

IMPORTANT NOTICE TO ALL POAM, COAM, TPOAM & FAOM BARGAINING UNIT MEMBERS

(REVISED: JANUARY 22, 2021)

**Frank A. Guido
General Counsel**

Notice: Due to a decision by the Michigan Employment Relations Commission, as affirmed by the Michigan Court of Appeals, the Executive Board of the Union has passed a Resolution and Adopted an “Interim Union Operating Procedure: Payment for Labor Representation Services and Membership Rules,” effective January 22, 2021.

An employee that does not want to be a member of the union is still considered, by law, a member of the bargaining unit. A non-dues employee (hereinafter designated as “nonmember”) will not be entitled to rights enjoyed by a dues-paying employee (hereinafter designated as “member”). Nonmember status means the employee:

- ✓ Will not be allowed to give input on collective bargaining issues.
- ✓ Will not be allowed to participate in contract ratification voting.
- ✓ Will not be allowed to attend union meetings.
- ✓ Will not be allowed to vote in elections for union officers.
- ✓ Will not be allowed to hold union office.
- ✓ Will not be eligible for coverage under the union extended legal representation plan.

The Union has adopted “Interim Union Operating Procedure: Payment for Labor Representation Services and Membership Rules,” effective January 22, 2021, pursuant to the authority of the Public Employment Relations Act, sections 10(2)(a) and 10(3)(c). Pursuant to the Interim Operating Procedure, all bargaining unit members shall be provided direct representation services concerning employment related issues upon payment for the requested services.

The Interim Union Operating Procedure is expressly intended by the Union to serve as a fair-share mechanism for dues-paying employees and non-dues employees, as “membership” of the bargaining unit, to pay for representation services, but not as a condition of obtaining or continuing public employment. A bargaining unit member, regardless of status as a dues-paying employee or non-dues employee, retains the right pursuant to section 11 of PERA to present a grievance to the employer, without intervention of the Union, thereby preserving an independent mechanism for a bargaining unit member to have redress to a grievance, subject to further provisions of section 11 of PERA.

In addition to PERA allowing a pay for services procedure, there exists further guidance in support from the United States Supreme Court in *Janus v AFSCME (2018)*, which declared:

“Individual nonmembers could be required to **pay for that service** or could be **denied union representation** altogether.” (pg. 17 of slip opinion) “.... This more tailored alternative, if applied to other objectors, would **prevent free ridership**.....” (pg. 17 of slip opinion at footnote 6).

The Union has determined that it is in the best interest of the labor organization and its bargaining unit membership, including dues-paying employees and non-dues employees, to establish an Interim Internal Operating Procedure which comports with both PERA and the expressive message and viewpoint of the Union, which is not a mere recital of rationale. It is the expressive message and position of the Union that “forced inclusion” to the viewpoint of individuals who refuse the mutual obligation to fair-share in the cost of representation, thereby espousing their message of entitlement to free services to the detriment of the bargaining unit as a whole, subjects the Union to involuntary servitude, which is antithetical to the continued existence of the Union and to the expressive message of the Union to associate with all bargaining unit members who seek representation through unity and collective fair-share support, thereby maintaining the highest level of professionalism in representation and in collective union activity.

The employment related issues that a bargaining unit member may request paid-for direct representation services include:

- ✓ Consultation with a Union representative or Union Legal counsel.
- ✓ Internal investigatory proceedings, including critical incident submission of information (reports, statements, or verbal questioning-including *Weingarten* and *Garrity* related matters).
- ✓ Employer administrative proceedings, including department hearings, trial boards, civil service commission meetings/hearings, pension board meetings/hearings, or any other commission, council, board, or tribunal proceeding.
- ✓ State administrative proceedings, including, but not limited to, representation/unfair labor practice proceedings (direct not collective) before the Michigan Employment Relations Commission.
- ✓ Grievance step meetings, arbitration filing, preparation for hearing, arbitration hearing, and post-arbitration matters, including filing of post-hearing briefs.

