

## APPENDIX F

### **REPRESENTATION FEE**

#### Section 1: **Employee Rights**

- A. The District and the Association recognize the right of employees to form, join and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall exert pressure upon nor discriminate against an employee in the exercise of these alternative rights.
- B. Accordingly, membership in the Association shall not be compulsory. A unit member has the right to choose, either: to become a member of the Association; or, to pay to the Association a fee for representation services, or to refrain from either of the above courses of action upon the grounds set forth in section 6 below.

#### Section 2: **Unit Members' Obligation to Exclusive Representative**

- A. A bargaining unit member who does not fall within one of the exempted categories as set forth in Sections 7 below, and who has not voluntarily made application for membership in the Association within the sixtieth (60th) day following the date upon which said employee has been formally hired by the District as a bargaining unit employee, must as a condition of continued employment in the District pay annually to the Association a representation fee, in exchange for representation services necessarily performed by the Association in conformance with its legally imposed duty of fair representation on behalf of said unit member who is not a member of the Association.
- B. In the event that a unit member does not become a member of the Association or pay such fee directly to the Association, the District shall begin automatic payroll deduction in the same manner as set forth in section 13.400 of this Agreement and Education Code Section 45061. There shall be no charge to the Association for such mandatory agency fee deductions.
- C. Prior to beginning such automatic payroll deduction, the Association will certify to the District in writing that the employee whose pay is to be effected by the deduction has: 1) refused to join the Association; and 2) has refused to tender the amount of the agency fee as defined herein; and 3) has not applied for an exemption under Section 6 herein.

#### Section 3: **Definition of Representation Fee**

- A. The representation fee collected pursuant to section 2 above from unit members who are not members of the Association shall be the amount authorized by Section 3540.1(I)(2) of the California Government Code.
- B. Any dispute as to the amount of the representation fee shall be resolved pursuant to the provisions of Section 8 herein.

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Section 4: **Exceptions**

A. Exceptions to Section 3 shall be as follows:

- 1) Full-time, non-exempt bargaining unit members hired during the school year shall join the Association or pay a prorated representation fee. Such prorate share shall be based upon the number of days of actual employment for a school year as compared with the number of days available for full-time employment in the school year.
- 2) Part-time, non-exempt bargaining unit members shall join the Association or pay a prorated representation fee on the basis of said employee's annual salary as compared with the same annual salary for a comparable full-time employee.
- 3) Unit members on leave without pay, and unit members who are on laid-off status shall be exempt from these provisions herein; except that the election as to membership or payment of a fee as set forth herein must be exercised within the first ten (10) work days upon return to paid status.

Section 5: **Annual Verification of Representation Fee by Association**

Prior to September 1 of each year and before the collection of a representation fee from any unit member pursuant to these provisions herein, the Association shall submit a written certification to the District verifying the total amount of its representation fee. The parties agree that such annual certification is a condition precedent to the collection by either the District or the Association of a representation fee from a unit member. The verification shall meet the Constitutional requirements. The Association shall provide to the District a copy of any notice sent to representation fee payers in accordance with Section 7.

Section 6: **Employees Exempted From Obligation to Pay Association**

A. Any unit member hired prior to September 1, 1986, shall be exempted from the requirements of Section 2 above, if such employee, either:

- 1) Has a bona fide religious objection as defined by Section 3546.3 of the Government Code to the payment of any fee in support of a union or "employee organization" as defined in Section 3540.1 (d) of the Government Code.
- 2) If employed prior to September 1, 1986, has deep philosophical objection to the payment of any fee in support of a union or "employee organization" as defined in Section 3540.1 (d) of the Government Code.

B. Any unit member hired on or after September 1, 1986, shall be exempted from the requirements of Section 2 above, only if such unit member has a bona fide religious objection as defined in Section 6 (A)(1) above.

