



Great Public Schools for Every Student

Talking Points

Fair Share

or

Agency Fee

Every educator who enjoys the benefits and protections of a contract should, in fairness, contribute to maintaining the benefits of the contract. Fair Share is a common-sense way to ensure fairness and protect equity, individual rights, and the pocketbooks of educators. Sometimes called agency fee, Fair Share is a percentage of total Association dues reimbursed to NEA and its affiliates for collective bargaining, contract administration, and other services provided to non-Association members.

Fair Share helps to ensure that all employees, regardless of whether they are members of the Association, receive the collective bargaining benefits. The Fair Share fee only reflects the cost of activities that benefit all employees. Fair Share does not force employees to join the Association; it just helps make sure the cost of negotiating benefits is shared by all employees.

Fair Share fees are not used for political or ideological activities. NEA and its affiliates conduct a thorough analysis of their finances each year, with review by an independent auditor, to ensure that the amount charged to fee payers does not include any political or ideological activities.

Under Fair Share, all employees draw the same benefits, rights, and protections of the contract, but the similarities end there. The Association membership benefits are numerous, including the strength and influence of a unified Association voice on public policy and workplace issues; access to professional development and opportunities to interact and learn from a global network of educators; individual protection; and a comprehensive suite of Association member benefits.

Guidance

The terms “agency fee” and “Fair Share” often are used interchangeably. When possible, spokespersons should use “Fair Share,” instead of “agency fee.” Our goal for media interviews is to emphasize that Fair Share simply helps to make sure that all employees equitably share the cost of negotiated benefits. Fair Share does not force individuals to join the Association. Media interviews regarding Fair Share also provide an opportunity to highlight the benefits of Association membership and encourage Fair Share payers to join the Association.

Talking Points

- Fair Share is a common-sense way to ensure fairness and protect equity, individual rights, and the pocketbooks of educators.
- Every educator who enjoys the benefits and protections of a negotiated contract should, in fairness, contribute to maintaining the contract.
- Fair Share fees are not used for political or ideological activities. NEA and its affiliates conduct a thorough analysis of their finances each year, with review by an independent auditor, to ensure that the amount charged to feepayers does not include any political or ideological activities.
- Fair Share does not force individuals to join the Association. In fact, Fair Share protects the individual rights of educators to choose whether to join the Association. Fair Share simply makes sure that **all** educators **share** the cost of negotiations for benefits that **all** educators enjoy, regardless of whether they are Association members.
- Under Fair Share, all members enjoy the benefits, rights, and protections of the bargained contract, but the similarities end there. The importance and power of Association membership cannot be overstated.
- Association membership has benefits and privileges, including:
 - **A voice in running our Association.** As members, we have the right to participate in the decision-making process of our local, state, and national Associations. We decide the issues our Association will champion, such as working conditions in our schools and improving the quality of education for our students.
 - **Strength in numbers.** The more members in our Association, the stronger our voice in advocating for our families and our students.
 - **Added protection and expertise.** The right to representation by experts and union attorneys in matters unrelated to the contract is a benefit only provided to Association members.
 - **Impact on public policy.** Through our Association membership, we are guaranteed a strong and credible voice in legislative and public policy discussions to help advance legislation and policies that benefit our students, public schools, and school employees.
 - **Access to professional development.** Through our Association, we can participate in unique professional development offerings.
 - **Financial savings.** Association members can enjoy substantial savings by taking advantage of discounted rates provided by NEA Member Benefits. For example, discounted car and homeowners insurance, appliances, car rentals are available to members.

Harris v. Quinn

Harris v. Quinn is a pending case before the Supreme Court; it could have significant implications for state and local affiliates that collect agency fees from non-members. The Right to Work Committee and its supporting briefs have asked the Supreme Court to reconsider and overrule its prior decisions that have allowed public-sector unions to collect agency fees in a manner that is consistent with the First Amendment.

Background

Harris involves a First Amendment challenge to an Illinois statute that (a) allows home-care providers (who are paid through certain state programs but are directed in their day-to-day activities by the patients they care for) to select a union to be their exclusive representative for purposes of negotiating with the state over rates of pay and other working conditions; and (b) allows such a duly selected union to collect a representation fee from all home-care providers, whether they are members of the union or agency fee payers.

Home-care providers represented by the National Right to Work Committee challenged the statute and were being turned away in the lower courts. Now before the Supreme Court, the *Harris* plaintiffs and several supporting *amici* have asked the Court to declare all public-sector Fair Share arrangements unconstitutional by overruling *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), the Court's key precedent upholding the constitutionality of Fair Share arrangements.

Implications of an Adverse Ruling in Harris

The Court heard arguments in *Harris* in January, with a decision to follow sometime between March and the end of June 2014. The union defendants in *Harris* and their supporting *amici* (which include NEA) made strong arguments as to why agency fee arrangements are constitutional. Their arguments point out that several of the current Justices (including Justices Scalia and Kennedy) previously accepted the proposition that Fair Share arrangements are constitutional at least insofar as fee payers are only being charged for the costs of the union carrying out its statutory duties as the employees' exclusive collective bargaining representative.

Given the prior decisions of the Court in this area, NEA attorneys believe it is unlikely that the Court will directly overrule *Abood* and make all public-sector agency fee arrangements unconstitutional but reasonably likely that the Court will narrow *Abood* so significantly that existing Fair Share arrangements would be drastically altered.

Should the Court issue a ruling along either of these lines, it obviously would have significant implications for NEA and our affiliates that collect agency fees. As of the date of the ruling, all state and local laws that permit public-sector agency fees would be subject to immediate challenges that would seek to void those arrangements and/or recoup fees.

Affiliates that now collect agency fees should be aware of these developments and begin to make contingency plans.