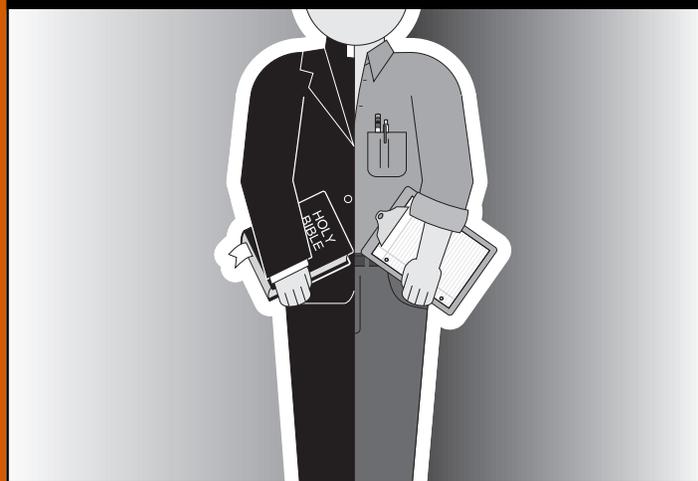


June 2000



A Mackinac Center Report

Religious Liberty and Compulsory Unionism: A Worker's Guide to Using Union Dues for Charity

Mark L. Fischer, J.D.
Robert P. Hunter, J.D., LL.M.

Information on Statutes and Court Decisions that Protect
Employees' Freedom of Conscience in the Workplace



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FOR PUBLIC POLICY

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ISBN: 1-890624-21-7

S2000-03

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Executive Summary

In May 1997, the Mackinac Center for Public Policy published *Compulsory Union Dues in Michigan*, a report on the need to enforce union members' rights under the National Labor Relations Act (NLRA) and the Supreme Court's 1988 decision in *Communication Workers of America v. Beck*. This decision declares that workers may be entitled to a refund of that portion of their dues used by their unions for purposes not related to collective bargaining.

Most union workers are unaware that they have these rights. Even fewer are aware that they have similar rights with regard to religious objections to union membership or payment of union dues or "agency fees" in lieu of dues. The purpose of this report is to explain the rights of employees who harbor religious objections to joining, financing, or otherwise associating with labor unions and how such workers can defend themselves if their union or employer or both violate those rights.

Under Section 19 of the 1974 Health Care Amendments to the NLRA and amendments passed by Congress in 1980, an employee "who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations" is exempt from any union dues obligations. But he or she may be required to pay the equivalent of union dues and fees to one of three non-religious charitable organizations listed in the collective-bargaining contract.

Unfortunately, a court ruling on Section 19 and its amendments cast doubt on the availability of this defense for religious objectors. While the 1974 and 1980 amendments to the NLRA have neither been repealed nor declared unconstitutional by the U.S. Supreme Court, their final legal disposition is still subject to further court refinement and clarification.

A stronger case can be made for the religious discrimination clause of Title VII of the federal Civil Rights Act of 1964. Employees who have sincerely held religious objections to joining or otherwise supporting a labor organization and make that objection known to the employer and union have a statutory right under Title VII to a reasonable accommodation of their religious beliefs.

The statutory duty established under Title VII for employers and unions is to accommodate an expansive definition of "religion," as long as such accommodation does not place "undue hardship" on the employer's business. This is the standard by which both employers and unions would be judged in cases where an employee alleges some form of religious discrimination.

The purpose of this report is to explain the rights of employees who harbor religious objections to joining, financing, or otherwise associating with labor unions and how such workers can defend themselves if their union or employer or both violate those rights.

There also are instances in which union policies can violate the religious tenets of employees who have no objection to membership in a union per se. Relatively recent case law indicates that employees have legal recourse in these situations as well.

To ensure that his or her religious objection to union membership, support, or association is honored, the employee must sincerely hold the religious belief and must communicate the objection to the employer and the union. If no agreement can be reached for accommodating the religious belief, and termination ensues for failing to tender union dues or agency fees, the legal burden is on the union to prove that it could not reasonably accommodate the employee's religious beliefs without suffering an "undue hardship."

The employee should file a charge within 180 days of termination with the Equal Employment Opportunity Commission (EEOC) and its state counterpart, the Michigan Department of Civil Rights. The EEOC will conduct an investigation, determine if the law has been violated, and if so attempt to settle the matter out of court. If this effort fails, the agency can take the claim to the courts for enforcement. The agency also has the option of abandoning the case and issuing a "right to sue" letter informing the charging party that he or she has 90 days to file a lawsuit. If the employee wants to pursue the case, he or she must then press the claim to its conclusion in the courts.

To ensure that his or her religious objection to union membership, support, or association is honored, the employee must sincerely hold the religious belief and must communicate the objection to the employer and the union.

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Introduction: Unions and Religious Liberty

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .”*¹

These familiar words comprise the very first individual right that the framers of our Constitution sought to protect from the federal government, and it is perhaps the individual freedom that Americans hold most dear: the ability hold religious beliefs and practice them free from government coercion.²

The course of America's history, however, demonstrates that individual rights are never absolutely free from challenge. No matter how carefully statutes are crafted, circumstances inevitably arise that challenge individual rights in unexpected, unprecedented ways. Consequently, America's legal history is full of examples in which infringements upon constitutionally protected rights are met with legislation and subsequently argued and settled in courts of law.

As one might expect, American labor relations offer one of the most historically active arenas for such controversies, including threats to the free exercise of religion. The National Labor Relations Act (NLRA) of 1935³ and its subsequent amendments demonstrate how such legislation evolves, often resembling a pendulum that swings from one legislative priority to the other.⁴

Originally enacted to balance inequalities in bargaining power between labor and management interests,⁵ the NLRA established collective bargaining as the method for determining wages, terms, and conditions of employment for unionized private-sector employees. It also erected the system through which unions and employers can compel workers to either become union members or pay the union an agency fee as a condition of employment.

Once certified, a union acts as the exclusive representative for employees at the bargaining table. Part of the collective bargaining process is the ability of labor organizations to negotiate union “security clauses.” These are contract terms, negotiated into a bargaining agreement by the union and management, that enable the labor union to obligate the employees it represents to either 1) join the union as a formal member and pay membership dues and fees; or 2) refrain from formal membership and tender an “agency fee” (usually of an amount equal to full membership dues) to the union as a condition of continued employment.

The National Labor Relations Act erected the system through which unions and employers can compel workers to become members or pay fees as a condition of employment.

Employees who wish to refrain from formal union membership may do so, depending on the reasons given, as provided by statutory and constitutional mandates.

The reasoning behind this requirement is that unless a union has the uncompromised ability to obtain payment from all the workers it represents in a workplace, some employees will refuse to pay the union for its bargaining services while nevertheless enjoying the benefits of the union's negotiated agreement.

