SUPREME COURT OF THE UNITED STATES

No. 97–428

AIR LINE PILOTS ASSOCIATION, PETITIONER *v.* ROBERT A. MILLER ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May 26, 1998]

JUSTICE GINSBURG delivered the opinion of the Court.

An "agency shop" arrangement permits a union, obliged to act on behalf of all employees in the bargaining unit, to charge nonunion workers their fair share of the costs of the representation. The purposes for which a union may spend the "agency fee" paid by nonmembers, however, are circumscribed by the First Amendment (when public employers are involved) and the National Labor Relations Act (NLRA) or Railway Labor Act (RLA) (when private employers subject to their provisions are involved). In *Teachers* v. *Hudson*, 475 U. S. 292 (1986), we held that the First Amendment requires public-employee unions to accord workers who object to the agency fee "a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker." *Id.*, at 310.

Petitioner Air Line Pilots Association (ALPA or Union), a private-sector labor organization covered by the RLA, acknowledges that it is bound by *Hudson*. ALPA endeavored to comply with *Hudson*'s "impartial decisionmaker" requirement by referring all fee disputes to a neutral arbi-

trator. In the action now before us, nonunion pilots challenged the agency fee collected by the Union in 1992. ALPA urged that the challengers must exhaust the arbitration process before pursuing judicial remedies. The Court of Appeals for the District of Columbia Circuit held that the pilots resisting the agency fee may proceed at once in federal court. We hold, in accord with the Court of Appeals, that employees need not submit fee disputes to arbitration when they have never agreed to do so.

I

ALPA represents, as exclusive bargaining agent, pilots employed by most United States commercial air carriers, including Delta Air Lines (Delta). In November 1991, ALPA and Delta amended their collective-bargaining agreement to include, *inter alia*, an "agency shop" clause. That clause, similar to provisions in ALPA's agreements with other carriers, required each pilot who was not an ALPA member to pay the Union a monthly "service charge as a contribution for the administration of [the collective-bargaining agreement] and the representation of such employee." App. 31.

On December 12, 1991, five Delta pilots filed this action against ALPA and Delta in the District Court for the District of Columbia. Their complaint charged that the "agency shop" clause was unlawful on its face. (Three of the original plaintiffs, plus 150 Delta pilots who subsequently intervened, are respondents here; the other two original plaintiffs were dismissed from the case for reasons unrelated to the issue we resolve. Delta was also dismissed from the case on grounds not pertinent here.) The pilots unsuccessfully moved for a preliminary injunction against implementation of the agency shop arrangement, and ALPA began collecting agency fees on January 1, 1992.

In 1992, ALPA charged its members monthly dues of

2.35 percent of each pilot's earnings. The Union ultimately determined, in its final, audited "Statement of Germane and Nongermane Expenses" (SGNE) for 1992, that 19 percent of ALPA's expenses for that year were not germane to collective bargaining. Accordingly, the Union adjusted fees charged nonmembers to equal 81 percent of the amount members paid.

On October 8, 1992, some months after the Union had begun to collect agency fees, the pilots moved to amend their complaint to add a count challenging the manner in which ALPA calculated the fee. They alleged, *inter alia*, that ALPA had overstated the percentage of its expenditures genuinely attributable to "germane" activities. The District Court granted the motion to amend on August 2, 1993. The pilots' original facial challenges to the agency-shop clause were later resolved in the Union's favor on summary judgment (a matter the pilots did not contest on appeal). Thus, the challenge to the 1992 agency fee calculation is the only claim before us.

Under ALPA's "Policies and Procedures Applicable to Agency Fees," pilots who object to the fee calculation may request arbitration under procedures the American Arbitration Association (AAA) devised to resolve such disputes. *Id.*, at 69–70. One hundred seventy-four Delta pilots filed timely objections with the Union after receiving the 1992 SGNE. ALPA treated those objections as requests for arbitration and referred them to the AAA. On October 15, 1993, the AAA appointed an arbitrator to resolve the objections in a single, consolidated proceeding.

The objectors included 91 of the 153 pilots who are respondents here. (The other 62 respondents intervened in the lawsuit but were not parties to the arbitration.) Preferring to pursue their challenges to ALPA's agency-fee calculation in the context of their ongoing federal-court action, the respondent-objectors asked the AAA to suspend the arbitration. The AAA referred that request to the

arbitrator, who declined to defer to the federal-court litigation. *Id.*, at 106. After the District Court denied a motion to enjoin the arbitration, *Id.*, at 111–114, respondents' counsel entered a "conditional appearance" in the arbitral proceedings. The arbitrator held hearings in January, February, and March 1994. He ultimately sustained the Union's agency fee calculation in substantial part, although he concluded that "nongermane" expenses made up 21.49 percent of the union's budget, not 19 percent as the Union had determined. App. to Pet. for Cert. 71a–115a, 158a–161a.

