



*A Union of Professionals*

## **A 10-Point Legal Checklist and Action Plan to Prepare for the Loss of Fair Share**

### **1. Diligently maintain member lists and contact data.**

- Proactively and constantly maintain highly accurate member/fee-payer lists with broad contact information (home, cell, email, Facebook, Twitter, work site, work schedule/location, etc.).
- Establish uniform member data-collection process and mechanics (with digital interfacing where available).
- Conduct internal authorization card (or list) status audit.
- Obtain and track cellphone sign-up (cell and text robo reach-out) in compliance with Telephone Consumer Protection Act.

### **2. Evaluate card language and sign-up process.**

- Ensure authorization cards/digital sign-up language and process meet best practices and applicable laws for your setting (including labor law, privacy, bank routing and COPE issues).
- Analyze and carefully evaluate maintenance of benefits language (or alternatives).
- Obtain legal review of legally compliant electronic/digital and telephonic member sign-up process.
- Train staff on sign-up legal issues and narratives.
- Establish efficient record-keeping system and digital interface.

### **3. Take appropriate employer/CBA actions.**

- Evaluate the possibility of a pre-decision reach-out to employer.
- Ensure that collective bargaining agreements (MOUs, procedures, practices, manuals) contain the most effective language regarding: member lists, data transfer and updates,

widest scope of member data, direct union access to employer database, sign-up processing timeline, expedited information on new hires, quitting process and timeline, access to and appearances at key employer activities, orientation, training and conferences, access to work sites/mailboxes/email, unit meeting and break-time access, union notification and rep insertion at important mentoring/promotion/evaluation/due process points, etc. Where there is a common employer, consider working with the other unions on common bargaining demands.

- Secure provision or understanding to address potentially intrusive disclosure of employee information to third parties and ensure the union receives timely notification of such disclosure.
- Establish a well-delineated agency-fee termination escrow contingency plan (with the employer carrying the obligation to withhold and refund any overpayments arising post-decision).

### **4. Establish administrative process for agency-fee termination and funds handling.**

- Select key point person(s) with clear assignments regarding agency-fee inquiries, quit processes, forms/templates, communications, reporting, funds handling and refunds.
- Train staff on the process and chain of authority.
- Establish employer point person(s) and interface process.

### **5. Urgently dispatch agency-fee funds post-adverse decision.**

- Escrow and segregate agency-fee funds.
- Direct employer to cease deducting and sending agency fees.
- Return these funds to employer with record-keeping and transmittal backup.

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- Uniformly inform and/or respond to former fee payers and employer about these actions.
- Monitor and ensure that employer timely effectuates refunds, and document your actions.
- Establish contingency refund process if employer does not accept returned monies.

## **6. Utilize a uniform and well-disciplined post-decision communications plan.**

- Assign communications point persons and spokespersons who are well-versed in legal (and, of course, communications) issues.
- Train staff on handling member inquiries, including former fee payers asking about their rights and status of post- and pre-contributions.
- Utilize a uniform set of responses and communication forms and templates to respond to former fee payers.
- Be alert to and document any fishing or bogus inquiry. Report this activity to counsel.

## **7. Design an illegality clause and/or impact bargaining strategy.**

- Carefully evaluate the ruling and all its ramifications (including opt-out, retroactivity, dicta, etc.) with the AFT.
- Assess the ruling's impact on the collective bargaining agreement (MOUs, procedures, etc.), including on any illegality and severance language.
- Analyze and review the decision's interface regarding the indemnification, dues deduction, membership, reopener and other related provisions within the CBA.
- Decide whether to open the contract pursuant to any operational CBA language or impact bargaining laws.
- Consider as possible bargaining topics those issues described in No. 3 above. Again, where there is a common employer, consider working with the other unions.

## **8. Conduct budgetary and personnel analysis.**

- Model financial impact arising out of an adverse ruling and incorporate into budget process.
- Review employee contracts and applicable laws and regulations.

## **9. Anticipate litigation strategies.**

- Be aware of and report outside investigative action that might tip off forthcoming litigation.
- Immediately notify the state federation and the AFT of anti-union activities, including mailings, phone calls, texts and organizers on the ground.
- Coordinate defensive litigation with relevant affiliates and the AFT.
- Evaluate and coordinate with the AFT any potential proactive litigation before actions are taken.
- Be mindful of all written and oral communications in light of potential litigation.

## **10. Evaluate possible legislative and regulatory actions and counter actions.**

- Monitor anti-union legislation, initiatives, referenda and/or constitutional revisions looking to expand or build upon an adverse ruling.
- Identify and coordinate legislative and other opportunities to address the range of outcomes as well as to further enforce workers' rights to organize.
- Facilitate cooperation among union and community allies (including attorneys general) to jointly coordinate positive results in the legislative and regulatory arenas.