Therefore, employees who fail to either join the union as full members or tender the appropriate "agency" fee can be discharged by the employer at the request of the union.

Such clauses can and do set up conflicts with the individual rights and freedoms recognized in the Constitution. And these have been the source of a series of court rulings over several decades, aimed at protecting individual employee rights. The rulings in these cases define the extent of a non-union member's financial obligation to his exclusive representative.⁶

Those employees who wish to refrain from formal union membership may do so, depending on the reasons given, as provided by statutory and constitutional mandates. For example, employees who object to funding that part of a union's agenda having nothing to do with collective bargaining done in his or her behalf—including political, social, and ideological causes and activities—can limit their dues or agency fee to cover only their share of the union's costs of collective bargaining, contract administration, and grievance processing.⁷

The vast majority of union members have no idea that they have such legal recourse when their rights are violated. For this reason, in May 1997, the Mackinac Center for Public Policy published *Compulsory Union Dues in Michigan*, a report on the need to enforce union members' rights under the NLRA and the Supreme Court's 1988 decision in *Communication Workers of America v. Beck*. This decision declares that workers may be entitled to a refund of that portion of their dues used by the union for purposes not related to collective bargaining.

For further information on all of the requirements of the *Beck* case; how to become a *Beck* objector and to exercise the rights accorded thereto; and the advantages and disadvantages of being a *Beck* objector, please refer to the Mackinac Center study or visit the Mackinac Center's Web site at www.mackinac.org.

Unfortunately, where an employees' objection to joining or financially supporting a union is motivated solely by religious conviction, the NLRA contains only narrow protections—clear in the case of health-care workers in religiously affiliated hospitals, not so clear in other cases.⁸ These protections will be discussed in Part II of this report.

But what protections exist for practitioners of some religions, such as the Seventh Day Adventists, who prohibit their practitioners from holding membership in a labor organization? What about other workers, for whom merely associating with a labor union that supports activities offensive to their interpretation of church teachings constitutes a violation of their religious faith?

For workers who find themselves in this situation, there is a far more widely applicable remedy in the religious discrimination clause of Title VII of the federal Civil Rights Act of 1964.⁹ Employees who have sincerely held religious objections to joining or

otherwise supporting a labor organization and make that objection known to the employer and union have a statutory right under Title VII to a reasonable accommodation of their religious beliefs.

Until recently, the relative scarcity of case law dealing with employees' religious objections to union membership or other policies suggested that few employees would ever challenge their unions on the basis of religious belief. But as the volume and scope of union political activity increases, so does the possibility that religious discrimination claims against unions will become a more common occurrence on court dockets.

The purpose of this report is to explain the rights of employees in union shops who harbor sincere religious objections to joining, financing, or otherwise associating with labor unions, and how such workers can defend themselves if the union or the employer or both violate those rights.

Part I: Title VII—First Line of Defense for Religious Objectors to Forced Union Membership, Dues, or Agency Fees

Title VII is a component of the Civil Rights Act of 1964, a statute created to prohibit discrimination in public accommodations and facilities as well as participation in federal programs, education, and employment.¹⁰ Although Title VII is most widely known for its proscription of racial discrimination, the statute also sought to eliminate discrimination on the part of employers, labor organizations, and employment agencies against applicants or employees based upon several classifications, including race, national origin, sex and religion.

Title VII Protections and Religion

Specifically, Title VII makes it illegal for employers to:

1. [f]ail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms or conditions, or privileges of employment, because of that individual's race, color, religion, sex, or national origin; or
2. limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.¹¹

The statute defines employers broadly as "a person, engaged in an industry affecting commerce, who has at least 15 employees for 20 weeks during the current or preceding calendar year."¹² Given the expansive nature of the definition, few businesses escape classification as an employer subject to Title VII's proscriptions.

As the volume and scope of union political activity increases, so does the possibility that religious discrimination claims against unions will become a more common occurrence on court dockets.

While race, color, sex, and national origin are somewhat concrete concepts, “religion” was not defined in the early version of Title VII.

Title VII imposes similar prohibitions on labor organizations, defining them just as broadly¹³ and making it illegal for them to:

1. [E]xclude or to expel from membership, or otherwise discriminate against, any individual because of his or her race, color, religion, sex, or national origin;
2. [L]imit, segregate, or classify membership or applications for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or
3. [C]ause or attempt to cause an employer to discriminate against an individual in violation of this section.¹⁴

While race, color, sex, and national origin are somewhat concrete concepts, “religion” was not defined in this early version of Title VII. Rather than define the scope of its mandate in the statute itself, Congress created a new federal agency, the Equal Employment Opportunity Commission (EEOC), which was charged with administration and enforcement of Title VII's provisions.

The EEOC offered some early, if ambiguous, guidance as to employers' duties under the law. The commission's guidelines not only directed employers to avoid using religion as a decision-making factor, but also established an affirmative duty to accommodate the religious needs of employees to the extent possible without “serious inconvenience to the conduct of the business.”¹⁵

The EEOC subsequently refined this duty by linking religious discrimination to an employer's failure to make “reasonable accommodations” to an employee's religious beliefs and practices that did not amount to an “undue hardship” on the business. The Commission's guidelines were not readily adopted by the courts¹⁶ and it would be eight years before Congress would amend Title VII to include a definition of “religion.”

Congress finally provided a definition of “religion” with the passage of the Equal Employment Opportunity act of 1972,¹⁷ where “religion” was defined to include “all aspects of religious observance and practice, as well as belief, unless the employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance without undue hardship on the conduct of the employer's business.”¹⁸

The statutory duty for employers and unions to accommodate an expansive definition of “religion,” coupled with the fact that such accommodation could not place “undue hardship” on the employer's business, would eventually become the standard by which both an employer and a union would be judged in cases where an employee alleges some form of religious discrimination.¹⁹

How the Courts Have Handled Employees' Religious Objections to Union Membership under Title VII

In a unionized workplace, employee claims of religious discrimination by a union based on Title VII often arise after an employee is discharged for failing to tender dues or agency fees as required by a union security agreement contained in the employee's collective bargaining agreement.²⁰

In such cases, the employee can potentially name both the employer and the union in a lawsuit under Title VII. If an employer terminates a worker without attempting to make a reasonable accommodation of his or her religious belief, then the employer risks a lawsuit under Title VII's provisions. When the termination comes at the behest of a union, both the labor organization and the employer can be held liable under Title VII.²¹

FIRST AMENDMENT CHALLENGES TO FORCED UNION MEMBERSHIP

Prior to the 1972 amendment of the Civil Rights Act, the Act did not present itself as the best legal basis upon which to sue a union on behalf of private-sector employees whose religious rights had been violated. Such litigants more commonly used the First Amendment's guarantee of the free exercise of religion in an effort to get unions to accommodate their religious beliefs. These efforts were largely unsuccessful.

