

Chapter 4

Union security arrangements

The LRA assists unions to become strong and stable by providing for agency shop and closed shop agreements.

Agency shop agreements

An agency shop is a system that requires non-union employees to pay an amount into a special fund kept by the union. The amount may not be more than a union member's subscription. This money may only be used to advance and protect the socio-economic interests of employees.

The aim of an agency shop is to ensure that non-union employees, who nevertheless benefit from the union's bargaining efforts, make a contribution towards those efforts.

Establishing an agency shop

Only a majority union (or unions which jointly have a majority of employees as members) in a workplace or a sector can establish an agency shop by reaching an agency shop agreement with an employer or employers' organisation.

Controls on the agency shop

The employer must pay the employees' agency fee into a separate account administered by the union. This account must be audited once a year and the auditor's report must be available for inspection at the office of the registrar of labour relations.

Agency fees from a conscientious objector (an employee who refuses to belong to a union on the grounds of conscience) must be paid to a fund administered by the Department of Labour if the employee requests this.

Agency shop fees cannot be used to make contributions to political parties or political candidates or used to pay affiliation fees to political parties. However, the fees can be used to advance or protect the socio-economic interests of employees. For example, a campaign against a VAT increase would probably be considered to be a campaign in the socio-economic interests of employees.

Closed shop agreements

Closed shop agreements have a similar aim to agency shop agreements, but provide a union with a more powerful way of strengthening its bargaining position with employers. Under a closed shop agreement, non-union employees must join the union or face dismissal. If a union expels a member or refuses to allow a new employee to become a union member and if this expulsion or refusal is in accordance with the union's constitution or is for a fair reason, then the employer will have to dismiss the employee.

Establishing a closed shop

There are two requirements for the establishment of a closed shop:

- an agreement must be reached between the relevant employer and a majority union (or unions acting jointly which constitute a majority) in a workplace or sector; and
- a ballot must be held among the employees at the workplace where the closed shop will apply and two thirds (66%) of the employees at the workplace who vote must support the establishment of a closed shop.

Controls on the closed shop

Apart from the voting requirements to implement new closed shop agreements, other democratic controls and protections for individuals are provided by the LRA, namely:

- if one third of the employees covered by the agreement sign a petition calling for the ending of the agreement and if three years have passed since the inception of the agreement or the last ballot was held, the union must hold a ballot to decide whether a closed shop agreement should end;
- the money deducted in terms of a closed shop agreement may only be used to advance or protect the socio-economic interests of employees and may not be used to make contributions to political parties or political candidates, or to pay affiliation fees to political parties;

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- a union which represents a significant grouping of employees covered by the closed shop can apply to join the closed shop agreement. If the existing parties to the agreement refuse to admit the new union, the union can apply to the CCMA to resolve the dispute. If conciliation fails, any party to the dispute may refer the dispute to the Labour Court; and
- an employee who is unfairly expelled from a union (for example, the employee is a conscientious objector who may validly refuse to join the union) and is subsequently dismissed, can challenge the dismissal in the Labour Court if conciliation has failed. If the court finds that the union's action was unfair, it must order the union, and not the employer, to compensate the employee.

It is not unfair in law to expel an employee or refuse an employee admission to a union if that employee undermines the union's collective exercise of its rights.

Further information

Relevant sections in the Act

Section 25: Agency shop agreements

Section 26: Closed shop agreements

Forms to fill in

LRA Form 3.1 Conscientious objector requests agency fee to be paid to Department

LRA Form 3.2 List of deductions from conscientious objector's wages