

456 CMR 17.00: AGENCY SERVICE FEE

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17.01: Scope

The purpose of 456 CMR 17.00 is to implement the provisions of M.G.L. c. 150E, § 12. 456 CMR 17.00 shall be applicable only to proceedings arising under M.G.L. c. 150E, § 12.

17.02: Ratification

(1) No service fee shall be imposed unless the collective bargaining agreement requiring its payment as a condition of employment has been formally executed pursuant to a ratification vote of a majority of all employees casting valid votes in person at a meeting or meetings or by mail in a mail ballot ratification procedure.

(2) The ratification vote shall be taken by mail or at a meeting or meetings called by the exclusive bargaining agent. The right to vote by mail or in person at a meeting shall be extended to all employees in the bargaining unit covered by the proposed collective bargaining agreement. Ratification meetings shall be held at a reasonable time and place. Mail ballot ratifications shall be conducted in a manner calculated to ensure custody of the ballots and compliance with the public counting requirement of 456 CMR 17.02(3).

(3) The vote shall be publicly counted, and the majority of valid votes cast by mail or in person at a meeting or meetings shall prevail. If the collective bargaining agreement is ratified, the exclusive bargaining agent shall maintain a written record of the results of the vote until the expiration of said agreement.

(4) The exclusive bargaining agent shall maintain and make available for inspection by members of the bargaining unit, at reasonable times and places, a copy of its most recent financial report in the form of a balance sheet and operating statement listing all receipts and disbursements of the previous fiscal year as required by M.G.L. c. 150E, § 14.

(5) Notice of the ratification procedure shall be given by the exclusive bargaining agent in like manner to all employees in the bargaining unit at least five calendar days prior to the holding of the meeting(s) or the distribution of ballots to employees in a mail ratification unless extraordinary circumstances warrant notice of fewer than five days. The notice shall include the following information:

- (a) The time and place of the meeting(s) or details of the mail ratification procedure;
- (b) A statement that the proposed collective bargaining agreement, if ratified, shall require payment of a service fee as a condition of employment;
- (c) The current amount of the service fee;
- (d) A statement that all employees in the bargaining unit may attend and vote at the meeting(s) or by mail in a mail ballot ratification;

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- (e) A statement that all employees within the bargaining unit covered by the proposed agreement are eligible to vote;
- (f) The full identity, including affiliations, of the exclusive bargaining agent; and
- (g) A statement that the exclusive bargaining agent's most recent financial report in the form of a balance sheet and operating statements listing all receipts and disbursements of the previous financial year is available for inspection.

17.03: Impermissible and Permissible Costs

- (1) Costs attributable to the following shall be deemed impermissible in computing a service fee:
 - (a) Expenditures for political candidates or political committees formed for a candidate or political party;
 - (b) Establishing and publicizing of an organizational preference for a candidate for political office;
 - (c) Lobbying or efforts to enact, defeat, repeal or amend legislation or regulations unrelated to wages, hours, standards of productivity and performance, and other terms and conditions of employment of employees represented by the exclusive bargaining agent or its affiliates;
 - (d) Expenditures for charitable, religious or ideological causes not germane to a bargaining agent's duties as the exclusive representative;
 - (e) Benefits and activities which are:
 - 1. Not germane to the governance or duties of the exclusive bargaining agent, and
 - 2. Available only to the members of the employee organization which is the exclusive bargaining agent;
 - (f) Fines, penalties or damages arising from the unlawful activities of the exclusive bargaining agent or the exclusive bargaining agent's officers, agents or members;
 - (g) Overhead and administrative costs allocable to any activity listed in 456 CMR 17.03(1)(a) through (f).

- (2) Costs attributable to the following shall be deemed permissible to the extent that they are not deemed impermissible under 456 CMR 17.03(1):
 - (a) Preparation, negotiation, and ratification of collective bargaining agreements;
 - (b) Adjusting employee grievances and complaints;
 - (c) The public advertising of positions on the negotiating of, or provisions in, collective bargaining agreements, as well as on matters relating to the collective bargaining process and contract administration;
 - (d) Purchasing of materials and supplies used in matters relating to the collective bargaining process and contract administration;
 - (e) Paying specialists in labor law, negotiations, economics and other subjects for services used in matters relating to working conditions and to the collective bargaining process and contract administration;
 - (f) Organizing within the charging party's bargaining unit;
 - (g) Organizing bargaining units in which charging parties are not employed, including units where there is an existing exclusive bargaining agent;
 - (h) Defending the employee organization seeking a service fee against efforts by other unions or organizing committees to gain representation rights in units represented by the employee organization seeking a service fee or by its affiliates;
 - (i) Proceedings involving jurisdictional controversies under the AFL-CIO constitution or analogous provisions governing bargaining agents that are not affiliated with the AFL-CIO;
 - (j) Lobbying or efforts to enact, defeat, repeal, or amend legislation or regulations relating to wages, hours, standards of productivity and performance, and other terms and conditions of employment of employees represented by the exclusive bargaining agent or its affiliates;
 - (k) Paying costs and fees to employee organizations affiliated with the exclusive bargaining agent seeking a service fee;
 - (l) Meetings and conventions;
 - (m) Publications of the exclusive bargaining agent seeking a service fee;
 - (n) Lawful impasse procedures to resolve disputes arising in connection with negotiating and enforcing collective bargaining agreements;

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- (o) Professional services rendered to the exclusive bargaining agent and its affiliates;
- (p) Wages and benefits for persons employed by the exclusive bargaining agent;
- (q) All other activities not listed in 456 CMR 17.03(1);
- (r) Overhead and administrative costs allocable to any item in 456 CMR 17.03(2)(a) through (q).