The fees to be charged for requested direct representation services shall include:

- (a) grievance arbitrator fees; (b) alternative dispute resolution agency charges for filing, processing and administration of arbitration cases (AAA, FMCS and MERC); (c) witness fees, including expert witness fees; (d) subpoena fees; (e) transcript fees; (f) court costs and related filing fees and expenses; (g) appeal fees and related costs and expenses; (h) the hourly equivalent of the wages and benefits of the direct provider of services, whether business agent or attorney;
- (i) any contact in which the member or nonmember has requested the presence of a Union

representative, including any form of meeting, interview, or other contact, whether in-person or remote, with an employer representative and/or Union representative; and (j) the filing and processing of a grievance through the contractual grievance steps. The filing and processing of a grievance does not create a duty, agreement, or requirement on the part of the Union to pursue the grievance to arbitration. The Union reserves the right to decline pursuit of a grievance to arbitration.

The Union has established set fees for several representation activities, including: \$100.00 per day for any contact in which the member or nonmember has requested the presence of a Union representative, and \$500.00 for the filing and processing of a grievance through the contractual grievance steps. The fees for any additional requested direct representation services, including, but not limited to an arbitration proceeding, shall be initially estimated, and thereafter determined, by the Union on a case-by-case basis.

Prior to providing requested services, 50% of the amount of fees for services (including estimated and determined amounts) shall be paid by the member/nonmember, with the remainder being paid through monthly installments, in an amount/duration to be determined by the Union, in its sole discretion. The amount of the monthly installment payment shall not exceed an amount that is comparable to the monthly dues being paid by a member. In the event the member/nonmember declines responsibility for the required fee, the Union shall withdraw from further representation in the matter, however, it is recognized that the member/nonmember retains the right pursuant to section 11 of PERA to pursue an independent grievance with the employer.

Nonmember payment of the initial 50% of the amount of fees for services, and subsequent monthly installments, shall be paid directly to the Union by personal check payable to the Union, or through any other acceptable payment format as determined by the Union, in its sole discretion. In the event the nonmember was previously a member, the initial 50% amount of fees for services shall be credited, to the extent sufficient, against the dues the nonmember previously paid to the Union. Member payment of the initial 50% of the amount of fees for services, to the extent sufficient, shall be credited against dues the member previously paid to the Union. Subsequent monthly installments of the balance owed for services shall be paid through credit against the member's on-going monthly dues deduction.

In the event a member opts-out of membership prior to payment of the full amount of installment payments, the former member shall remain responsible for direct payment of the remaining balance through monthly installments. Failure of a member or nonmember to pay the full amount assessed for direct representation services, through the procedure set forth hereinabove, may result in a suspension of future direct representation services until such time as the full amount assessed has been paid, as determined by the Union, in its sole discretion. Any

failure to pay the full amount assessed may result in the Union seeking recovery of the unpaid amount through civil litigation.

During the pendency of an employment related issue, a nonmember shall only be allowed to opt-in to the status of a dues-paying member if allowed by PERA, provided the employee has not been terminated from employment. If an employee opts-in to the status of a dues-paying member, the employee shall also comply with the Union membership rules for reinstatement, as set forth hereinafter. In addition, payment of fees assessed by the Union for services rendered to the employee as a nonmember shall continue to be paid by the employee in accordance with the procedure set forth hereinabove. In the event of any future opt-out by the employee prior to payment in full of the assessed fees, the employee shall remain responsible for direct payment of the remaining balance through monthly installments, paid directly to the Union.

The rules for opt-in to the status of a dues-paying member are as follows:

- ✓ Payment to the Union of a \$500 administrative/user/initiation/reinstatement fee, to be paid as follows: for every continuous month of maintaining dues-paying member status, the amount of the fee shall be credited against the monthly amount of dues paid. All dues-paying members, regardless of length of membership, shall be subject to an initiation fee of \$500, provided the amount shall be deemed credited against previous payment of dues, if sufficient. If not sufficient, the amount of the fee shall be reduced each month by credit against the monthly amount of dues being continuously paid.
- ✓ Execution of a deduction of Union dues/fees authorization form with the public employer.
- ✓ Until such time as the \$500 administrative/user/initiation/reinstatement fee has been paid, the member shall not be allowed to vote for elective office, nor shall the member be allowed to hold elective office.

Notice: This document is intended as a summary of the provisions within the Union Executive Board Resolution and the Adopted Interim Union Operating Procedure: Payment for Labor Representation Services and Membership Rules. As such, this document is not intended to replace implementation of the primary documents.