Two typical cases are *Gray v. Gulf, Mobile & Ohio Railroad Co.*²² and *Linscott v. Millers Falls Co.*²³ In *Gray*, a Seventh Day Adventist refused to join a union because of his religious convictions. This constituted a violation of a union security clause requiring employees to become union members within 60 days of employment. This individual rejected the union's offer to permit him to pay an agency fee and forego formal union membership.

The railroad terminated Gray as called for in the collective bargaining agreement. Gray sued on several Constitutional grounds, including the First Amendment's free exercise clause.²⁴ Both the trial and appellate courts ruled against Gray.

Likewise in *Linscott*, a Seventh Day Adventist refused to join the union as required by a union security clause due to her religious convictions, offering instead to pay an amount equivalent to her union dues and initiation fees to a non-religious charity. The union refused, Linscott was discharged, and she sued on First Amendment grounds. Linscott lost at both the trial and appellate levels,²⁵ with the appellate court concluding that the government's interest in maintaining a peaceful labor relations climate outweighed the burden imposed on Linscott to protect her religious sensibilities.²⁶

TITLE VII CHALLENGES: COMPULSORY UNIONISM VS. EMPLOYEES' RELIGIOUS BELIEFS

The First Amendment free exercise argument having failed as a means of protecting the right of employees to honor their religious convictions, Congress passed the 1972 amendments to Title VII, which provided greater protection.²⁷

If an employer terminates a worker without attempting to make a reasonable accommodation of his or her religious belief, then the employer risks a lawsuit under Title VII's provisions.

The court determined that both employers and unions have a duty to make “reasonable accommodations” to the religious employees’ objection to union membership.

Yott v. North American Rockwell Corp.

In *Yott v. North American Rockwell Corp.*,²⁸ a Seventh Day Adventist objected to joining a recently certified union that had negotiated a union security clause requiring all employees to pay union dues. Yott is the first acknowledged Title VII case to countenance attacks on union security.²⁹ Citing religious prohibitions on either joining or paying dues to union, Yott sought an exemption from the union security clause, but made no offer to pay either an agency fee or to contribute his dues to a charity.³⁰ The union refused the exemption, and Yott was ultimately fired according to the terms of the bargaining agreement.

A trial court dismissed Yott’s subsequent lawsuit, but the appellate court held that Title VII imposed an obligation on both the employer and the union to make reasonable accommodation of Yott’s religious beliefs, so long as such accommodation did not constitute an undue hardship to the employer or the union.³¹

Additionally, the court construed the 1972 amendments to Title VII as applicable to issues regarding union membership and the ability to avoid paying union dues.³² Although Yott ultimately lost his case, it marked the first use of Title VII by the courts to undergird the rights of employees whose religious convictions are harmed by union membership.

Cooper v. General Dynamics Convair Aerospace Div.

The Fifth Circuit confronted similar facts in *Cooper v. General Dynamics Convair Aerospace Div.*³³ In *Cooper*, Seventh Day Adventists who were non-union members protested on religious grounds the enactment of a union security agreement obligating them to pay agency fees in lieu of union dues. Rather than pay the agency fees, the Adventists paid an amount equal to the required fees into a trust account for the benefit of a non-religious charity and sued under Title VII.

The trial court dismissed the case, saying that the Adventists’ beliefs, though religious and sincere, were “specious” and did not require accommodation.³⁴ The Fifth Circuit reversed the lower court’s decision, observing that the logic of employees’ beliefs, once found religious and sincerely held, are beyond the court’s scope of inquiry.³⁵

The court also determined that both employers and unions have a duty to make “reasonable accommodations” to the religious employees’ objection to union membership and that both unions and employers could seek to prove that the accommodations demanded by employees created an undue hardship for their organizations.³⁶

It would take the United States Supreme Court to offer some guidance as to the limits of “reasonable accommodation” and what would constitute an “undue hardship.”

Trans World Airlines v. Hardison

The Supreme Court finally spoke to both these matters with its decision in *Trans World Airlines v. Hardison*.³⁷ Hardison's religious faith dictated that he observe the Sabbath by refraining from work between sunset on Friday and sunset on Saturday. Hardison was a union member and subject to the terms of a collective bargaining agreement that contained a seniority clause governing shift assignments among employees. Hardison had sufficient seniority to keep his Sabbath without hindering his job status. When he transferred to another building, however, he lost that seniority and subsequently was asked to work on a Saturday.

When he refused, his employer could not accommodate him without violating the seniority clause and denying other employees with seniority their shift preferences. Covering these shifts would require TWA to hire an extra employee or have current employees work overtime for overtime pay. The union refused to make an exception to the seniority clause in the collective bargaining agreement. No mutually satisfying alternative could be reached, and Hardison was ultimately discharged for not reporting to work on Saturdays.

Hardison subsequently sued both TWA and the union under Title VII.³⁸ His case reached the U.S. Supreme Court after a trial in which the employer and union prevailed, and a subsequent appeal to the Eight Circuit held TWA, but not the union, liable under Title VII.³⁹

In judging TWA's conduct, the Supreme Court held that seniority systems, absent a discriminatory *purpose* in their operation, are not unlawful merely because their operation may result in discriminatory consequences.⁴⁰

Thus, while collective bargaining agreements and union security clauses could not be used to thwart Title VII, the duty to make a reasonable accommodation of an employee's religious beliefs did not require TWA to violate the seniority clause contained in its collective bargaining agreement with the union.⁴¹

The Court also stated that if accommodating Hardison's need for Saturdays off caused the company significant expense, it would constitute an undue hardship to TWA.⁴² The Court also considered the possible effect of such an accommodation on the seniority rights of the other employees under the seniority clause.⁴³ The prospect of violating other employees' contract rights of seniority to accommodate Hardison's religious beliefs was unacceptable to the Court, and it refused to obligate employers or unions to do so.⁴⁴

Hardison focused on the employer's obligation to accommodate a religious objection that conflicted with a provision in a collective bargaining agreement. Litigation following *Hardison* further refined the extent of a union's obligation to make reasonable accommodations to employees' religious objections to membership. The *Yott* court's final outcome was a direct result of applying the *Hardison* ruling on the treatment of seniority clauses to union security clauses as well.⁴⁵

Hardison had sufficient seniority to keep the Sabbath without hindering his job status. When he transferred to another building, however, he lost that seniority and subsequently was asked to work on a Saturday.

These and other cases establish that non-payment of dues or agency fees on the part of individual employees does not impose "undue hardship" on a union.

McDaniel v. Essex International, Inc.

