

Section 16 - see below

Section 16. Service Fee

A. Implementation of Service Fee

All employees who are covered by this MOU but who are not members of SLEOLA shall pay to SLEOLA their fair share of the cost of services rendered by SLEOLA that are chargeable as a service fee. Employees in the unit who choose not to become members of SLEOLA within thirty (30) calendar days of employment or thirty (30) calendar days of the signing of this MOU shall be required to pay the service fee. The determination of the fee, collection, escrow, disputes, and other procedures relating to the service fee shall comply with all legal requirements and be governed by the terms and conditions described in Appendix A-1 of this MOU. The service fee shall not exceed the amount of dues uniformly required of SLEOLA members.

B. Amount and purpose of Representation Fee

On or before July 1 of each fiscal year, SLEOLA will determine, pursuant to the criteria contained in Appendix A-1 of this MOU, its calculation of the service fee based on a percentage of its regular expenses; said percentage to represent the cost of all services performed by SLEOLA under Title 3 of the State Personnel and Pensions Article, Annotated Code of Maryland or otherwise lawfully chargeable to employees covered by this MOU who are not members of SLEOLA.

C. Notice to Employees

Before each fiscal year, SLEOLA will send a written notice to each employee in the unit who is required to pay a service fee.

D. Collection of Fee

The State shall automatically withhold from the bi-weekly salary of each employee who is not a member of SLEOLA the service fee as calculated. Such involuntary deduction shall remain in effect until the legal authority for the deduction no longer exists. 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 is not required to pay a service fee but is required to pay an amount equivalent to the service fee required of employees who are covered by this MOU but who are not members of SLEOLA, to any charitable organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code. It shall be the sole obligation of any such employee to furnish to SLEOLA and to the Department of Budget and Management written proof that charitable contributions contemplated hereby have actually been made and that said employees are not subject to a service fee involuntary deduction.

F. Indemnity

SLEOLA 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 SLEOLA pursuant to this section. SLEOLA assumes full responsibility for the disposition of the funds deducted under this section as soon as they have been remitted by the State to SLEOLA. 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 SLEOLA to take appropriate steps to collect the amount or otherwise enforce the requirement in question.

Appendix A-1

SLEOLA Service Fee

1. Amount and Purpose of Service Fee.

- A. On or before July 1 of each contract year, SLEOLA will determine the service fee based on a percentage of its regular expenses for its prior year, said percentage to represent the cost of all services performed by SLEOLA under the Memorandum of Understanding with the State. The fee may include all costs incurred by SLEOLA: (1) in negotiating, administering, and implementing of the terms of the MOU; (2) in providing representation in grievances; (3) in providing representation in disciplinary proceedings and appeals; (4) in the protection of rights available under local, state and federal anti-discrimination laws; and (5) for any other purpose that is lawfully chargeable to employees in the bargaining unit who do not join SLEOLA.
- B. SLEOLA will base its determination of the service fee on an audit or review of its financial records and other documents describing SLEOLA's activities for bargaining unit members and will be guided by the United States Supreme Court decision in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), and other relevant federal and state court decisions. The service fee shall not include the cost of political or ideological activities unrelated to collective bargaining or activities for or benefiting only union members.

Each year, when it determines the service fee, SLEOLA shall follow these guidelines, which guidelines shall be irrefutably presumptive and may not be challenged in any proceeding on the amount of the fee in any year:

- (i) SLEOLA shall not charge nonmembers for costs associated with any affiliation fees and organizing, unless those expenses are chargeable to nonmembers to the extent permitted by §1.A, above.
- (ii) Those costs associated with legislative activities (including lobbying the Maryland General Assembly) and conferences shall be allocated, as between chargeable and non-chargeable expenses, by purpose, and shall be chargeable to nonmembers to the extent permitted under §1.A, above.
- (iii) SLEOLA shall not claim as chargeable (or attempt to collect a fee) any item or items of expense for which there is insufficient documentation to support a charge against nonmembers, or for that portion of its expenses or financial statements as to which Certified Public Accountants express either a qualified or adverse opinion or a disclaimer of opinion.
- (vi) SLEOLA shall engage independent public accountants to audit or review and issue a special report on its allocation of chargeable and nonchargeable costs, consistent with the appropriate audit standards of the American Institute of Certified Public Accountants.

2. Notices to Employees.

On or before July 1 of each contract year, SLEOLA will send written notice to each employee in the unit who is required to pay a service fee under Article IV, Section 16 of the MOU. The notice will inform and disclose to each member of the bargaining unit:

- A. His or her obligation under Article IV, Section 16 of the MOU to pay a service fee;
- B. All procedures described in Article IV, Section 16 of the MOU and this Addendum;
- C. The amount of the service fee and the manner in which it was determined, including financial disclosure of the major categories of SLEOLA expenditures which form the basis for the service fee;
- D. The State's procedure for automatic payroll deduction of the service fee and the transmission of such fee to SLEOLA; and
- E. The employee's option not to pay the fee where the employee holds religious beliefs that are opposed to joining or financially supporting any collective bargaining organization.