After the arbitrator issued his decision, ALPA moved for summary judgment in the federal-court action. Granting the motion, the District Court concluded that pilots seeking to challenge the Union's agency-fee calculation must exhaust arbitral remedies before proceeding in court. *Id.*, at 26a–31a. Accordingly, the court held, the 62 respondents who did not join the arbitration were bound by the arbitrator's decision. *Id.*, at 32a. The other 91 respondents, the District Court ruled, qualified for clear-error review of the arbitrator's fact findings and *de novo* review of all legal issues. *Id.*, at 31a. Determining that the arbitrator had committed no error of law or clear error of fact, the court sustained his decision.

The Court of Appeals for the District of Columbia Circuit reversed. 108 F. 3d 1415 (1997). That court found "no legal basis" for requiring objectors to arbitrate agency-fee challenges unless they had agreed to do so (as respondents had not). *Id.*, at 1421 (emphasis deleted). It therefore concluded that "the arbitrator's decision [was] no longer a part of the legal picture," and for that reason the case "must be remanded." *Id.*, at 1422. We granted certiorari, 522 U. S. ___ (1997), limited to the question whether an objector must exhaust a union-provided arbitration process before bringing an agency-fee challenge in federal court, a matter on which the Courts of Appeals have

reached differing conclusions.[1]

II

A

Because Delta is a "common carrier by air engaged in interstate or foreign commerce," 45 U. S. C. §181, the RLA governs its bargaining relationship with ALPA. Section 2, Eleventh, of the RLA allows employers and unions to conclude agency shop agreements.[2] The statutory authorization for such agreements aims to resolve the problem of "free riders– employees in the bargaining unit on whose behalf the union [is] obliged to perform its statutory functions, but who refus[e] to contribute to the cost thereof."

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[1] Compare *Lancaster* v. *Air Line Pilots Assn. Int'l*, 76 F. 3d 1509, 1522 (CA10 1996) (exhaustion of arbitral remedy required), with *Knight* v. *Kenai Peninsula Borough School Dist.*, 131 F. 3d 807, 816 (CA9 1997) (exhaustion not required), and *Bromley* v. *Michigan Ed. Assn.-NEA*, 82 F. 3d 686, 694 (CA6 1996) (same).

[2] The RLA, §2, Eleventh, as added by 64 Stat. 1238, 45 U. S. C. §152, Eleventh, provides in pertinent part:

"Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted–

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership."

Ellis v. *Railway Clerks*, 466 U. S. 435, 447 (1984). Under agency shop arrangements, nonmembers must pay their fair share of union expenditures "necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." *Id.*, at 448. To avoid constitutional questions that might arise were we to adopt a contrary interpretation of the RLA, however, we have held that costs unrelated to those representative duties may not be imposed on objecting employees. See *id.*, at 448–455; see also *Railway Clerks* v. *Allen*, 373 U. S. 113, 121 (1963) (§2, Eleventh, distinguishes between "the union's political expenditures," to which nonmembers may not be compelled to contribute, and expenditures "germane to collective bargaining," to which they may); *Machinists* v. *Street*, 367 U. S. 740, 768–769 (1961) ("§2, Eleventh is to be construed to deny the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes"); see also *Communications Workers* v. *Beck*, 487 U. S. 735, 762–763 (1988) (same limitations apply under NLRA).

A similar rule– based explicitly on the Constitution– applies to public-sector employment. In *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209, 232 (1977), we upheld the constitutionality of agency shop agreements made by government employers with their workers' exclusive bargaining representatives. As the Court explained, imposition of agency fees under the RLA "is constitutionally justified by the legislative assessment of the important contribution of the union shop to the system of labor relations established by Congress," and "[t]he same important government interests . . . presumptively support" agency shop arrangements in the public sector. *Id.*, at 222, 225.

The agency fees assessed from nonmembers, we said in *Abood*, may be "used to finance expenditures by the Union for the purposes of collective bargaining, contract admini-

stration, and grievance adjustment." *Id.*, at 225–226. We cautioned, however, in view of the presence of state action, that objecting employees have a First Amendment right to "prevent the Union's spending a part of their required service fees to contribute to political candidates and to express political views unrelated to its duties as exclusive bargaining representative." *Id.*, at 234. In *Lehnert* v. *Ferris Faculty Assn.*, 500 U. S. 507, 519 (1991), we relied on both public-sector and RLA cases to hold that agency fees assessed by public-employee unions "must (1) be 'germane' to collective-bargaining activity; (2) be justified by the government's vital policy interest in labor peace and avoiding free riders'; and (3) not significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop."

