

EMPLOYEE FREEDOM

A Public Employee's Guide to Opting Out of Union Membership



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Are you a public employee interested in leaving your union?

If so, you are not alone.

Although many public and private employers hire their employees under terms established by collective bargaining, some workers may not want to be part of a union. Employees may find that union involvement contradicts their view of professionalism, or they could object to the

heavy-handed tactics unions often use to force workers to provide financial support for political candidates and causes with which they disagree. Furthermore, some religious employees may believe that affiliation with a labor union would be contrary to their religious beliefs.

Despite these concerns, unions have managed to make some kind of union association inevitable for many public employees. While courts have made it clear that public employees may not be forced to join a union outright, they can be required to pay certain union fees.

State and federal law provide three options for public employees who do not want to be part of a union or would like to limit their support of union activities:

- [1]** *Become an “agency fee payer”* 
- [2]** *Object to union membership on religious grounds* 
- [3]** *Work to decertify the union* 

(1)

Become an Agency Fee Payer

If you wish to resign from your union, you can become an *agency fee payer*. This allows you to request an annual refund from the union of whatever portion of your membership dues they put towards political and other non-collective bargaining purposes.

It is not difficult to leave your union if you choose to do so. Courts have held that you can withdraw membership whenever you like, even if your union argues that resignations can only be submitted at certain times. Workers who choose not to be part of the union are freed from having to follow union rules and are not subject to union discipline. However, they may not be able to take part in union elections, meetings or other functions.

Most importantly, even if a government worker decides to leave his or her union, the employment conditions will still be governed by the terms of the union-negotiated contract. Consequently, the employer cannot deny a non-union worker any benefits guaranteed by the contract, and the union may not refuse to represent non-union workers in matters subject to collective bargaining. Because their employment remains governed by the union contract, state law provides that non-union workers may be required to pay the union an “agency fee” to cover the costs of negotiating and administering the contract.

Furthermore, non-union workers cannot be compelled to fund union efforts that are unrelated to collective bargaining. For instance, non-union workers may not be forced to contribute toward a union’s expenses for lobbying, public relations, political advertising, funding of charities, or the payment of “members only” benefits. Objecting workers are entitled to a refund of whatever portion of their membership dues goes to support these “non-chargeable” expenses. A typical rebate is generally worth about 15-30% of a worker’s total annual dues, though it may be higher. At present, workers who do not want to support union political and ideological activities are required to affirmatively express their dissent to the union *each year*.

To become an agency fee payer, follow the checklist on the next page >

Become an Agency Fee Payer

CHECKLIST



Review the union's constitution or bylaws and identify when and to whom your resignation should be submitted. Many unions have their constitutions available online, though in some cases you may need to get in touch with a local union official to direct you to a copy.



Write a letter stating that you want to resign from the union and clarify that your resignation is effective immediately.



State that you do not wish for your funds to be used for any purpose other than collective bargaining and contract administration and grievance assistance.



Demand that the union refund and stop collecting the part of your agency fee used for political, ideological and other non-bargaining activities, also known as "non-chargeables."



Direct the union to hold the contested fees (the difference between full member dues and the reduced agency fee payer amount) in escrow while processing or disputing your resignation. This prevents the union from illegally using your dues in the meantime.



Send one copy of your letter to each applicable union official and one copy to your employer. For example, if you are a teacher, send one copy to the Executive Director of the Washington Education Association, one copy to your school district, and one copy to your local union. Be sure to keep a copy for your own records.



If you want evidence that your resignation was received, be sure to send it via certified mail or some other service which will provide you with proof of delivery.



Repeat process yearly.

After sending your resignation letter(s), the union is required to provide you with independently-audited financial information about how they determined the agency fee amount, as well as the chance to dispute that amount before an impartial decision maker.

(2)

Become a Religious Objector

For workers who have religious objections to paying any fees at all to the union, state law provides the opportunity to redirect the union fees to charity. Unions often use funds from membership dues to promote or defend causes which conflict with some workers' sincerely held religious beliefs.

However, if there is any genuine religious reason for a worker to object to union membership, the worker cannot be forced to contribute any money to the union.

While a religious objector cannot simply keep the dues that would otherwise go to the union,

Washington law permits the worker and the union to agree on a charity to which that money will be donated. Unlike agency fee payers, *religious objectors do not have to renew their objection each year for it to continue to apply.*

If you have a religious objection to being associated with a union, you may take the following actions to divert your dues from the union to a charity.

CHECKLIST



Review the union's constitution or bylaws and identify to whom your letter should be submitted. Many unions have their constitutions available online, though in some cases you may need to get in touch with a local union official to direct you to a copy.