In *McDaniel*,⁴⁶ a Seventh Day Adventist was discharged for refusing to join the union or pay it fees. In contrast to *Yott*, *McDaniel* offered to pay the full dues amount to a non-religious, non-union charity. The union refused this offer and sought *McDaniel*'s discharge.

Essex, the employer, requested that the union allow more time to reach an agreement with *McDaniel*, who made an alternative suggestion that she pay that proportion of her union dues with which she could morally agree, while paying the remainder to a mutually acceptable charity. The union refused this offer as well, and *McDaniel* was fired for failure to join the union and tender dues and fees.

McDaniel sued under Title VII, and the trial court dismissed her suit, finding that non-payment of dues constitutes an undue hardship on the union. But the 6th Circuit Court reversed the decision of the trial court and interpreted *Hardison* as requiring "an effort at accommodations" and, if unsuccessful, a demonstration "that they are unable to reasonably accommodate the plaintiff's religious beliefs without undue hardship."⁴⁷

On remand, the trial court found the union in violation of Title VII for its failure to make any attempt at accommodation before claiming undue hardship.⁴⁸ In the trial court's eyes, substituting charitable contributions for union dues "was not an undue hardship, put[ting] the [union's] actions clearly in the realm of a Title VII violation."⁴⁹

The union's request that *McDaniel* be discharged was ruled unlawful, and the employer was also found guilty of violating Title VII because it complied with the request.⁵⁰ The court based its decision on the fact that accommodating *McDaniel*'s request did not substantially burden other employees.⁵¹ Nor did it impose a substantial cost on the employer in the court's eyes.⁵²

Burns v. Southern Pacific Transportation Co.

In *Burns*,⁵³ another Seventh Day Adventist refused to comply with a union security clause, citing religious objections. *Burns* offered to pay an equivalent dues amount to a designated charity. Both the employer and union agreed to waive the membership requirement, but would not forgo the payment of dues requirement. *Burns* refused and was fired. In supporting *Burns*'s position, the court found the loss of *Burns*'s dues to be a minimal hardship to the union that did not justify its refusal to forgo the dues payment.⁵⁴

These and other cases establish:

- a) a clear duty on the part of unions and employers to make a good faith effort to accommodate employees whose religious beliefs prevent them from joining a union or paying union dues;
- b) the right of employers and unions to refuse to accommodate employees' religious beliefs if such accommodation imposes an undue hardship;

- c) that non-payment of dues or agency fees on the part of individual employees does not automatically impose “undue hardship” on a union; and that
- d) payment of an amount equivalent to dues or activity fees to a charity is considered by the courts to be a viable alternative that protects both the rights of the religious objector and the union.

Other Union-Related, Religion-Based Objections

There also are instances in which union policies can violate the religious tenets of employees who have no objection to membership in a union per se. Relatively recent case law indicates that employees have legal recourse in these situations as well.⁵⁵

EEOC V. UNIVERSITY OF DETROIT

In this trailblazing case,⁵⁶ Robert Roesser worked as an assistant professor for the University of Detroit and was subject to a union security provision that required either union membership or payment of an agency fee in an amount equivalent to member dues.⁵⁷

Roesser declined union membership and paid the required agency fee to the University of Detroit Professors' Union (UDPU), an affiliate of the Michigan Education Association and the National Education Association.⁵⁸ Most of the dues and agency fees paid by UDPU members are passed on to the MEA and NEA.⁵⁹

Roesser, a Roman Catholic, subsequently raised a religious objection to paying an agency fee when he learned that the state and national affiliates' positions supporting women's rights of choice respecting abortions,⁶⁰ a position at odds with his religious beliefs.⁶¹ Roesser maintained that his beliefs not only prohibited him from financially supporting the union, but also constrained him from associating with the union.⁶²

Instead, Roesser offered to either: 1) pay the entire agency fee to charity, or 2) pay UDPU that portion of the fee which was allocated solely to the union's local bargaining responsibilities,⁶³ paying the remainder to charity.⁶⁴ The union rejected both alternatives and requested Roesser's termination.⁶⁵

The University refused to discharge Roesser until the union first offered to accommodate his religious beliefs.⁶⁶ In response, the union offered to reduce the agency fee “by an amount proportional to that percentage of the MEA budget which is even remotely connected with the alleged support of issues to which you take exception.”⁶⁷

Roesser, doubtful that the union could accurately calculate the amount of his agency fee that was paying for the union's abortion advocacy, and doubtful that it would reduce his fee by any meaningful amount, rejected this offer. In the absence of any agreement, the university terminated Roesser.⁶⁸

Roesser objected to paying an agency fee when he learned that the NEA and MEA had campaigned in favor of abortion, a position at odds with his religious beliefs.

A federal district court in New York held that a public employees' union must accommodate a corrections officer's religiously based objections to its public positions on abortion and the death penalty by permitting him to pay an amount equivalent to his agency shop fee to charity.

In the ensuing lawsuit, a federal court⁶⁹ ruled that the union's offer of a proportional rebate of Roesser's dues was a reasonable accommodation.⁷⁰ The court also held that Roesser's proposed accommodations would raise "a substantial likelihood of the 'widespread refusal to pay union dues'"⁷¹

The 6th Circuit Court of Appeals reversed the lower court's decision. First, it ruled that if an employee establishes that he "holds a sincere religious belief that conflicts with an employee requirement," this is enough "to invoke the employer's duty to offer a reasonable accommodation." The court said that although "the duty to accommodate cannot be defined without reference to the specific religious belief at issue,"⁷² and that though Title VII requires reasonable, not absolute, accommodation,⁷³ Roesser's objection contained both "a contribution and an association element"; each one required accommodation absent proof of an undue hardship.⁷⁴

Similarly, subsequent litigation apparently supports religious objections that are born of opposition to a union's positions on non-bargaining-related subjects. A federal district court in New York held that a public employees' union must accommodate a Roman Catholic corrections officer's religiously based objections to its public positions on abortion and the death penalty by permitting him to pay an amount equivalent to his agency shop fee to charity.⁷⁵

How Workers Can Put Title VII Protections into Action

After 28 years of litigation, we now have some guidance for employees who encounter conflicts of conscience stemming from compulsory union membership or financial support.

