



American Independent Cockpit Alliance, Inc.

- Working for the pilots of American Airlines -

December 11, 2002

Fellow American Airlines pilot:

As contract talks go into their second year, APA leaders have put the issue of an “agency shop” union on the table. While this issue has been discussed and ultimately shelved in the past, current indications are that, this time, the issue is being advanced with more vigor than before. Setting aside (for now) the possible reasons behind the most recent surfacing of the agency shop issue, let’s begin with a brief understanding of what an agency shop union is all about.

Since APA’s inception, membership has been voluntary. No pilot on American Airlines property was ever compelled to join APA. Likewise, a current member of APA is free to resign their membership if and when they choose. Of course, there are certain provisos in APA’s Constitution and Bylaws that must be adhered to if one decides to later rejoin APA, including, but not limited to, payment of back dues.

Once an agency shop is in place at APA, union affiliation becomes a contractual condition of employment with American Airlines. Technically, one could opt not to be a “member” of an agency shop union. However, you would still be assessed a “contract maintenance fee” that, by law, is intended to cover only those costs germane to the collective bargaining process excluding any political PACs, special assessments, and the sort. Typically, a contract maintenance fee would run about 80% of total dues. Most significantly though, if APA became an agency shop union, refusal upon your part to pay at least the contract maintenance fee, can result in termination of employment from American Airlines.

It’s important to note: the above scenario can only take place if - and only if - American Airlines management agrees to an agency shop provision. Therefore, it would be shortsighted to believe that there would not be a quid pro quo for this to occur.

If you’re an APA member, you should be asking yourself, “At what cost to the pilot group will APA leaders be willing to get an agency shop contractual provision?” More scope dilution? Poorer working conditions? More days on the road for the same pay? AMR management is not stupid. They are not going to grant their consent for an agency shop without something of greater value in exchange. The question is: *What?*

Presuming APA is successful (at whatever the cost) in obtaining an agency shop provision, who benefits the most? The mere fact of being compelled to support any organization runs afoul of most pilots' beliefs. Therefore, APA strategists will have to apply a little spin here and there to sell the agency shop idea. (Notice the lack of a membership referendum here.) Instead, attentions will be manipulated toward playing the "deadbeat non-member" card as well as a few other old classics.

Until recently, APA was not overtly concerned with non-members. Mostly because non-members constituted a rather small percentage of the overall pilot roster. As the non-member numbers grow, this is becoming a concern for APA leaders. Despite any propaganda to the contrary, loss of dues revenues is probably the least of the actual concern. The financial hit to APA by non-member pilots doesn't even approach the damage caused to its treasury by one illegally orchestrated sick out. Still, don't be surprised to read about the drain on APA's treasury caused by "freeloader" pilots.

So then, if it's not a money issue, what's really the deal behind the latest resurgence of an agency shop provision?

It's no secret that AICA has been picking up scores of new members. APA's ambition for an agency shop may well be motivated by a combination of two main factors; the ultimate goal to take the masses back to ALPA and placing a "dual dues" burden on current AICA members. In the latter case, AICA members will have to "involuntarily" pay a contract maintenance fee to APA as well as their "voluntary" dues payment to AICA. The bet here will be that AICA members will soon tire of the dual dues burden and resign membership in AICA.

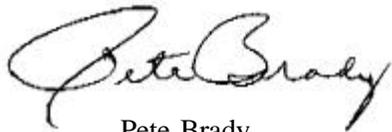
Moreover, once APA leaders establish an agency shop, the transition to ALPA will be made that much easier because there will be one less obstacle to overcome. The big push for ALPA by many APA notables is a certainty. It's just a matter of when.

Don't forget, one of the reasons behind voluntary union membership is simple. If enough members find the union's direction at odds with their careers, dues monies can be reduced by resignations and perhaps serve as a last means resort of "change from within." This concept is also known as "voting with your feet." Without that option, they (union officials - either elected or behind the scenes) have your money and you are powerless to effect any near last resort change. Yet, you are to believe that this is somehow to your benefit? If so, then ask those currently in favor of an agency shop if they would embrace the same if the tables were turned and AICA became the sole bargaining agent.

For the record, if elected the sole bargaining agent for the pilots of American Airlines, AICA has no intention to extract dues monies from those who are not inclined to join. To do otherwise, runs counter to our founding principles. Furthermore, we would never trade irreparable harm to the pilots' working agreement for an opportunity to spite a rival union or further erode power from our rank and file members.

We, the elected officers and pilot representatives at AICA, believe the dog should wag the tail. In stark contrast to our position, the union hierarchy at APA appears to be embracing the opposite philosophy. An agency shop provision will guarantee that the tail can always wag the dog. Once the option to withhold your financial support from your bargaining agent is gone, so to is your ultimate check and balance. Is this what *you* really want?