Carefully articulate why your [1] personal religious beliefs or [2] the teachings of your church or religious organization will not allow you to be part of the union. Although some unions make it a practice not to contest a statement of religious objection, they may argue that your objection is not sincere. If you have been a union member for some time, you may need to explain any recent changes in perspective that have brought about the decision that your faith does not permit you to support the union, thus requiring you to end your membership and financial support.

Become a Religious Objector

CHECKLIST

Continued



Write a letter to the state and/or local union leader(s) informing them that you have religious reasons for wishing to separate yourself from the union. Before you send the letter, you may want to have it reviewed by an expert in this area, such as the legal analysts at the National Right to Work Legal Defense Foundation. [see Appendix I]



Authorize the union to withhold the money to be distributed to a charity, but instruct it to place that money into an escrow account until it can be transferred to the charity.



*Identify two-or-three charities that you would like to see benefitted by your fees. You and the union will have to reach a mutual agreement as to the eventual recipient of these funds. However, in 2008 the Public Employment Relations Commission (PERC, see Appendix I) ruled in *Wiggs v. Vancouver WEA* that, “the goal is to respect the objector’s choice of charities, so long as the designated recipient is lawful and charitable.” The presumption should rest with your choice.*



Revoke any authority the union might have to take payroll deductions for membership dues, and describe how you would like the charity donation to be handled. For example, will you make the donation to the charity and provide the union with receipts, or will your employer withhold funds from your paycheck for the charity, or will the union make the donation?



Send one copy of your letter to each applicable union official and one copy to your employer. For example, if you are a teacher, send one copy to the Executive Director of the Washington Education Association, one copy to your school district, and one copy to your local union. Be sure to keep a copy for your own records.



Follow up with the union to confirm the choice of charity to receive your fees.



Verify that the charity has received your donation and be prepared to provide written proof that you have made the donation.

Become a Religious Objector

~ Final Details ~

The union is required to respond within 60 days. If the union or your employer refuses to recognize and comply with your status as a religious objector, you may file a complaint with the PERC.

The form (N-1) is available online

[Download PDF](#)

Instruction are also available online

[Download PDF](#)

You may also be able to register a complaint with Federal Equal Opportunity Employment Commission within 180 days of the date of the refusal.

As a side note, some may wonder if it is possible to be both an agency fee payer and a religious objector. In other words, could one pay only the portion of member dues which go towards collective bargaining, but pay it to a charity instead

of the union? While state law does not prohibit a worker from being both an agency fee payer and a religious objector, neither does it expressly permit it. The issue would have to be resolved based on the terms of your workplace collective bargaining agreement or with your specific union, which would likely be opposed to you receiving both exemptions.

Up next - Decertification >

[3]

Decertification

The third option is the most effective way to achieve independence from a union, but it is also the most difficult. Each public worker bargaining unit has a certified, exclusive bargaining representative – or union. With enough support, it is possible for a group of workers in a bargaining unit to decertify the union functioning as their exclusive representative. The workers can vote to be

represented by a different union, or they may decide to have no union representation at all.

While the decertification process is not easy, it can be done. Teachers in Waterville, Washington, decided that the partisan political activity of the Washington Education Association and the compelled dues were not in their best interests. In November, 2011, they filed

to decertify the WEA as their union representative and, after a year of wrangling with the WEA, were able to establish the Waterville Teachers Leadership Council, a local, independent union. Teachers in two other school districts have taken similar action: the St. John School District decertified the WEA in 2009, and the Sprague School District decertified the WEA in 2005.

In order to begin the process of decertification, employees must file a petition for investigation of a question concerning representation of employees with the PERC.

[Online form \[E-1\]](#)

[Download PDF](#)

[Form instructions](#)

[Download PDF](#)

What else do I need?

More details on the following pages >

You need more people.



Although any employee may file such a petition with the PERC, state regulations require that the petition be accompanied by a “showing of interest.” To meet this requirement, the person(s) filing the petition need to make sure that the PERC receives individual authorization cards or letters from *at least 30 percent* of the employees being represented by the union in that particular bargaining unit. *

Individual authorization cards should include:

- *The date.*
- *The name of the worker.*
- *Their employer.*
- *An affirmative statement that the employee desires to be represented by a particular organization, if changing unions, or that the employee no longer wants a collective bargaining representative, if decertifying.*
- *The employee’s signature.*

* *Independent home care providers are the one exception to the 30 percent showing of interest requirement. The law treats all providers in the state as a single bargaining unit and, consequently, only requires a 10 percent showing of interest in order to have a decertification election.*

You need to be on time.