ESTABLISHING A TITLE VII RELIGIOUS DISCRIMINATION CLAIM

At the outset it is important to understand that the employee is responsible for raising a religious-based objection to union membership, support, or association. In order to establish an employer or union violation of Title VII's statutory duty to accommodate religious belief, an employee must demonstrate the following:

1. That the employee maintains a sincerely held religious belief that compels him to refrain from joining, supporting, or associating with a union as a condition of continued employment;
2. That the employee communicated his religious objection to his employer and union; and,
3. That the employee was discharged for failing to tender union dues or agency fees.⁷⁶

Once the employee meets the burden of establishing these three points, the burden shifts to the union to prove that it could not reasonably accommodate the employee's religious beliefs without suffering an undue hardship.⁷⁷

1) Be Certain of Your Religious Beliefs

The sincerity of the employee's religious belief is rarely in dispute in Title VII cases; however, questions concerning the religious nature of the belief can arise. Therefore, the employee should be careful to honestly determine whether his objection to joining, supporting, or otherwise associating with a labor organization is religiously based.⁷⁸ If the employee's reasons for avoiding union membership fall outside of his religious beliefs, he should consider pursuing other legal channels available to employees, such as implementing *Beck* rights.⁷⁹

2) Make Your Objection Known

It is up to the employee to put the union and employer on notice that he has religiously based objections to joining, funding, or otherwise associating with the union. A written objection is advisable, clearly stating in detail the nature of the employee's religious beliefs, describing how those beliefs conflict with existing work requirements, requesting an accommodation of those beliefs, and offering suggestions that the employee believes are reasonable and sufficient to eliminate the conflict.⁸⁰

3) Cooperation Is Key

While employees ought not to compromise on matters of religious conviction, it is wise to approach a conflict with a view toward working collaboratively to arrive at a reasonable accommodation. Recall that an "undue hardship" is sufficient for a union to reject your proffered accommodations, providing the cost imposed by the "hardship" can be demonstrated.

When a satisfactory outcome cannot be reached by the parties privately, it may be necessary to proceed with a legal charge of religious discrimination.

THE BASIC PROCEDURE FOR MAKING RELIGIOUS DISCRIMINATION CHARGES UNDER TITLE VII

1) File a Charge

Although the case law discussed throughout this monograph consists of federal court decisions, a Title VII religious discrimination claim begins with a charge filed with the Equal Employment Opportunity Commission, the agency in charge of administering and enforcing the Civil Rights Act.

The proper form to use can be obtained at the nearest regional EEOC office, which you can find in the blue government listings section of your phonebook, and should be completed with the same detail and specificity used to communicate the employee's religious

It is up to the employee to put the union and employer on notice that he has religiously based objections to joining, funding, or otherwise associating with the union.

Many employees don't know there are groups willing to take on their cases and shoulder the legal expense or provide legal counsel.

objections to the union and employer. *Claims must be filed within 180 days of the alleged discrimination.*⁸¹

Claimants should also file a claim with the EEOC's counterpart at the state level, if such an entity exists. In Michigan, this agency is the Michigan Department of Civil Rights.⁸²

2) EEOC Will Intervene

The EEOC will put the parties involved on notice that charges have been formally filed and that the agency will proceed with an investigation. It will then conduct interviews with the parties, and will accept documentation and evidence pertaining to the discrimination claim in an effort to determine what has actually taken place.

An investigation pursuant to a timely discrimination charge will enable the agency to decide whether it believes there is cause to pursue the charge or whether there is no cause for action under Title VII.

If the agency believes the law was violated, it will issue a "cause determination letter" and act as a conciliator, with an eye toward achieving a reasonable accommodation. Conversely, if the agency believes no violation took place, it will issue a "no cause" determination letter. At that point, employees have 90 days to file suit in federal court.

If the EEOC-administered conciliation effort fails, the agency can take the claim to the courts for enforcement. The agency also has the option of abandoning the case and issuing a "right to sue" letter informing the charging party that he or she has 90 days to file a lawsuit. If the employee wants to pursue the case, he or she must then press the claim to its conclusion in the courts.

Many employees don't understand that there are groups willing to take on such cases and shoulder the legal expense or provide legal counsel for the plaintiff so the case can go forward rather than being dropped because the employee can't afford legal expenses. For a listing of some of these groups, see Appendix I at the end of this report.

Part II: Religious Objectors under the National Labor Relations Act

In 1947, Congress passed the Taft-Hartley amendments⁸³ to the 1935 National Labor Relations Act. The amendments were aimed at enhancing the legal rights of individual employees under the law and preventing excessive coercion and abuses of the rights of workers on the part of unions. These amendments recognized the right of employees to refrain from union activities, added new provisions to prohibit unfair labor practices, and set forth the duties of each party in collective bargaining.

Religious Objectors in Health-Care Industry Gain Protection under NLRA

In 1974, Congress again amended the NLRA to extend its coverage to non-profit hospitals and establish some special procedures covering collective bargaining in the health-care industry.⁸⁴ In addition, Congress broadened the term “health-care institutions” to include “any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm or aged persons.” The effect of these amendments was to bring both profit and non-profit hospitals as well as most other health-care institutions under coverage of the NLRA.

The 1974 Health Care Amendments created a religious freedom exemption for health-care workers. Under the exemption, any health-care industry employee who has religious objections to joining a labor union can neither be required to join nor to financially support a union as a condition of employment. The exemption was a political concession made to large health-care providers operated by religious institutions such as Seventh Day Adventists to secure their approval of the bill.

Under Section 19 of the 1974 Health Care Amendments, an employee “who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations” is exempt from any union dues obligations. But he or she may be required to pay the equivalent of union dues and fees to one of three non-religious charitable organizations listed in the collective-bargaining contract.

Section 19 does not supersede Section 701(j) of the Civil Rights Act of 1964, discussed in Part I (under which employers must “accommodate” their employees’ religious practices, observances, and beliefs absent a showing that such accommodation would impose “undue hardship” on the conduct of the business). Employees are free to pursue their remedies under both statutes.⁸⁵

It is important to note that the NLRA makes a distinction between being a member of a bone fide religion, body, or sect that holds conscientious objections to unions, in which case one can claim the religious exemption, and simply having sincere religious objections to joining or supporting unions.⁸⁶

Congress Attempts to Expand NLRA Protections to All Religious Objectors

In 1980, Congress sought to make the religious belief exemption more comprehensive by expanding Section 19 to include all employees, not just those who worked only for health-care institutions. Had it held up in court, the 1980 law also would have required that employees qualified for the exemption reimburse the union bargaining agent for the cost of representation in a grievance or arbitration process undertaken in behalf of the employee.

While it is laudable that Congress sought to make the religious belief provision universal in its application, unfortunately in 1990 the Sixth Circuit Court of Appeals held that Section 19 grants a benefit on the basis of membership in a religion, and therefore violates the First Amendment of the U.S. Constitution. The court said it is not possible to

The law makes a distinction between being a member of a bone fide religion, body, or sect that holds conscientious objections to unions, in which case one can claim the religious exemption, and simply having sincere religious objections to joining or supporting unions.

Employees who are members of a religious sect that objects to union membership and/or payment of union dues as conditions of employment have a legal remedy available in the NLRA's 1974 and 1980 amendments.

avoid this constitutional defect by construing the statute as applying to all employees having religious objections to unions, without regard to whether these employees belong to a religion, body or sect.⁸⁷

This does not mean that either the 1974 or the 1980 amendments to the NLRA have been invalidated. Since there have been no other relevant federal court cases issued since the *Wilson* decision, and since the laws have neither been repealed nor declared unconstitutional by the U.S. Supreme Court, the exemption still represents good law for those who qualify for a remedy that the NLRB can provide.

