



*** MEMORANDUM ***

To: Local & Unit Public Sector Presidents

From: Danny Donohue, President

Date: April 13, 2018

Re: *Amendments to DFR statute*

The Taylor Law with regard to the Union's Duty of Fair Representation ("DFR") has been amended by the New York State Legislature.

Prior to the change, under New York law, CSEA was required by law to represent members and non-members (currently known as agency fee payers) the same. That is, CSEA had to treat non-members the same in collective bargaining (contract negotiations); provide all benefits under a contract; grievance handling—both contract and disciplines; non-contract disciplines (i.e., Section 75); Justice Center Matters; Civil Service Law section 71, 72, and 73 hearings; state court matters (i.e., Article 78s, statutory claims); federal court matters; administrative matters (DHR, EEOC); licensing matters, expungement cases; and other legal proceedings that CSEA routinely provided representation for.

In short, under the old law, CSEA members' rights over non-members (agency fee payers) were running for Union office, voting in Union elections, voting in contract ratifications, attending certain Union trainings and access to member only benefits and insurances.

Now, the law, as amended, provides that the Union's DFR to non-members is limited to the negotiation of contracts—that is, we cannot have contracts that have different provisions for members and non-members; and the enforcement of the terms of a collective bargaining agreement—that is the filing and pursuing a contract grievance.

The Union is no longer required to represent non-members during questioning by an employer; in statutory or administrative proceedings; in any stage of a grievance, arbitration or other contractual process concerning the evaluation or discipline of the non-member where the non-member is

permitted to proceed without the employee organization and be represented by his or her own advocate.

Further, the Union is not prohibited from providing legal, economic, or job-related services or benefits beyond those provided in a contract only to its members.

Under the amended law, CSEA has the discretion to refuse to represent non-members in certain matters. That is, CSEA may represent non-members, but is not required to under the law.

Thus, CSEA does not have to represent non-members in any:

- Disciplinary matters
- Justice Center Matters
- Administrative matters—DHR, EEOC, Expungement hearings
- State Court matters
- Federal Court matters
- Licensing hearings
- Civil Service section 71, 72, and 73 proceedings

Further, non-members remain ineligible for member-only benefits, member-only insurances, the right to run for Union office, vote for Union officer candidates, vote in contract ratifications, and attend Union trainings.

Please remember, if your contract contains a discipline procedure that only permits CSEA to proceed to arbitration, CSEA must facilitate the non-member in getting to arbitration if the non-member so chooses. That is, if a non-member wishes to defend his or her discipline with his or her own advocate, but the contract only allows CSEA to file for arbitration, CSEA will have to file to arbitration. The costs will still be covered by the non-member and not CSEA.

The effective date of the new law was immediately. However, because agency fee payers are still paying their fair share, CSEA will continue to represent non-members (agency fee payers), as we do today, until the Supreme Court issues its ruling in the *Janus* case. If that ruling, as expected, makes agency fees unconstitutional—that is illegal—CSEA will no longer represent non-members as described above.

If you have any questions about the new DFR law and/or this memorandum, please contact the CSEA Legal Department.