State regulations also limit the time windows during which petitions and accompanying showing of interest documents may be filed.

- *For state and marine employees, petitions must be filed with the PERC 120 to 91 days before the expiration of the existing contract.*
- *For all other public employees, petitions must be filed with the PERC 90 to 61 days before an existing contract expires.*
- *No petitions may be filed for at least one year after the last certification or election.*

You need to take a call.



Hello?

Once the petition and required showing of interest cards are submitted during the appropriate window, the PERC will arrange for an investigative conference call with the concerned parties. The conference will seek to answer questions such as:

- *Does PERC have jurisdiction? Under what law/regulation?*
- *Who are the parties to the case?*
- *Was the petition filed in a timely manner?*
- *Is there a question concerning representation?*

[3]

Final Details on Decertification

If the PERC finds that an election is needed to determine if a majority of workers in the bargaining unit want to change or decertify their union, the Representation Coordinator will schedule the election arrangements during the conference call with the parties. PERC elections are secret-ballot

and generally done by mail. It is important to note that, for the purposes of the decertification election, Washington law permits campaigning on the employer's property during working hours.

Be aware that attempts at decertification have historically been met with

fierce union opposition and misinformation. Patience, knowing the rules and following them carefully, and meeting all deadlines are the most important things to keep in mind when starting a decertification effort.

Now that you've seen the options and the process the next steps are up to you.

You are not alone. You can do this.

The following is a list of organizations and government entities that may be helpful or essential to public employees seeking to opt out of union membership:

Freedom Foundation

Description: The Freedom Foundation is a non-profit educational research organization dedicated to empowering and standing up for individuals in Washington State. Our primary research areas are budget, taxes, education, labor, elections, property rights, and citizenship. We publish, teach, speak, testify, and occasionally litigate when public information is withheld or when constitutionally protected rights have been trampled. We have an active online audience through audio and video podcasts, films, blogging, and investigative journalism. We receive our support from our more than 5,000 members.

Web: www.myfreedomfoundation.com

Phone: (360) 956-3482

Address: P.O. Box 552, Olympia, WA 98507

Public Employment Relations Commission

Description: The PERC is the state agency tasked with handling the resolution of labor-management disputes. Their website provides detailed information about the decertification process, and other information related to union representation.

Web: www.perc.wa.gov

Phone: (360) 570-7300

Address: P.O. Box 40919, Olympia, WA 98504

National Right to Work Legal Defense Foundation

Description: A nonprofit, NRTW works to eliminate coercive union power and compulsory unionism abuses. They offer informational resources and free legal aid for cases involving compulsory union membership or due payments, union violence against workers, forced union dues used for politics, and decertification elections.

Web: www.nrtw.org

Email: legal@nrtw.org

Phone: 1-800-336-3600

Address: 8001 Braddock Road, Springfield, VA 22160

ORGANIZATIONS

Continued

Northwest Professional Educators

Description: An affiliate of the Association of American Educators, NWPE is a nonpartisan professional organization offering liability insurance and legal services to its members for \$198 per year.

Web: www.nwpe.org

Phone: 1-800-380-6973

Address: P.O. Box 28496, Spokane, WA 99228

Christian Educators Association International

Description: CEAI is a non-profit, non-union, professional association of Christian educators. They offer up to \$2 million in professional liability insurance for members meeting eligibility requirements, as well as other services, for \$239 per year.

Web: www.ceai.org

Phone: 1-888-798-1124

Address: P.O. Box 45610, Westlake, OH, 44145.

COURT DECISIONS, STATUTES AND REGULATIONS

The following is a list of relevant court rulings, laws and regulations which govern the rights of union members.

U.S. Supreme Court, Abood v. Detroit Board of Education, 1977.

This case established the constitutional right of workers to resign from their union at any time and receive a refund of that portion of their member dues which supported anything other than the union's costs of collective bargaining, contract administration, and grievance adjustment.

U.S. Supreme Court, Chicago Teachers Union v. Hudson, 1986.

The Hudson case established three safeguards for agency fee payers, finding that, "the constitutional requirements for the Union's collection of agency fees include an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision-maker, and an escrow for the amounts reasonably in dispute while such challenges are pending."

U.S. Supreme Court, Knox vs. Service Employees International Union, Local 1000, 2012

Knox involved the practice of public employees' unions imposing special assessments on member dues for political activity. The Court ruled that union members must opt-in to any such assessments, instead of having to opt-out.

