

## Agency Fee or Fair Share Fee

Agency fee or fair share fees are the amounts of money paid by non-union members of the bargaining unit to cover the union's costs of representing them. In the public sector, the right of an individual to become a fair share payer, as opposed to a full member, is rooted in the First Amendment of the U.S. Constitution as well as similar provisions in certain state constitutions.

The courts have held that under the First Amendment fair share payers are not obligated to pay that portion of their dues which are used for ideological or political purposes. Fair share payers are only required to pay their share of the costs generally associated with collective bargaining and contract administration. Employees in the private sector have similar, but not identical rights.

These rights are grounded on the duty of fair representation as well as, in certain circumstances, the U.S. Constitution. In fact, the legal analysis applied to public sector employees has its origins in the private sector. In the past three decades, cases decided by the U.S. Supreme Court and the National Labor Relations Board (NLRB) have provided unions with detailed instruction on how to administer and report fair share fees. We have prepared this fair share guide in response to questions posed by AFT locals around the country concerning these rulings.

With a few exceptions, which are noted herein, public and private sector AFT locals have the same legal obligations to fair share payers. Therefore, we make no distinctions in this guide between locals that represent members under the National Labor Relations Act and those that represent members pursuant to a public sector collective bargaining law.

We emphasize, however, that fair share procedures are not only dictated by decisions of the courts and administrative agencies, but also in many cases by state law and state and local labor law procedures. Therefore, AFT locals are advised to consult counsel to see if there are any separate requirements imposed by state law.

Finally, please note that Article VIII, Sections 1 (b)-(d) of the AFT By-Laws requires that these procedures be implemented by all locals.