The NLRB is charged by law with enforcing all the provisions of the law it administers. It does not selectively determine what protections are available to employees. The NLRB also does not construe any aspects of its statute as unconstitutional—that is the function of the nation's highest court. While the NLRB may accept the *Wilson* decision as the law of the 6th Circuit, the statutory protections for religious objectors still apply in all other states.

The lack of any NLRB activity may be because most religious objectors are unaware of their NLRA statutory protections. It may also be true that those who are aware and eligible are protected by collective-bargaining contract provisions which recognize their statutory options, hence resort to the NLRB has been unnecessary. Perhaps the requirement of “actual membership” in a bona fide religious order that objects to union membership and/or payment of dues has kept many objectors who hold merely personal religious objections from filing suit.

In short, employees who are members of a religious sect that objects to union membership and/or payment of union dues as conditions of employment have a legal remedy available in the NLRA's 1974 and 1980 amendments, although these remedies are subject to legal challenge.

Such persons should contact the nearest NLRB office and ask for assistance in evaluating his or her particular circumstance. The advice is free and if the NLRB pursues your unfair labor practice claim, the legal representation is at no cost to you.

Part III: The *Beck* Case Offers Partial Relief to Religious Objectors

Although not specifically decided to benefit religious objectors, the U.S. Supreme Court's 1988 *Beck* decision⁸⁸ does provide some protection which may well meet the needs of those seeking accommodation of their religious objections to union membership or payment of dues or fees.

Religious objectors often complain about the use of their dues by the unions to fund social and ideological causes which conflict with their fundamental religious beliefs. The U.S. Supreme Court in *Beck* and other judicial decisions has established two important protections for union workers whether they be private- or public-sector employees:

- The right to receive a financial breakdown of how the union spends its funds and the right to challenge the figures, and
- The right to withhold payment of that portion of union dues which is spent on the union's political, social, and ideological goals. (The amount spent on collective bargaining, contract administration, and grievance processing must still be paid.)

In addition, the U.S. Supreme Court has ruled that private-sector employees have the right to refuse to join their workplace unions, even though the language of their labor contract may state otherwise.⁸⁹ Each worker has the legal right to resign from his union and cease to be bound by its constitution and by-laws, which may require participation in strikes and other activities.

Only a fraction of union members are aware of these so-called *Beck* rights. Widespread awareness and enforcement of *Beck* rights would probably have at least two related effects:

- Hundreds of dollars per year in savings to individual workers, and
- Millions of dollars less in annual labor union income that is now used to fund political, social, ideological, and other activities unrelated to collective bargaining.

Perhaps even more important to religious objectors than the money saved would be their greater exercise of freedom of speech and association under *Beck*. Under the *Beck* doctrine, objectors are not compelled to state the specific reasons for their objections—in other words, religious objectors are not forced to identify “religious reasons” to lodge a valid objection to paying full union dues.

For an example of the kind of letter one should send to a union and/or employer in order to exercise *Beck* rights, see Appendix II at the end of this report.

Conclusion

Workers whose religious beliefs prohibit them from joining a union or paying dues that fund political, social, or ideological activities with which they disagree should not be forced to violate those beliefs.

Fortunately, religious objectors have available statutory choices under Title VII of the Civil Rights Act, the National Labor Relations Act, and the Supreme Court's *Beck* decision to redress their grievances.

The choice of which statute to use is up to the discretion of the individual, who must weigh his or her individual circumstances to assess the best alternatives available. This should be done, of course, in consultation with legal counsel.

But one of the most important points to bear in mind is that the protections afforded employees' religious beliefs are not as broad under Section 19 of the NLRA as they are

The U.S. Supreme Court has ruled that private-sector employees have the right to refuse to join their workplace unions, even though the language of their labor contract may state otherwise.

under Title VII. Under section 19 only employees who are members of “bona fide” religions which have “historically held conscientious objections” are allowed any recourse from joining and/or paying their dues to a union.

By contrast, Title VII protects “all aspects of religious observance and practice, as well as belief” regardless of membership in a religion, body or sect. Thus, employees with sincerely held religious beliefs that prevent them from joining a union or paying dues or fees could be relieved under Title VII, even if they were not members of an organized religious group that opposes unions.⁹⁰

Workers whose religious beliefs prohibit them from joining a union or paying dues that fund political, social, or ideological activities with which they disagree should not be forced to violate those beliefs.

Appendix I: Organizations to Contact for Help

Religious objectors should contact one of the organizations listed below for more information on how to file a religious objection, or for more information on any of the issues discussed in this study.

Mackinac Center for Public Policy

140 West Main Street
P.O. Box 568
Midland, Michigan 48640
Phone: (517) 631-0900
Fax: (517) 631-0964
Email: mcpp@mackinac.org
Internet: <http://www.mackinac.org>

National Right to Work Legal Foundation

8001 Braddock Road
Springfield, Virginia 22160
Phone: (703) 321-8510
Toll Free: 1-800-336-3600
Internet: <http://www.nrtw.org>

Pacific Justice Institute

P.O. Box 4366
Citrus Heights, California 95611
Phone: (916) 857-6900
Fax: (916) 857-6902

Landmark Legal Foundation

457-B Carlisle Drive
Herndon, Virginia 20170
Phone: (703) 689-2370
Fax: (703) 689-2373
Email: markrlevin@aol.com
Internet: <http://www.llf.org>

Center for Individual Rights

1233 20th Street, NW, Suite 300
Washington, DC 20036
Phone: (202) 833-8400
Fax: (202) 833-8410
Email: cir@mail.wdn.com
Internet: <http://www.cir-usa.org>

Appendix II: Sample Employee *Beck* Letter

Here is an example of a private-sector union member's *Beck* request.

TODAY'S DATE HERE

UNION PRESIDENT'S NAME
UNION ADDRESS

Dear Sir or Madam:

In accordance with the U.S. Supreme Court's decision in *Patternmakers v NLRB*, I hereby resign my membership with the union, (INSERT UNION NAME), effective immediately.

Furthermore, I wish to exercise my rights pursuant to *Communication Workers v Beck*, and declare myself to be a *Beck* objector. Pursuant to the Supreme Court's *Beck* decision, I object to the use of my dues money for any purposes other than those related to collective bargaining, contract administration, and grievance processing in my immediate bargaining unit. Any fees that are not related to these financial core activities should be immediately deducted from my dues, pursuant to the procedures outlined by the U.S. Supreme Court.