In *Hudson*, a public-sector case, we held that the First Amendment required unions and employers to provide procedural protections for nonunion workers who object to the calculation of the agency fee. Three safeguards, we declared, are essential to "minimize the infringement" on nonmembers' rights and provide workers with "a fair opportunity to identify the impact of [the agency-fee assessment] on [their] interests," *Hudson*, 475 U. S., at 303: Employees must receive "sufficient information to gauge the propriety of the union's fee," *id.*, at 306; the union must give objectors "a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker," *id.*, at 310; and any amount of the objector's fee "reasonably in dispute" must be held in escrow while the challenge is pending. *Ibid.*

B

The Court of Appeals held that *Hudson*'s procedural requirements transfer fully to employment relations governed by the RLA, 108 F. 3d, at 1419, and the parties have

not challenged that determination.[3] We therefore turn directly to the question presented: When a union adopts an arbitration process to comply with *Hudson*'s "impartial decisionmaker" requirement, must agency-fee objectors pursue and exhaust the arbitral remedy before challenging the union's calculation in a federal-court action?

In his concurring opinion in *Hudson*, Justice White (joined by Chief Justice Burger) answered that question "yes." He stated: "[I]f the union provides for arbitration and complies with the other requirements specified in our opinion, it should be entitled to insist that the arbitration procedure be exhausted before resorting to the courts." 475 U. S., at 311 (concurring opinion). The Court's opinion did not comment on that unelaborated assertion, however, so the issue remains live for the decision we now reach. The Court of Appeals recognized that "Justice White raised a legitimate *practical* concern," but found "no *legal* basis for forcing into arbitration a party who never agreed to put his dispute over federal law to such a process." 108 F. 3d, at 1421 (emphasis in original). We agree, and decline to read *Hudson* as a decision that protects nonunion members at a cost– delayed access to federal court– they do not wish to pay.

ALPA urges extension of the discretionary exhaustion-of-remedies doctrine to agency-fee arbitration. See Brief for Petitioner 19 (citing *McCarthy* v. *Madigan*, 503 U. S.

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[3] See *Lehnert* v. *Ferris Faculty Assn.*, 500 U. S. 507, 516 (1991) ("[T]he RLA cases necessarily provide some guidance regarding what the First Amendment will countenance in the realm of union support of political activities through mandatory assessments."); *id.*, at 555 (SCALIA, J., concurring in judgment in part and dissenting in part) ("good reason to treat" statutory agency-fee cases as reflecting First Amendment principles articulated in *Abood*). But cf. *Price* v. *International Union, UAW*, 927 F. 2d 88, 92 (CA2 1991) (*Hudson*'s "heightened procedural safeguards" do not apply to agency-fee cases involving private employers governed by the NLRA).

140, 144 (1992) ("[W]here Congress has not clearly required exhaustion, sound judicial discretion governs.")).[4] But a principal purpose of that doctrine is not relevant here. "[T]he exhaustion doctrine recognizes the notion, grounded in deference to Congress' delegation of authority to coordinate branches of Government, that agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to administer." *McCarthy*, 503 U. S., at 145. ALPA seeks exhaustion not of an administrative remedy established by Congress but of an arbitral remedy established by a private party. Ordinarily, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U. S. 574, 582 (1960); see also *First Options of Chicago, Inc.* v. *Kaplan*, 514 U. S. 938, 942 (1995) ("a party who has not agreed to arbitrate will normally have a right to a court's decision about the merits of its dispute").

The Union, it is true, acted to comply with this Court's

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[4] *Amicus* National Education Association (NEA) argues that the question before us is one not of exhaustion but of ripeness. Illegality depends on the *spending* of compelled agency fees for ideological purposes, NEA maintains, not simply the initial collection of those fees; hence, an objector has no basis for filing suit until the arbitrator has ruled and the disputed amounts are released from escrow. See Brief for National Education Association as *Amicus Curiae* 18–20. Petitioner, in its reply brief, endorses NEA's argument. See Reply Brief 16–17. The contention, however, is inconsistent with *Teachers* v. *Hudson*, 475 U. S. 292 (1986). There, we rejected the union's position that "because a 100% escrow completely avoids the risk that dissenters' contributions could be used improperly, it eliminates any valid constitutional objection to the procedure and thereby provides an adequate remedy." *Id.*, at 309. We held that even if the entire agency fee remained in escrow throughout arbitration, objectors (who are deprived of the use of what may be their property pending the outcome of the dispute) had an independent, enforceable interest in the prompt and proper resolution of their objections.

decision in *Hudson* rather than out of its own unconstrained choice. But *Hudson*'s requirement of "a reasonably prompt decision by an impartial decisionmaker," 475 U. S., at 307, aims to protect the interest of objectors by affording them access to a neutral forum in which their objections can be resolved swiftly; nothing in our decision purports to compel objectors to pursue that remedy. See *Id.*, at 307 ("The nonunion employee, whose First Amendment rights are affected by the agency shop itself and who bears the burden of objecting, is entitled to have his objections addressed in an expeditious, fair, and objective manner."). Indeed, *Hudson*'s emphasis on the need for a speedy remedy weighs against exhaustion, even through an arbitration procedure intended to be expeditious, as an essential prerequisite to federal-court consideration of nonmember challenges. See *McCarthy*, 503 U. S., at 146 ("[A]dministrative remedies need not be pursued if the litigant's interests in immediate judicial review outweigh the government's interests in the efficiency or administrative autonomy that the exhaustion doctrine is designed to further.") (internal quotation marks omitted). We resist reading *Hudson* in a manner that might frustrate its very purpose, to advance the swift, fair, and final settlement of objectors' rights.

