National Right to Work Committee®

Fact Sheet

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A COALITION OF EMPLOYEES AND EMPLOYERS

Forced Fees Equals Forced Unionism

The truth behind the lie in the unions' "Fee for Grievance" scheme

Union officials have devised a new backdoor scheme to undermine state Right to Work laws. This scheme is particularly dangerous because its dishonest framing has already allowed Big Labor to trick many freedom-loving state legislators, who would not knowingly vote against Right to Work, into voting for and even cosponsoring it. Yet this dangerous and deceptive scheme directly violates both federal labor law and state Right to Work laws.

Such bills are explicitly designed to sabotage state Right to Work laws by allowing union officials a way to extract "fees" from non-union workers, leaving a state Right to Work law on the books, but virtually meaningless.

Under this so-called "fee for grievance" scheme, a non-union worker would have to pay a union every time he or she used the grievance process at his or her job.

A typical bill would say something like this:

> **"A non-member who chooses to have representation from the labor organization in any grievance or legal action must reimburse the labor organization for the actual legal fees and court costs incurred by the labor organization."**

The danger is that unless you have a thorough understanding of federal labor law, this language sounds fair and reasonable. But within the context of federal labor law, this language is anything but reasonable, and will ultimately end up forcing virtually every worker in a union shop to pay fees to that union, or else go looking for another job.

Federal Law Forces Workers to "Choose" to Ask for the Union's Help

The whole scheme is premised on the fiction that the individual worker has a "choice" as to whether to use the union's grievance procedures.

But what kind of choice is it when federal law leaves only one valid option?

Here is how the system imposed by federal law works.

Suppose a worker has a grievance alleging he's been discriminated against.

Unless the union contract specifically allows, he is not permitted to hire his own attorney -- and of course those contracts rarely make such allowance. -- *Republic Steel Corp. v. Maddox, 379 US.S. 650, 653 (1965); Malone, 526 F.2d at 1106-07; Hughes Tool Co., 104 N.L.R.B. 318, 328 (1953).*

And if the employee tries to exercise the so-called "choice" to represent himself, the employer can refuse to meet with him. -- *Malone v. United States Postal Serv., 526 F.d 1099, 1106-07(6th Cir. 1975).*

In fact, federal labor law not only permits the employer to refuse, it gives the employer every incentive to refuse.

You see, by meeting with the individual worker, the employer opens himself up to a lawsuit that the resolution of the grievance does not line up perfectly with the union's interpretation of the labor contract. -- *29 U.S.C. § 185, Emporium Capwell Co. v. Western Addition Community Organization, 420 US 50 (1975).*

What employer is going to take that risk when he doesn't need to? Almost none. Employers will tell the employee to work through the union representative virtually every time.

"Fee for grievance" bills would mandate payment of a representation fee any time a non-member uses representation from a labor organization in any grievance or legal action. In pursuing grievances and arbitration, non-members have no choice. Legally and practically they must "choose" representation from their monopoly bargaining agent, which actually "owns" their grievance under the terms of the monopoly agreements.

As the Supreme Court has explained in *Republic Steel Corp. v. Maddox*, federal labor policy requires that individual employees wishing to assert contract grievances must attempt use of the contract grievance procedure agreed upon by employer and union, and, unless the contract provides otherwise, there can be no doubt that the employee must afford the union and only the union the opportunity to act on his behalf.

And if the employer denies the grievance, the union is the only one who can compel the employer to arbitration of the dispute. Arbitration is purely a creature of the monopoly bargaining agreement. *Vaca v. Sipes*, 386 U.S. 171, 191 (1967).

The employee doesn't even have the right to sue his employer, because the courts won't take the case until the union grievance and arbitration processes have been exhausted. *Vaca*, 386 U.S. at 184; *Republic Steel Corp. v. Maddox*, 379 U.S. at 653.

Clearly, there is no choice involved. Federal law deprives the worker of the right to represent himself. In a Right to Work state, workers are not required to pay for the union's so-called representation. “Fee for grievance” bills would therefore force the “representation” on the employees and make them pay for it.