I also desire to exercise my rights to a full accounting performed by an independent auditor and a reasonably prompt opportunity to challenge any fees before an impartial decision-maker. I further insist that any disputed fees be placed in escrow pending a final determination as to the appropriateness of any asserted charges.

Please provide me with an accounting as soon as possible. Until such time as an accounting is provided to me, please escrow all of my dues that are not subject to an immediate rebate. Additionally, if there will be any delay in obtaining a full accounting, please advise me as to when this information will be forthcoming.

I would appreciate a prompt response to my request.

Sincerely,

YOUR NAME
YOUR HOME ADDRESS
YOUR COMPANY'S NAME
YOUR WORK LOCATION

Endnotes

- ¹ The First Amendment to the U.S. Constitution.
- ² Of course, also inherent in this freedom is the individual's right to abstain from religious beliefs and practices.
- ³ 49 Stat. 449 (1935).
- ⁴ See Robert P. Hunter, *Michigan Labor Law: What Every Citizen Should Know*, (August 1999) for a concise summary of the evolution of the National Labor Relations Act.
- ⁵ 1 NLRB, Legislative History of the National Labor Relations Act, at 15 (1985).
- ⁶ See, e.g. *Communication Workers v. Beck*, 487 U.S. 735 (1988); *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 309-310 (1986); *Ferris Faculty Association v. Lehnert*, 500 U.S. 507 (1991); and *Aboud v. Detroit Board of Education*, 431 U.S. 209, 234 (1977).
- ⁷ For an excellent explication of these rights and case law underpinning them, see Robert P. Hunter, *Compulsory Union Dues in Michigan* (May 1997).
- ⁸ See discussion in Parts II and III of this report, *infra*.
- ⁹ 42 U.S.C. Section 2000e(j).
- ¹⁰ 42 U.S.C. Sections 1971, 1975 a-d, 2000a, et seq.
- ¹¹ 42 U.S.C. Section 2000e-2(a)(1) & (2).
- ¹² Title VII of the Civil Rights Act, Section 701(b).
- ¹³ Joel W. M. Friedman and George M. Strickler, Jr., *The Law of Employment Discrimination 2nd Edition*, (1987) at 43.
- ¹⁴ 42 U.S.C. Section 2000e-2(c)(1)-(3).
- ¹⁵ 29 C.F.R. Section 1605.1(a)(2) (1966).
- ¹⁶ See James G. Vantine, Jr., "Casenote: Labor Law—Religious Discrimination—Accommodation of Refusal to Pay Dues in an Agency Shop Because of Religious Beliefs," 23 WAYNE L. REV. 1171, 1175-77 (1977).
- ¹⁷ 42 U.S.C. Section 2000e(j) (1976).
- ¹⁸ *Id.*
- ¹⁹ See generally, Joel W. M. Friedman and George M. Strickler, Jr., *The Law of Employment Discrimination 2nd Edition*, (1987), at 302-325. "While the statute does not set out the limits of these general terms, the federal courts have uniformly adopted the interpretation given to the religious exemption provision of the selective service statutes by the Supreme Court in two conscientious objector cases, *Welsh v. United States*, 398 U.S. 333, 90 S.Ct. 1792, 26 L.Ed.2d 308 (1970); and *United States v. Seeger*, 380 U.S. 163, 85 S.Ct. 850, 13 L.Ed.2d 733 (1965).

Accordingly, a plaintiff need only prove (1) that his belief is 'religious' in his own scheme of things, and (2) that it is sincerely held." *Id.* at 302.

²⁰ Although union security clauses typically require the employer to discharge an employee upon the union's request for failure to either join the union within a particular time frame or tender non-member "agency fees", Michigan law also permits employers to deduct *unauthorized* agency fees directly from the reticent employee's paycheck and remit the fee to the union upon the union's request, if the employer and union so stipulate in the collective bargaining agreement. M.C.L.A. 408.477; M.S.A. 17.277(7).

²¹ 42 U.S.C. Sections 2000e(j), 2000e-2(a) & 2(c).

²² 302 F. Supp. 292 (1969), 429 F.2d 1064 (5th Cir. 1970), *cert denied*, 400 U.S. 1001 (1971).

²³ 316 F. Supp. 1369 (D. Mass. 1969), 440 F.2d 14 (1st Cir. 1971), *cert denied*, 404 U.S. 872 (1971).

²⁴ 302 F. Supp 292, 293.

²⁵ 440 F. 2d 14 (1st Cir. 1971).

²⁶ *Id.* at 18.

²⁷ Charleston C.K. Wang, "Religious Accommodation versus Union Security: A Tale of Two Statutes," NORTHERN KENTUCKY L. REV. *supra*, note 19 at 346.

²⁸ 501 F. 2d 38 (9th Cir 1974), *on remand*, 428 F. Supp. 763 (C.D. Calif. 1977), *aff'd* 602 F. 2d 904 (9th Cir. 1979), *cert. denied*, 445 U.S. 928 (1980).

²⁹ Wang, *supra*, note 29 at 347.

³⁰ *Id.*

³¹ *Id.* .

³² *Id.*

³³ 378 F. Supp. 1258 (N.D. Tex. 1974), *reh. denied*, 537 F.2d 1143 (5th Cir. 1976), *cert. denied sub nom.*, *International Ass'n of Machinists and Aerospace Workers v. Hopkins*, 433 U.S. 908 (1977).

³⁴ 378 F. Supp. at 1262.

³⁵ 533 F.2d 163, 166 n.4.

³⁶ Wang, *supra* note 29 at 350.

³⁷ 375 F. Supp. 877 (W.D. Mo. 1974), *rev'd*, 527 F.2d 33 (8th Cir. 1975), *rev'd*, 432 U.S. 63 (1977).

³⁸ 432 U.S. at 69.

³⁹ 527 F.2d 33 (8th Cir. 1975).

⁴⁰ 432 U.S. at 70.

⁴¹ Id. at 79. Title VII also carves out a specific exception to its provisions for seniority systems implemented without an intention to discriminate on the basis of race, color, religion, sex, or national origin. See Wang, *supra* note 29 at 353 n. 144.

⁴² 432 U.S. at 84.

⁴³ Id.

⁴⁴ Wang, *supra* note 29 at 354.

⁴⁵ Id. at 354-55.

⁴⁶ 696 F.2d 34 (6th Cir. 1982).

⁴⁷ 571 F. 2d 338, 343 (6th Cir. 1978).

⁴⁸ 509 F. Supp. 1055 (W.D. Mich. 1981).

⁴⁹ Id. at 1061.

⁵⁰ 696 F.2d 34, 38 (6th Cir. 1982).

⁵¹ Id.

⁵² Id.

⁵³ 589 F.2d 403 (9th Cir. 1978), *cert denied*, 439 U.S. 1072 (1979).

