

## **Section 16. Employee Participation**

### **A. Service Fee**

All employees who are covered by this MOU but who are not members of the Union shall as a condition of employment pay to AFT Healthcare-Maryland, AFT, AFL-CIO Local 5197 a “service fee.” Non-members must begin and currently pay the service fee assessed upon the latter of: (i) July 1, 2011 or (ii) thirty (30) calendar days of employment in the Union unit. The determination of the amount of the service fee, collection, escrow, disputes, and other procedures relating to the service fee shall comply with all applicable legal requirements and be governed by the terms stated in this MOU.

### **B. Amount of Service Fee**

The service fee shall not exceed the amount of dues uniformly required of the Union members. The Union will determine once annually, based upon its most recently audited financial reports, the percentage of its membership dues that represents all of the Union’s representational activities, including negotiation and administration of terms and conditions of employment, fringe benefits, grievances, and the investigation, challenge and appeal of personnel and employment rights, and all other chargeable activities. This percentage shall be applied to membership dues and be assessed to those non-member employees who make known, as required, their objection to the payment of fees to support non-representational or union member-only activities and expenses. (“Political objection”)

### **C. Service Fee Notice**

The Union will annually determine the percentage of its activities which are chargeable and non-chargeable to nonmembers and will provide a written notice of its calculation to each employee in the bargaining unit who is required to pay a service fee.

Such notice will provide: (1) the type of activities considered to be chargeable and non-chargeable to service fee payers; (2) financial data in support of the union’s calculation of chargeable expenses; (3) procedures for filing an objection to the payment of the portion of the fee attributable to non-representational and member-only activities and expenses; (4) procedures for filing a challenge to the accuracy of the calculation of chargeable expenses; and (5) procedures for filing a conscientious objection based upon religious beliefs.

Non-members may file a “political objection” to the payment of any portion of the service fee related to non-representational activities. Objecting non-members may also “challenge” the computation of the fee. The procedures available to nonmembers for filing political objections and challenges shall require that non-members make their filings individually, in writing, and provide for no less than a thirty (30) day period after receipt of the Union’s annual service fee notice, for a timely filing. Political objections and/or challenges shall be deemed waived if not filed in accordance with the notice procedures.

#### D. Collection of Fee

The State shall automatically withhold from the bi-weekly salary of each employee who is not a member of the Union the service fee as determined. The deduction of the service fee shall be made without the necessity of a written, signed authorization from the employee. The State is not required to take any action to collect a service fee from any employee in any given pay period except to the extent that such employee earns wages from the State in that pay period.

#### E. Conscientious Objectors

An employee whose religious beliefs are opposed to joining or financially supporting any collective bargaining organization shall not be required to meet the above service fee obligations but shall pay in lieu thereof an amount equal to the service fee to any charitable organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code.

To qualify for the religious exemption, the employee must obtain from the Union a Declaration of Bona Fide Religious Objection and Selection of Charitable Organization form. The employee must submit the completed form to both the Union and the Department of Budget and Management, within thirty (30) days of receipt of annual notice described in ¶ C above.

It shall be the obligation of a conscientious objector to furnish, monthly, to the Union and to the Department of Budget and Management, written proof that charitable contributions contemplated hereby have actually been made and that said employee is not subject to a service fee involuntary deduction. Proof of payment may be in the form of original receipt issued by such organization, by credit card statement or cancelled check. Failure to provide proof of contributions to a charitable organization shall constitute employee's voluntary revocation of his/her status as a conscientious objector and involuntary deduction of the service fee shall commence.

An employee utilizing the religious exemption status and who requests the Union representation services shall be subject to charges by the Union for the reasonable cost of such representation.

#### F. Information

Within ten (10) days after the end of each calendar month, the State will submit to the Union a list of all employees who are newly hired into unit positions during the previous month.

#### G. Disputes and Challenges

Any dispute between the Union and the State as to the meaning or application of Article IV, Section 16 of the Agreement and/or any as to the administration of the service fee will constitute a complaint within the meaning of the dispute resolution procedure in Article VIII of this MOU and will be processed accordingly.

Any timely filed challenge to the calculation of chargeable expenses that cannot be resolved between the union and fee payer within thirty (30) day of the close of the challenge period shall be expeditiously resolved by an impartial arbitrator. The impartial arbitrator shall be selected under, and the proceedings conducted in accordance with, the Rules for Impartial Determination of Union Fees (the “Rules”) established by the American Arbitration Association (AAA). The employee and the Union shall each be responsible for their own attorney’s fees and other representation costs. All arbitration related costs shall be borne by the Union.

All challenges properly filed shall be consolidated in a single proceeding before the Arbitrator chosen under the Rules, and they shall be heard and determined at the same time. Decisions of the Arbitrator shall be binding on all non-member service fee payers who join the bargaining unit during the period covered in the Union’s notice. The Union and a challenger may voluntarily settle or compromise the dispute between the Union and that nonmember without precedent as to the disposition of other pending challenges.

Upon receipt of a written challenge from a service fee payer the Union shall place an amount equal to the fees collected from the challenger into an interest bearing escrow account, separate from the union’s funds. The escrowed figures will be independently verified. The fair share fees shall remain in escrow until the arbitration award issues and shall be distributed along with accrued interest, in accordance with that award or as may otherwise be mutually agreed to by the Union and the challenger.

#### H. Indemnity

The Union shall indemnify and save the State harmless and shall provide a defense of any and all claims, grievances, demands, actions, suits, costs, expenses, or other forms of liability or damages, including attorney's fees and costs, that arise out of or by reason of any action taken or not taken by the State, its officers, agents, employees or representatives for the purpose of complying with any of the provisions of this section; or that arise out of or by reason of the State’s reliance on any notice, letter, or authorization forwarded to the State by the Union pursuant to this section. The Union will assume primary responsibility for the defense of any such claims and may engage counsel of its choosing. As counsel for the State, the Office of the Attorney General will be permitted to enter an appearance and will be kept fully apprised of litigation developments by counsel for the Union, but the Union will not be responsible for any legal fees or costs incurred by the Office of the Attorney General in this regard. The Union will not be responsible for the State’s attorneys’ fees and costs incurred in any dispute referred to in the first subparagraph of ¶ G, above, between the State and the Union under the MOU.

The Union assumes full responsibility for the disposition of the funds deducted under this section as soon as they have been remitted by the State to the Union. In addition, if an employee who is required to pay a service fee, make a contribution to a charity, and/or provide written proof of a charitable contribution fails to do so, it is solely the responsibility of the Union to take appropriate steps to collect the amount or otherwise enforce the requirement in question.