Yours in service,



Pete Brady
President



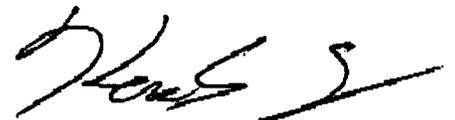
Rex A. Chadwell
Secretary/Treasurer



Larry R. Scerba
Pilot Representative



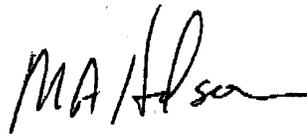
Mike Templeton
Pilot Representative



Ken Avery
Pilot Representative



John Taft
Pilot Representative



Mike Hudson
Former Pilot Representative

Certain Legal Points to Consider

**Provided by the law firm of AICA's General Counsel
Seham, Seham, Meltz & Peterson, LLP**

I. Ramifications of a Union Security Clause for the Bargaining Unit Employee.

A. A Union Security Clause/Agency Shop is Permitted Under the Railway Labor Act (RLA).

The Railway Labor Act (RLA) permits unions to include security clauses in their collective bargaining agreements. Ellis v. Railway Clerks, 466 U.S. 435, 80 L. Ed. 2d 428, 435, 104 S. Ct. 1883 (1984). A union security clause allows the union to require all employees to financially support the incumbent union as a condition of continued employment.

Section 2, Eleventh of the RLA allows an employer and a union to:

make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

45 U.S.C. § 152, Eleventh, subsection (a). Typically, a union security clause in a collective bargaining agreement will quote directly from this section of the RLA.

B. No Employee May Be Forced to Join the Union, Union Membership Must Be Voluntary

Despite the statutory language, which provides that “all employees shall become *members* of the labor organization,” the United States Supreme Court has interpreted this statute to have other than its literal meaning. The terms *member* or *membership* are interpreted to mean only payment of a fee for expenses incurred by the union for collective bargaining activities. It has not been construed to mean compulsory union membership per se.

Every employee in the bargaining unit maintains the right to choose to be a non-member of the union. Every member who has joined the union retains the right to subsequently resign his union membership.

By choosing non-membership the employee surrenders both his rights *and* obligations under the union's constitution and by-laws. These surrendered membership rights will generally include the right to participate in union elections and contract ratification votes. Non-members retain the right, however, to participate in any NMB-supervised union election.

A non-member will also be exempt from discipline for violation of union constitutional provisions and will be eligible to pay “agency fees” in lieu of full dues. The distinction between agency fees and full dues is discussed further below.

C. Through a Security Clause, the Union, Which is Certified as the Exclusive Bargaining Agent, Can Force All Bargaining Unit Employees to Pay an “Agency Fee”, as a Condition of Employment.

A non-member may elect to pay an “agency fee” in lieu of full dues. The agency fee is the non-member’s fair share of the union’s cost to negotiate and administer the collective bargaining agreement, excluding such “non-germane” expenses as political lobbying. A non-member’s payment of agency fees is a condition of employment just as the payment of the full union dues is a condition of employment for the union member.

If the non-member becomes sufficiently delinquent in the payment of the agency fee, he may be terminated from employment at the request of the union.

If the non-member wishes to have his monthly payment to the union reduced from the union dues amount to the agency fee amount, he must notify the union in writing that he wishes to be a non-member agency fee payer.

D. Rights Specifically Guaranteed By the RLA to Non-Member Agency Fee Payers of the Union.

Under the RLA, the right to object to paying full union dues is a right only of the *non-member* of the union. The union member does not have a right to object to or to reduce his dues to support only union expenditures made in the negotiation or administration of the collective bargaining agreement. Kidwell v. Transportation Communications International Union, 946 F.2d 283, 297(4th Cir. 1991).

Once the employee has established his non-member agency fee payer status with the union, the union security clause is not enforceable in the absence of certain pre-collection procedures, which safeguard the non-members’ rights to refrain from funding union non-germane activities that they oppose.

In Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986), the Supreme Court held that all agency fee collection systems must be carefully scrutinized to ensure fair and adequate procedural protections for nonmember employees.

In practical terms, Hudson imposes on unions and employers the duty to provide all nonmembers with the following procedures:

- 1) before collection of any agency fee, the union must give to the non-member an independently audited financial disclosure statement. This statement should include the union’s calculation of what the non-members’ agency fee should be. This should describe what expenditures the union claims are germane and not germane to collective bargaining. The nonmember agency fee payer may object to the union’s calculation of his agency fee and seek a further reduction in his payments to the union. Such notice and disclosure must be timely - i.e., in advance of any collections, so that the employees have sufficient time prior to collections to intelligently review the financial disclosure and determine whether or not to exercise their right to object. See e.g., Dashiell v. Montgomery County, 925 F.2d 750, 754-56 (4th Cir. 1991).
- 2) a properly calculated “advance reduction” in the amount of the compulsory fee, based upon the independently audited financial disclosure; See e.g., Damiano v. Matish, 830 F.2d 1363, 1369-70 (6th Cir. 1987). Requiring the non-member to pay full dues and giving a year-end rebate is not permitted.
- 3) creation of an escrow of all collections reasonably in dispute by objecting agency fee payers. See, e.g., Hudson, 475 U.S. at 309-10.
- 4) the opportunity for an expeditious arbitration hearing before an impartial decision maker, if the employee wishes to utilize that forum, to challenge the union’s reduced agency fee calculations. Miller v ALPA, 523 U.S. 866 (1998).