⁵⁴ Id. Accord, *Intern. Assn. of Machinists v. Boeing Corp.*, 833 F.2d 165 (9th Cir. 1987), *cert. denied*, 485 U.S. 1014 (1988); *Tooley v. Martin-Marietta Corp.*, 648 F.2d 1239 (9th Cir. 1981) *cert. denied*, 454 U.S. 1098 (1981); *Nottelson v. Smith Steel Workers*, 643 F.2d 445, 451-52 (7th Cir. 1981); *EEOC v. Davey Tree Surgery Co.*, 671 F. Supp. 1260 (N.D. Calif. 1987).

⁵⁵ Michael Wolf, Bruce Friedman, Daniel Sutherland, *Religion in the Workplace: A Comprehensive Guide to Legal Rights and Responsibilities*, American Bar Association, Chapter 10, p. 138 (1998).

⁵⁶ *EEOC v. University of Detroit*, 703 F. Supp. 1326 (E.D. Mich. 1988), *rev'd and remanded*, 904 F.2d 331 (6th Cir. 1990).

⁵⁷ 703 F. Supp. 1326, 1328.

⁵⁸ Id. at 1328, n.1.

⁵⁹ Id. at 1328, n.3.

⁶⁰ 904 F.2d. at 332, n.1. "Roesser became aware of the MEA's position when it mounted a petition drive to remove a Michigan state probate judge who compelled an 11-year-old ward of the court to carry her pregnancy, the result of a rape, to term. Similarly, Roesser became aware of the NEA's position through its statement of December 16, 1981, before the Subcommittee on the Constitution of the Senate Judiciary Committee, in which it expressed strong opposition to 'all proposals that would constrict the availability of abortions and other reproductive health care.'"

⁶¹ 701 F. Supp at 1330 Roesser articulated his religious beliefs in an amendment to his charge against

the University and the union: “My understanding of the teachings of the Church, and my personal belief, is that a member of the Church should not campaign in favor of abortion laws, vote for them or collaborate in their application Because of my sincerely held religious beliefs, I may not pay money to the union to support these pro-abortion activities nor may I associate with the union because of this activities.”

⁶² Id.

⁶³ 701 F. Supp at 1328, n.2. “It appears undisputed that the UDPU did not take a pro-choice position on the abortion issue, and made no local expenditures to which Roesser objects. See text accompanying n. 6 *infra*; UDPU’s Motion for Summary Judgment (Pl. 78) at 4; Intervenor’s [sic] Trial Brief (Pl. 145) at 8-9.”

⁶⁴ 904 F.2d at 333.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ *EEOC v University of Detroit*, 703 F. Supp. 1326 (E.D. Mich. 1988).

⁷⁰ University of Detroit, *supra* note 59 at 1332-33.

⁷¹ Id. at 1343.

⁷² Id. at 335.

⁷³ 904 F.2d at 334.

⁷⁴ Id. The court suggested that a reasonable accommodation may require Roesser to pay all of the agency fee, including the amount normally forwarded to the MEA and NEA, to the UDPU, as the UDPU’s activities apparently did not trouble Roesser.

⁷⁵ *EEOC v. AFSCME*, 937 F. Supp. 166 (N.D.N.Y. 1996). See also *EEOC v. Alliant Techsystems, Inc.*, 78 FEP Cases 37 (W.D. VA 1998) (Proposal by employer and union to allow employee to donate portion of his union dues attributable to objectionable political causes to charity, with the remainder being paid to the union to cover expenses for collective bargaining, is inadequate in view of employee’s feeling that any support of a union that supports candidates and causes that he finds offensive transgresses his religious beliefs.)

⁷⁶ *Anderson v. General Dynamics, Convair Aerospace*, 589 F.2d 397 (1978); See also *Smith v. Pyro Mining Co.*, 827 F.2d 1081 (6th Cir. 1987); *McDaniel v. Essex International, Inc.*, 571 F.2d 338 (6th Cir. 1978).

⁷⁷ Appendix A to EEOC Guidelines, 29 CFR Sections 1605.2 & 1605.3.

⁷⁸ See, e.g. *Bellamy v. Mason’s Stores, Inc.*, 368 F. Supp. 1025 (E.D. VA 1973) (Beliefs springing from the tenets of the Ku Klux Klan are nor religious beliefs.)

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- ⁷⁹ See Robert P. Hunter, *Compulsory Unionism in Michigan*, May 1997, for a full explanation of workers' rights to limit their financial support of their union to their pro rata share of collective bargaining, grievance processing, and contract administration.
- ⁸⁰ See, e.g. *EEOC v University of Detroit*, 703 F. Supp. 1326 (E.D. Mich. 1988), *rev'd and remanded*, 904 F.2d 331 (6th Cir. 1990). Robert Roesser's written communications describing his religious faith, interpretations of Church teachings, understanding of union activities relative to those beliefs, and acceptable accommodations.
- ⁸¹ 42 U.S.C. Section 2000(e)-5(e)(1).
- ⁸² The Elliott-Larsen Civil Rights Act (ELCRA), MCLA 37.2101; MSA 3.548(101), is Michigan's civil rights statute. Although the statute specifies prohibited acts for labor organizations, ELCRA does not contain the same specific mention of the employer's or union's duty to accommodate religious beliefs. At the time of this writing, no cases of union-based religious discrimination arising from religious objections to union security clauses were brought under ELCRA.
- ⁸³ 61 Stat. 136 (1947).
- ⁸⁴ Public Law 93-360; 88 Stat. 395 (1974).
- ⁸⁵ *Tooley v. Martin-Marietta Corp.* 648 F2d 1239, (1981), cert. denied, 454 US 1098, (1981); *Machinists Lodge 751 v. Boeing Co.*, 833 F2d 165, (CA 7 1987), cert. denied, 485 US 1014, (1988).
- ⁸⁶ Amalgamated Transit Union Local 836 (Grand Rapids City Coach Lines), 293 NLRB No. 62, (1989).
- ⁸⁷ *Wilson v. NLRB* 920 F2d 1282 (CA6, 1990), denying review of Amalgamated Transit Union Local 836, supra note 86.
- ⁸⁸ 487 US 735 (1988).
- ⁸⁹ See General Motors, 373 U.S. 734 (1963); Pattern Makers v. NLRB, 473 U.S. 95 (1985).
- ⁹⁰ See International Ass'n of Machinists v. Boeing Co., 833 F. 2d 165 (9th Cir. 1987), cert. denied, 485 U.S. 1014 (1988).

Acknowledgments

The authors gratefully acknowledge Mackinac Center for Public Policy Managing Editor of Publications David Bardallis, Communications Specialist Sam Walker, and Graphic Arts Manager Daniel Montgomery for their invaluable assistance in the production of this report.

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ISBN: 1-890624-21-7

S2000-03