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- C. Such exempt unit member shall, as an alternative to payment of a representation fee to the Association, pay an amount equivalent to such representation fee to:
- 1) Children's Hospital of Orange County
  - 2) United Way
  - 3) Any charity jointly agreed to by the parties.
- D. If a unit member desires to be exempted for the reason set forth in Section 6 herein, the unit member must first request such exemption in writing from the Orange Unified School District setting forth briefly the rationale for the exemption. If the Association notifies the unit member in writing that the Association will not honor the request, then the matter shall be referred automatically to a panel for determination according to the procedure set forth below. The panel shall be composed of one person selected by the Association, one person selected by the unit member, and an arbitrator selected by the parties (Association and unit member) chosen from a list submitted by the Public Employment Relations Board (PERB). If either one or both parties fail to nominate a panel member, the process of hearing will continue without that party's panel member.
- E. The panel shall first receive arguments and evidence from the unit member requesting the exemption. Thereafter the Association may present any arguments or evidence. The proceedings shall be conducted in an informal manner, and the rules of evidence will not apply. The panel member selected from the list provided by PERB shall act as chair and rule on all matters before the panel with the exception of the final determination of the panel. The panel shall prepare a written decision within fifteen (15) calendar days of the completion of the hearing, which shall be final and binding upon the parties. Expenses of the arbitrator shall be borne equally by the parties. Any expenses of the panel shall be borne by the parties incurring them.
- F. Upon receipt for the decision of the panel, the Association shall release any funds held in escrow to the O.U.E.A. or to the charity. Any decision by the panel shall apply for the duration of this Collective Agreement.
- G. In addition, the Association may require such exempt unit member to submit proof of payment of an amount equivalent to such representation fee to one of the alternative funds or organizations listed above. If the bargaining unit member has not provided payment, the District will institute deductions pursuant to section 2
- H. Such payments shall be made on or before October 1 of each school year for returning employees or no more than thirty (30) days after commencing duties for any newly hired employee.

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#### **Section 7: Escrow Account**

A. **Escrow Account for Amount of Fee**

If any unit member disputes the amount of the fee or a rebate, the District shall forward such fees to the Association. The Association shall establish and maintain an escrow account in accordance with applicable statutory and decisional law. Upon request and subject to Association established procedures, a representation fee payer shall receive a rebate of the portion of the representation fee which represents political or ideological spending on the part of the Association, CTA and NEA not related to collective bargaining or employment

Section 8: **Procedure for Unit Members Who Contest the Amount of the Fee**

- A. The parties agree that following exhaustion of Association established procedures, any claim by a unit member involving the amount of the representation fee may be referred to the Public Employment Relations Board for determination, provided that the parties have first complied with the other provisions of this Section.
- B. The Association will verify in writing to the District that all of the conditions of Section 2 have been met prior to the District's initiation of the fee deductions set forth in Section 2. Thereafter, the District will notify the affected employee in writing that such deductions will commence and a copy of the Association's written verification will be attached to the District notice. Thereafter, the District will begin the deductions.

Section 9: **Payment Method**

- A. Any unit members who are not exempted from payment under Section 6 above shall pay annually the properly determined representation fee directly to the Association.
- B. As an alternative to the direct payment method, a unit member may voluntarily sign and deliver to the District, a written assignment authorizing deduction to the properly established representation fee as defined in Section 3 above, subject to the conditions set forth elsewhere in this Agreement for payroll deductions, or the amount of the fee will be deducted automatically in accordance with Section 2B herein.
- C. The District is under no obligation to make payroll deductions for periods during which a unit member is either terminated from active employment, or not on the District's active payroll for any reason, including, but not limited to, layoff and voluntary leave of absence for more than thirty (30) days.
- D. Upon the rehiring of any unit member, or upon the recalling of a unit member from layoff status, the District will resume or initiate dues deductions for such unit member.

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Section 10: **Obligations of Parties**

### **District's Obligations**

- A. The District's obligation under this Article is to notify any unit member who has failed to comply with the provisions of this section that, as a condition of continued employment in the District, such unit member must either become an Association member, pay a representation fee, or establish an exempt status and make payment pursuant to provisions of Sections 2 and 6 of this Appendix and upon notification from the Association, to commence payroll deductions of the representation fee. Under no circumstances shall the District be required to dismiss or otherwise discipline any unit member for failure to fulfill their obligations to pay the fees established herein.

### **Association's Obligations**

- B. Except as specified herein, the Association, and not the District, shall be responsible for requiring unit members to fulfill obligations defined herein.