have challenged the amount of the Impartially-Determined Agency Fee in a court or other forum.

NOTICE OF CLASS I OBJECTION

I object to APEA/AFT regular dues amount, and I would like to pay a reduced dues amount the will exclude expenditures that are considered political and ideological in nature and are not considered germane to the contract (non-chargeable activities). I accept the APEA/AFT determination that for Fiscal year _____ the reduced agency fee amount will be \$_____ per month. This amount will be used for "chargeable" activities. I wish to have the amount of the fee attributable to "non-chargeable" activities returned to me.

Printed Name

Date _____

Signature

Social Security Number

Return by June 30, _____ to: APEA/AFT
211 Fourth Street, Suite 306
Juneau, AK 99801

Failure to return will be treated as a non-objection.

**NOTICE OF CLASS II OBJECTION TO APEA/AFT
CALCULATION OF "CHARGEABLE AGENCY FEE
EXPENDITURES"**

I object to APEA/AFT regular dues amount, and I would like to pay a reduced Agency fee amount, further more, I object to the calculation of the "chargeable" agency fee amount, and I wish to challenge the APEA/AFT determination of the amount attributable to "chargeable" activities. I request that my challenge be heard by an impartial arbitrator. I understand that the arbitrator may either approve the APEA/AFT calculations and increase or decrease the amount of attributable to "non-chargeable" activities. I understand that the full amount of the Agency fee it receives will be retained in an escrow account, until the arbitrator decides the challenge. APEA/AFT will thereafter transmit to me the amount of the fee attributable to "non-chargeable" activities as determined by the arbitrator.

_____ Date _____
Printed Name

_____ Social Security Number
Signature

Return by June 30, _____ to: APEA/AFT
211 Fourth Street, Suite 306
Juneau, AK 99801

Failure to return will be treated as non-objection.