3. Pro Rata Portion in Certain Circumstances.

If an employee who is required to pay a service fee under Article IV, Section 16 of the MOU is employed on a part-time basis, or for less than a full contract year, the service fee for that employee for said contract year will be a *pro rata* portion of the annual fee, based on the number of days or proportion of time actually worked during said year rounded to nearest month.

4. Collection of the Service Fee.

The service fee will be collected by direct payroll deduction made bi-weekly, out of wages, in installments that are as equal as practicable. Collections shall begin, each fiscal year, no earlier than the first full payroll period in the month of July.

5. Exclusions.

- A. The obligation to pay a service fee will not apply to an employee whose religious beliefs are opposed to joining or financially supporting any collective bargaining organization. In order to be eligible under this Subsection for an exemption from the obligation to pay a service fee for any contract year, an employee must:
- (1) Submit to SLEOLA and the State prior to July 1 of each contract year, or within thirty (30) days after being hired into a bargaining unit position, whichever is later, a written statement setting forth the basis of his or her religious beliefs.
 - (2) During said contract year, pay an amount equal to the service fee to a charitable organization exempt from taxation under §501(c)(3) of the Internal Revenue Code; and
 - (3) Prior to the end of said contract year furnish to SLEOLA and the Department of Budget and Management written proof of such payment.

6. Information and Disputes.

- A. Within ten (10) days after the end of each calendar month, the State will submit to SLEOLA a list of all employees who are newly hired into unit positions during the previous month.
- B. Any dispute between SLEOLA and the State as to the meaning or application of Article IV, Section 16 of the Agreement or as to this Appendix or 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. However, any objection by an employee who is required to pay a service fee shall be handled between the objecting employee and SLEOLA in a manner described in paragraph 7 of this Appendix.

7. Objection Procedure and Escrow Provisions.

- A. Any employee who is obligated to pay a service fee as described herein shall have the right to object and dissent from the amount of the service fee, including the manner in which the amount of the service fee was determined; the calculations involved; and the financial information upon which the service fee was based. Such objections shall be handled exclusively as provided under this section of the Appendix.
- B. Within thirty (30) days after receipt of the notice described in paragraph 2 above, the affected employee shall file a written statement of objection with SLEOLA. A letter stating the employee's objection shall be sufficient. However, any objection not filed within thirty (30) days shall be deemed to have been waived as not timely filed. Any objection to the amount of computation of the fee in any contract year must be filed within thirty (30) days after notice of that fee, as provided in Article IV, Section 16C of this MOU, and in paragraph 2 of this Appendix, is received.
- C. A dissenting employee timely filing his or her own written objection shall be entitled to have his or her objection expeditiously resolved by an impartial arbitrator. The impartial arbitrator shall be selected

either pursuant to the Rules for Impartial Determination of Union Fees established by the American Arbitration Association (AAA) or by the Federal Mediation and Conciliation Service (FMCS). The dispute shall be resolved as follows:

- (1) The employee's objection to the amount of the fee must be in writing, and must be mailed to SLEOLA at:

SLEOLA
PO Box 6647
Annapolis, MD 21401

- (2) SLEOLA initially may answer the objections of all employees in a single written response, but such response shall be mailed or delivered within thirty (30) days after the objections period that is referred to in paragraph 7B of this Appendix has expired.
 - (3) If no resolution is reached, SLEOLA will request either the AAA or the FMCS to provide the name of an independent arbitrator with prior experience in the arbitration of disputes concerning service fees.
 - (4) The objecting employees and SLEOLA shall each be solely responsible for their own attorney's fees and other representation costs.
 - (5) The arbitrator shall consolidate the objections of all employees and shall issue one opinion to determine their claims. To the extent permitted by law, the decision of the arbitrator shall be final and binding on all objecting employees and SLEOLA.
 - (6) The arbitrator shall be limited in authority to rule upon the issues properly presented with regard to the lawfully chargeable amount of the service fee. The arbitrator may refer to and rely on existing legal authority on agency or service fees outside of the MOU when ruling on the amount of the fee.
- D. Written notice of objection by an employee shall not relieve the employee of the obligation to pay the service fee. However, immediately upon receipt of the notice of objection, SLEOLA shall place the amount of the objecting employee's service fee which is in dispute in an escrow fund and shall continue to place the challenged portion of service fee in escrow until the objection is resolved.
- E. The escrow fund shall be maintained by SLEOLA at an independent bank or trust company and the agreement therefore shall provide that the escrow account be interest bearing. SLEOLA shall not withdraw or convert monies in the fund until the receipt of the opinion of the arbitrator, and then only in accordance with that decision.
- F. SLEOLA shall furnish objecting employees with verification of the terms of the escrow arrangement and, on reasonable request, the status of the fund as reported by the bank.
- G. When issuing a decision and award, the arbitrator shall determine the disbursement of the disputed service fee held in escrow and SLEOLA shall not release the funds to its general account or to an objecting employee except by direction of an arbitrator or by mutual agreement of SLEOLA and the objecting employees.