17.04: Demand for Payment of a Service Fee

- (1) An exclusive bargaining agent seeking payment of a service fee shall serve a written demand for the fee upon the employee from whom the fee is sought. The written demand shall include the amount of the service fee, the period for which the fee is assessed, the method by which payment is to be made, the person to whom payment should be made, and the consequences of a failure to pay the fee.
- (2) An exclusive bargaining agent making a written demand pursuant to 456 CMR 17.04(1) shall also provide a copy of 456 CMR 17.00.
- (3) No demand for payment of a service fee under 450 CMR 17.04 shall be made until the exclusive bargaining agent making the demand has complied with the applicable provisions of M.G.L. c. 150E, §§ 13 and 14.
- (4) Any information that an exclusive bargaining agent may be required to provide as part of making a valid demand may be delivered electronically.

17.05: Challenge of a Service Fee

- (1) Employees may challenge the validity or amount of a service fee by filing a prohibited practice charge with the Department.
 - (a) Validity shall mean whether there has been compliance with the provisions of 456 CMR 17.02 and 17.04.
 - (b) Amount shall mean whether some or all of the service fee demanded by an exclusive bargaining agent is impermissible under 456 CMR 17.03(1).
- (2) Except for good cause shown, a charge challenging the amount of a service fee or its validity under 456 CMR 17.02 or 17.04 shall be filed within six months after the exclusive bargaining agent has made a written demand for payment of the fee pursuant to 456 CMR 17.04.
- (3) A charge challenging the validity or amount of a service fee shall contain the following:
 - (a) The full name(s) and address(es) of the individual(s) making the charge.
 - (b) The full name and address of the exclusive bargaining agent against whom the charge is made.
 - (c) The date the exclusive bargaining agent made a written demand for payment of the fee pursuant to 456 CMR 17.04.
 - (d) The amount of the regular membership dues.
 - (e) The amount of the service fee assessed by the exclusive bargaining agent, and the effective dates of the collective bargaining agreement under which the fee was assessed.
 - (f) If an employee is contesting the validity of the service fee under 456 CMR 17.02 or 17.04, a clear and concise statement of the reasons for the charge, including all relevant facts on which the charge is based.
 - (g) If an employee is contesting the amount of the fee, a general statement of the reasons for the charge.
 - (h) The signature of the individual making the charge or his or her representative.
 - (i) A statement as to whether the charging party has used the exclusive bargaining agent's rebate procedure and the result of that procedure.
 - (j) A declaration by the charging party, under the penalties of perjury, that its contents are true and correct to the best of the charging party's knowledge and belief.

17.06: Escrow Account

- (1) An employee filing a charge contesting the amount of a service fee shall jointly establish and administer an escrow account with the employee's exclusive bargaining agent.
- (2) The amount deposited in the escrow account must be equal to the full amount of the service fee for the disputed period of time, or equal to whatever amount remains in dispute after partial settlement between the employee and the exclusive bargaining agent seeking the fee.
- (3) Except for good cause shown, the charging party shall file with the Department evidence of the establishment of an escrow account before the date of the Department's investigation of the charge pursuant to 456 CMR 17.08. Failure to submit such evidence may result in dismissal of the charge.
- (4) Failure of the exclusive bargaining agent to cooperate in the establishment of the escrow account may waive its right to the establishment of the escrow account. If the exclusive bargaining agent waives its right to an escrow account, the charging party shall not be required to pay a service fee until the Department determines the fee due pursuant to 456 CMR 17.12.
- (5) Until a final order is issued by a hearing officer or the Board, the charging party shall continue to pay into the escrow account as such sums become due an amount equal to the service fee, or equal to whatever amount remains in dispute after a partial settlement between the employee and exclusive bargaining agent.

17.07: Deferral to Rebate Procedure

At any time after the establishment of an escrow account pursuant to 456 CMR 17.06, the Department may defer to an exclusive bargaining agent's procedure for rebating impermissible expenses to members of the bargaining unit. In order for the Department to consider deferral, a rebate procedure must meet the following standards:

- (1) Disputed amounts shall be placed in an escrow account during the pendency of the rebate proceedings;
- (2) The exclusive bargaining agent shall establish the justification for the fee demanded;
- (3) The exclusive bargaining agent shall make available to the dissenting employee the books and records on which the exclusive bargaining agent relies to justify the amount of the service fee demanded;
- (4) The procedure shall provide for a hearing or similar proceeding before a neutral decision maker in order to determine impermissible and permissible costs used in determining the fee, in accordance with the standards set forth in 456 CMR 17.03;
- (5) At any hearing or similar proceeding, the dissenting employee shall be entitled to a representative of her or his choice;
- (6) The costs arising from the hearing before a neutral decision maker shall be borne by the exclusive bargaining agent; and
- (7) The procedure shall not be unduly lengthy, cumbersome, or burdensome.