Such bills would require workers who have a grievance with their employer either to join the union that is their exclusive bargaining agent or pay more than union dues if they want to keep their jobs, because the actual legal fees and court costs for pursuing a grievance or legal action usually exceed the amount of union dues. The National Labor Relations Board (NLRB) has recognized that it would take over four years’ worth of dues to pay for the cost of one single grievance taken to arbitration.

This “fee for grievance” scheme would thus have the inevitable effect of coercing non-members who wish to bring grievances into joining unions to avoid paying costs that are substantially greater than union dues. Twice, in *Electrical Workers Local 282* and in *Columbus Area Local*, the NLRB ruled that charging non-members for grievance representation violates the National Labor Relations Act for just that reason.

Union Officials Already Have a Way Out

The truth is, there is only one player in this process who has any “choices” to make, and that is the union leadership.

At the local level, any union that finds its duty to represent non-members too burdensome can give up its monopoly status and negotiate a new, “members-only” contract that leaves non-union workers free to make their own deal with the employer and represent themselves in grievances.

But virtually no unions ever negotiate “members-only” contracts. Why? Because union officials *want* the power of exclusive monopoly representation, and derive great benefits of this power. They just don’t want the obligations that go with it.

They want to take away the individual worker’s right to represent himself, and then tell him “Oh, and we’re not going to represent you either, unless you pay us.”

That contemptible notion is the very reason states pass Right to Work laws in the first place.

Individual workers aren’t looking to get something for nothing. They have been stripped of their right to represent themselves, and in payment for the rights that have been taken from them, they are owed fair representation under the union’s monopoly agreement.

“Fee for Grievance” Scheme Violates Federal Law

In addition to being bad policy, this scheme directly violates federal labor law.

Legislators in North Dakota passed a similar measure (North Dakota Statute 34-01-14.1), and on March 24, 2003, the local UPS Teamsters union took advantage of it to attempt to extract $10,000 from Bernard Deichert, a non-union employee, for processing his grievance.

Mr. Deichert knew his rights and filed case number 12-CB-4254 with the National Labor Relations Board. When it became clear that the Board was going to rule the statute invalid, the Teamsters quickly settled the case, agreeing to pay Mr. Deichert $10,000 and posting a flyer at the workplace explaining to all employees that they would never attempt to charge an employee for grievance processing again.

Four years later, the National Labor Relations Board sued to have the statute invalidated, and in *NLRB v. State of North Dakota* (504 F. Supp. 2d 750 (D.N.D. 2007), North Dakota's "fee for grievance" statute was found to be preempted by federal law.

In *Motor Coach Employees v. Lockridge*, and in *San Diego Bldg. Trades Council v. Garmon*, the United States Supreme Court ruled that states cannot regulate conduct arguably protected or prohibited by the National Labor Relations Act.

The National Labor Relations Board has found that a union's requirement that non-members pay a fee for grievance representation in a Right to Work state is prohibited by the NLRA, because "[s]uch a fee coerces employees in the exercise of their . . . freedom to refrain from joining a labor organization and because members get grievance representation for free."

A state's imposition of such a requirement is thus impermissible.

Enactment of this backdoor forced-fee scheme would mean that working men and women across the state will ultimately be coerced into paying a union official to hold a job. And if they don't pay up, they risk being hauled into court to be sued by union-label lawyers.

If Big Labor is granted this forced-dues power, employees' rights will be trampled by the union officials' headlong rush for more money and more power.

By attempting to underhandedly repeal a state Right to Work law, Big Labor officials demonstrate once again that they care more about their own money and power than about the economic health of the state or the working people they claim to "represent."

No employee should be required to pay a private organization for "representation" he or she didn't ask for and wouldn't support if given a choice.

As our third U.S. President, Thomas Jefferson, said in 1779:

> **"To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical."**

Let there be no mistake about it: "Fee for grievance" schemes are nothing less than an effort to cut the heart out of state Right to Work laws. Supporters of worker freedom should oppose these bills at every opportunity.