

# THE SECRET INGREDIENT

## Why it's important to negotiate a "union security clause" into our contracts

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**O**NE OF THE most sensitive subjects in the labor movement is union dues. Any of us who have argued with anti-union friends or relatives has heard the line, "Unions are only after dues; that's all they want." But of course the goal of unions is to empower and represent workers. And, like any organization, unions need money to operate, so there's nothing shameful about dues. And yet, workers themselves can forget that collecting union dues is one of the most important ways to keep the union strong and maintain excellent contracts. The question is, how do unions obtain dues from workers? The answer is: the **union security clause**.

The union security provision of a collective bargaining agreement is probably its most vital and essential component. Without a meaningful union security clause, unions have to spend all of their

time tracking down members to pay union dues. This weakens the union and turns us into a collection agency. However, there's something even more important at stake. Over time, a contract without a union security clause can actually create a situation where the union loses majority status and can be decertified.

That last point deserves some discussion. The National Labor Relations Act mandates that an employer and a

labor organization must bargain in good faith *provided the labor organization can demonstrate that it has majority support*. Without a showing of majority support, a labor organization cannot insist that an employer bargain with it. If the majority status is ever lost, the union can be decertified and lose its ability to compel bargaining.

What has this got to do with union security clauses? The whole point of such

a clause is to compel workers to join the union. If workers didn't have to join the union, the union could lose majority support simply by attrition. Therefore, the reason why collective bargaining agreements contain union security provisions and why unions insist on their inclusion is that they assure or support continuation of the union's majority status.

Therefore, understanding the effect of union security and its importance to



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collective bargaining is paramount. Unfortunately, most union members focus on the parts of their contract that deal with wages, benefits and working conditions without fully understanding the union security clause.

Union security clauses take different forms and provide different levels of protection. A historical form of union security, **the closed shop**, required everyone to become a union member as soon as they were hired. This form of security was outlawed when the National Labor Relations Act was amended. Instead, we now have the **union shop provision**, which is a modified version of the closed shop. Here's how it works. Say you win a chair with an orchestra that has a Local 802 contract with a union shop provision. You now have **30 days** to join Local 802. (You don't have to join immediately, as per the old union shop rule.) But if you fail to join Local 802 by the 31st day, you can lose your job with the orchestra. The effect is that everyone eventually joins the union. Most of Local 802's major contracts have this union shop provision.

Now for some subtle logic. What does it actually mean to become a "member of the union"? Many years ago, the Supreme Court determined that union membership obliges the employee simply to pay union dues. There is no requirement that an employee be an active or involved member so long as they pay dues.

But more recently, the Supreme Court stated, in its Beck decision, that under certain conditions, an employee can opt out of actual union membership so long as they paid the union "core fees" (also known as "agency fees"), which are those fees that are attributable to the union's representational functions alone. This may seem arcane, but it allows workers who are philosophically against unions not to have to join the union while still paying the cost of having the union represent them. A union security clause limited to these core fees is called an **agency shop**. The danger with the agency shop provision is that a union may lose its majority status if a majority of a bargaining unit elect to become "fee payers" since they are not full-fledged union members. And once a union loses its majority status, it can be decertified, and workers can lose their union. This danger is mitigated by the fact that union dues and agency fees are almost identical

in most circumstances. When given a choice between full union membership and fee payer status, many will choose membership. With membership comes a whole host of advantages that aren't available to fee payers, including the ability to vote in internal union elections and hold union office.

Another form of lawful union security is called the **maintenance of membership provision**, which requires those who have elected to become union members to remain union members as a condition of employment. The maintenance of membership provision may also contain an agency fee requirement so that there are no free riders as well.

Finally, there is a proviso in the National Labor Relations Act that allows states to opt out of the section rendering union security provisions legal. States that do are known as "**right to work**" states, which I find a curious phrase since I believe that outlawing union security provisions means just the opposite. In right to work states, workers can enjoy the benefits of a union contract without having to join the union or pay any union fees at all. It's hard to argue that there is any benefit in this.

Finally, an important factor to note is that the NLRB has ruled that a union security provision is only enforceable if there are consequences if it is not abided by. For instance, most traditional union security clauses state that employees must abide by its terms as a condition of employment, meaning that they can be terminated if they do not join or pay agency fees.

Without union security clauses, a union may lose its right to compel bargaining. Union security provisions must be ardently protected and secured in all collective bargaining agreements if a union is to succeed in bettering its employees. Unfortunately, the Supreme Court has not made life easy for unions. In June, it decided in *Harris v. Quinn* that home care attendants were not subject to a prior precedent compelling public sector employees to pay agency fees when they elect not to join a union. That precedent is *Abood v. Detroit Board of Education*. While the court left its *Abood* decision intact, it is presently hanging by a thread.

As a membership organizations, labor unions are dependent upon members' dues for their very survival. It is their lifeblood.



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