17.08: Investigation

- (1) When a charge has been filed under 456 CMR 17.00, the Department shall conduct an investigation to ascertain whether there is probable cause to believe that the contested service fee is invalid under 456 CMR 17.02 or 17.04, or that the amount exceeds the non-member's *pro rata* share of the costs of collective bargaining and contract administration.

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(2) Either at or before the investigation, the exclusive bargaining agent shall make available to the charging party the books and records on which the exclusive bargaining agent relies to justify the amount of the service fee demanded.

17.09: Complaint

(1) If, after investigation, there is probable cause to believe that the contested service fee is invalid under 456 CMR 17.02 or 17.04, or the amount of the service fee remains in dispute, the Department shall serve a written complaint upon the parties and shall conduct a hearing. The Department may decline to issue a complaint unless it is satisfied that the charging party has made reasonable efforts to resolve the matter.

(2) If, after investigation, the Department declines to issue a complaint, it shall notify the parties in writing by a brief statement of the procedural or other ground for its determination. The charging party may obtain a review of the decision not to issue a complaint by filing a request for review with the Department in accordance with 456 CMR 15.05(9).

17.10: Amendments

(1) Upon its own motion, or upon the motion of any party, the Department may allow amendment of any complaint at any time prior to the issuance of a decision and order based thereon, provided that such amendment is within the scope of the original complaint.

(2) Any charge or amended charge filed, or any part thereof, may be withdrawn by the charging party prior to the issuance of a complaint.

(3) Any complaint or amended complaint, or any part thereof, may be withdrawn by the Department at any time prior to the issuance of an order based thereon and upon such terms as the Department may deem just and proper.

17.11: Answers

(1) The exclusive bargaining agent shall file an answer to a complaint within ten days from the date of service, unless otherwise notified by the Department. The exclusive bargaining agent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless it is without knowledge, in which case it shall so state, such statement shall operate as a denial. All allegations in the complaint not specifically denied or explained in an answer filed, unless the exclusive bargaining agent has stated in the answer that it is without knowledge, shall be deemed by the Department to be admitted to be true and shall be so found by the Department, unless good cause to the contrary is shown.

(2) Upon its own initiative or upon proper cause shown by the exclusive bargaining agent, the Department may extend the time within which an answer shall be filed.

17.12: Hearing and Final Determination

The Department shall schedule a hearing pursuant to 456 CMR 13.00: *Conduct of Hearings* to make a final determination on the amount of the service fee. At least seven days before the hearing, the exclusive bargaining agent upon request shall make available to the charging party the books and records on which the exclusive bargaining agent relies to justify the amount of the service fee demanded.

17.13: Record

(1) The record in a hearing under 456 CMR 17.00 shall consist of the charge, the complaint, notice of hearing, answer, motions, rulings, orders, audio recording or stenographic transcription, stipulations, exhibits, documentary evidence and amendments to any of the foregoing.

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(2) The record before the Board on review of a hearing officer's decision shall be as set forth in 456 CMR 13.19(3).

17.14: Burden of Proof

(1) When a complaint issued under 456 CMR 17.00 alleges that a service fee is invalid under 456 CMR 17.02 or 17.04, the burden of proof shall be on the charging party to establish the defects by a preponderance of the evidence.

(2) When a complaint issued under 456 CMR 17.00 alleges that part or all of the amount of a service fee is impermissible under 456 CMR 17.03, the burden of proof shall be on the exclusive bargaining agent to establish by a preponderance of the evidence that the contested amounts are permissible.

17.15: Non payment of Fee

(1) If an employee, after demand by the exclusive bargaining agent, refuses to pay the service fee in accordance with the requirements of a collective bargaining agreement, the exclusive bargaining agent may request the employee's termination or other sanction. The employer, after reasonable notice to the employee, shall terminate or otherwise sanction the employee pursuant to the collective bargaining agreement; provided, however, that no employee shall be terminated or otherwise sanctioned who has tendered the required service fee prior to the decision to terminate or otherwise sanction; and provided further that payment of a service fee shall not be required before the 30th day following the beginning of the employee's employment or the effective date of the collective bargaining agreement, whichever is later.

(2) No employee who has filed a charge with the Department and established an escrow account, if required under the provisions of 456 CMR 17.05 and 17.06, shall be terminated or otherwise sanctioned for failure to pay the service fee during the pendency of the charge before the Department and any related judicial appeal.

REGULATORY AUTHORITY

456 CMR 17.00: M.G.L. c. 23, §§ 9O, 9P, 9T(c) , (d) and c. 150E, §§ 12 through 14.