Against these concerns, ALPA stresses the asserted efficiency gains of requiring objectors to proceed to arbitration first. The Union asserts: "It is difficult to conceive how a court could fairly try an agency-fee dispute *ab initio*, given that the plaintiffs who challenge an agency-fee calculation are not required to state any grounds whatsoever for their challenge." Reply Brief 6–7. Arbitration, in ALPA's view, will serve a useful if not essential role in defining the scope of the dispute. See Brief for Petitioner 21–23; Reply Brief 4–7.

ALPA overstates the difficulties of holding a federal-court hearing without a preparatory arbitration. We have

held that "the nonunion employee has the burden of raising an objection, but that the union retains the burden of proof." *Hudson*, 475 U. S., at 306. And when pursuing the union's *internal* remedies, an objector may preserve the right to subsequent judicial relief without "indicat[ing] to the Union the *specific* expenditures to which he objects." *Abood*, 431 U. S., at 241 (emphasis in original). In stating that the "nonmember's 'burden' is simply the obligation to make his objection known," *Hudson*, 475 U. S., at 306, n. 16, however, we did not hold that a federal-court plaintiff can file a generally phrased complaint, then sit back and require the union to prove the "germaneness" of its expenditures without a clue as to "which of its thousands of expenditures" the objectors oppose. Reply Brief 4. Agency fee challengers, like all other civil litigants, must make their objections known with the degree of specificity appropriate at each stage of litigation their case reaches: motion to dismiss; motion for summary judgment; pretrial conference.

The very purpose of *Hudson*'s notice requirement is to provide employees sufficient information to enable them to identify the expenditures that, in their view, the union has improperly classified as germane. See 475 U. S., at 306–307. With the *Hudson* notice, plus any additional information developed through reasonable discovery, an objector can be expected to point to the expenditures or classes of expenditures he or she finds questionable. Although the union must establish that those expenditures were in fact germane, the shifted burden of proof provides no warrant for blocking dissenting employees from bringing their claims in federal court in the first instance, if that is their preference. The answer to ALPA's efficiency concern lies in conscientious management of the pretrial process to guard against abuse, not in a judicially imposed exhaustion requirement.

Moreover, the degree to which an exhaustion require-

ment would reduce the burden on the courts is uncertain. To the extent that the arbitrator does not sustain an objection to the union's fee calculation, exhaustion would require the objector to traverse two layers of procedure rather than one.[5] Furthermore, if the union's arbitration process in fact operates to provide an inexpensive, swift and sure remedy for agency-fee errors, dissenting employees may avail themselves of that process even if not required to do so. Cf. *Patsy* v. *Board of Regents of Fla.*, 457 U. S. 496, 513, n. 15 (1982) (under a "free market' system" of no required exhaustion, "litigants are free to pursue administrative remedies if they truly appear to be cheaper, more efficient, and more effective").

The Union may, nonetheless, face the prospect of defending its fee calculation simultaneously in judicial and arbitral fora. We note that unions do not lack means to limit the expense and disruption occasioned by multiple fee challenges: objections may be consolidated for consideration in a single arbitration, for example, and agency-fee litigation may be consolidated in a single district court. See 28 U. S. C. §§1404, 1407. But genuine as the Union's interest in avoiding multiple proceedings may be, that interest does not overwhelm objectors' resistance to arbitration to which they did not consent, and their election to proceed immediately to court for adjudication of their federal rights.[6] We hold that, unless they agree to the proce-

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[5] Inevitably limiting the utility of exhaustion in relieving the courts of the task of adjudicating agency-fee disputes is the nonbinding character of *Hudson* arbitration, a characteristic on which the dissent centrally relies. See *post*, at 1, 2, 3, 4–5, 5–6.

[6] Our recognition of the right of objectors to proceed directly to court does not detract from district courts' discretion to defer discovery or other proceedings pending the prompt conclusion of arbitration. See, *e.g.*, *Landis* v. *North American Co.*, 299 U. S. 248, 254–255 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of

dure, agency-fee objectors may not be required to exhaust an arbitration remedy before bringing their claims in federal court.

* * *

For the reasons stated, the judgment of the Court of Appeals for the District of Columbia Circuit is

Affirmed.

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time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.").