

# Agency Fee Payer Rights

## What must you do for Agency Fee Payers?

The Association has a duty to fairly represent all of the members of its bargaining unit – both Association members and non-members alike. In order to insure this duty has not been breached, an Association must show that it has not acted arbitrarily, discriminatorily or in bad faith.

Therefore, local associations must represent non-member agency fee payers in bargaining, grievance processing and disciplinary meetings with the employer, when requested. The decision about whether to proceed with a grievance on behalf of an agency fee payer must be made in a way that is not arbitrary, discriminatory or in bad faith.

## What are you not required to do?

State and federal law do not give agency fee payers the right to take part in internal Association affairs. Several U.S. Supreme Court decisions state that a union is entitled to limit its internal political processes to its members, and specifically cites the right to ratify a collective bargaining agreement as an internal union issue that non-union employees may be excluded from. [*NLRB v. Allis Chalmers Manufacturing Co.*, 388 U.S. 175 (1967); *NLRB v. Financial Institution Employees*, 475 U.S. 192 (1986)]. In response to a request by the Evergreen Freedom Foundation to extend voting privileges to agency fee payers, the Public Employment Relations Commission (PERC) also refused to extend the right to take part in union activities to non-members. [*In re: WAC 391-95-010 (October 27, 2004)*]. PERC stated that nothing in state or federal law would entitle non-members to vote on union issues, including ratification of the collective bargaining agreement.

Thus, Agency Fee Payers are not entitled to attend association meetings, unless the local association's Constitution or Bylaws specifically allows non-members to attend meetings (this is not a recommended provision).

Agency Fee Payers are not entitled to vote on association matters, unless the local association's Constitution or Bylaws specifically gives non-members the right to vote (this is not a recommended provision).

Agency Fee Payers are not entitled to access to an attorney funded by the WEA through the Legal Services Program or access to WEA attorneys for answers to legal questions (however, the Local can call WEA legal if there is a question regarding representation of Agency Fee Payers). In certain circumstances, the WEA General Counsel may elect to fund a case on behalf of an Agency Fee Payer if the case has precedential value to all association members.

Agency Fee Payers are not entitled to access to Association benefits that are reserved only for members (i.e no access to the Attorney Referral Program for discounted rates for personal legal matters, no coverage under the Educators Employment Liability Insurance).

Agency Fee Payers are not entitled to representation by the Local Association or WEA for statutory violations by the employer that do not result in contract violations (i.e. legal challenges to the non-renewal of a continuing contract).

### **What should you avoid doing?**

- **Do not** ask Agency Fee Payers to be WEA-PAC members – only Association members and staff are entitled to be WEA-PAC members.
- **Do not** deduct Community Outreach or Paramount Duty dues from Agency Fee Payers.
- **Do not** distribute political or legislative information to Agency Fee Payers. Each Local Association should have a system in place to insure that Agency Fee Payers do not receive this information.
- **Do not** allow Agency Fee Payers to hold any leadership position within the Association, such as Building Representative, Elected Governance position, Executive Board member or RA delegate.