Title VII of the Civil Rights Act of 1964

This legislation prevents employers and unions from discriminating against employees because of their religious beliefs, and requires that they take steps to reasonably accommodate an employee's religious beliefs.

Revised Code of Washington [RCW]

The RCW is the current compilation of Washington State laws passed by the legislature. Different types of public employees have different laws governing their employment relations, collective bargaining practices, and workplace representation.

State and Local Government Chapter details on the next page >

COURT DECISIONS, STATUTES AND REGULATIONS *Continued*

Revised Code of Washington [RCW]

State Government:

- State civil service employees - Chapter 41.80 RCW [Open Link](#)
- State higher education classified (civil service) employees Chapter 41.80 RCW [Open Link](#)
- State institutions of higher education faculty - Chapter 41.76 RCW [Open Link](#)
- Community and technical college faculty - Chapter 28B.52 RCW [Open Link](#)
- Home Care independent providers - Chapter 41.56 RCW [Open Link](#) and Chapter 74.39A RCW. [Open Link](#)
- Technical college classified employees - Chapter 41.56 RCW [Open Link](#)

Local Government:

- Local government employees (cities, counties, etc.) - Chapter 41.56 RCW [Open Link](#)
- Port districts - Chapter 41.56 RCW [Open Link](#) and Chapter 53.18 RCW [Open Link](#)
- Public utility districts - Chapter 41.56 RCW [Open Link](#) and RCW 54.04.170 - .180 [Open Link](#)
- School district certificated employees - Chapter 41.59 RCW [Open Link](#)
- School district classified employees - Chapter 41.56 RCW [Open Link](#)

Washington Administrative Code [WAC]

The WAC is the current compilation of regulations enacted by state agencies. The PERC has a number of WAC provisions which govern how it handles workplace representation questions. Title 391 WAC is the general chapter governing the Public Employee Relations Commission.

Representation Case Rules – Chapter 391-25 WAC [Open Link](#)

Governs cases where a union seeks certification as exclusive bargaining representative of a group of employees, or where the majority status of an existing exclusive bargaining representative is questioned.

Union Security Dispute Rules – Chapter 391-95 WAC [Open Link](#)

Covers cases where an employee and a union have a disagreement about the employee's assertion of a "right of non-association" based on religious beliefs.

NATIONAL EMPLOYEE FREEDOM WEEK
SAMPLE AGENCY
FEE-PAYER LETTER

DATE _____ UNION NAME _____
ADDRESS 1 _____
ADDRESS 2 _____

To whom it may concern,

This letter is to inform you that, effective immediately, I have resigned my union membership. With this letter I am also invoking my rights under United States Supreme Court decisions, such as *Communications Workers v. Beck*, *Ellis v. Railway Clerks*, *Aboud v. Detroit of Education*, to revoke any authorization for payroll deduction of membership dues and authorize only the deduction of those fees legally chargeable to objecting nonmembers under the First Amendment to the U. S. Constitution.

These legally chargeable fees only include the union's cost of collective bargaining, contract administration and grievance adjustment, as defined by the courts. I object to extractions for any other purpose. Any fees unrelated to these financial core activities should be immediately deducted from my dues according to the procedures outlined by the U. S. Supreme Court in *Chicago Teachers Local 1 v. Hudson* and any other relevant cases. This objection is permanent and continuing in nature and should be honored for as long as I remain in the bargaining unit.

I would also like a full accounting of the reduced fee verified by an independent auditor and a reasonably prompt opportunity to challenge the fee calculation before an impartial decision-maker. I also insist that any disputed fees be placed in an interest-bearing escrow account pending a final determination of the appropriateness of any asserted charges.

Please provide me with an accounting as soon as possible. Until an accounting is provided to me, please escrow all of my dues that are not subject to an immediate rebate. Additionally, if there will be any delay in obtaining a full accounting, please advise me as to when this information will be forthcoming.

Since I am continuing to pay for the "representative" portion of dues, I understand that the union will continue to represent me fairly and without discrimination in all matters subject to collective bargaining. I understand that I cannot be denied any benefits, including health care, pension, step increases, etc., under the labor contract with my employer because of non-membership.

Please see that my legal rights are fully and promptly protected.

Sincerely,
Your Signature Here

Name (Print) _____ SSN: (optional) _____

ADDRESS 1 _____
ADDRESS 2 _____

cc: Employer's Payroll/Personnel Department



To advance individual liberty, free enterprise and limited, accountable government.

We're making Washington state the "opportunity capitol" of the West Coast, We want it to be the best possible place for people to pursue their dreams, create value and earn the success they've worked for.

We're here for you. Let us know how we can help.



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