MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 7, 1985

The meeting of the Business and Labor Commitee was called to order by Chairman Bob Pavlovich on February 7, 1985 at 8:00 a.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present with the exception of Representative Fred Thomas, who was excused by the chairman.

HOUSE BILL 453: Hearing commenced on House Bill 453. Representative Dorothy Bradley, District #79, sponsor of the bill, stated that this bill amends the provisions of the law on total disability workers' compensation benefits. Temporary total disability is redefined to terminate when a vocational rehabilitation certification is made. The bill also provides that compensation for loss of certain body members, or of hearing or vision, or for disfigurement, the total disability benefits must be paid concurrently.

Proponent Monte D. Beck, an attorney who represented Matt Grimshaw in the Matthew Grimshaw case, stated that this statute was enacted in 1915. A person may receive benefits until such time as they are re-trained or employable. Temporary totally disabled should apply rather than permanent totally disabled.

Jan VanRiper, representing the Division of Workers' Compensation offered information only. House Bill 453 would bring the statute in line with case law. Indemnity benefits can be received only if an individual is permanent partially disabled nor permanent totally disabled. Problems of overpayment may surface with respect to House Bill 453. Ms. VanRiper suggested to the committee that on page 6, line 8 of the bill, the word "temporary" be inserted, to allow for temporary totally disabled.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 453 was closed.

HOUSE BILL 648: Hearing commenced on House Bill 648. Representative Mike Kadas, District #55, sponsor of the bill, stated that this bill would create a new class of restaurant license for on-premises consumption but not sale of beer and wine. The annual license fee is $100. The bill preserves

the prohibition against bottle clubs. A restaurant that presently does not have a beer and wine license, could allow a person to bring in beer and wine to be enjoyed with their meal provided a meal is purchased. House Bill 648 would help our small restaurants that cannot afford a license. A corkage fee could be charged by each restaurant with said fee being set by the owner.

Proponent Matthew Cohn, a Helena restaurant owner, explained that the cost to get a beer and wine license would be approximately $40,000, which is not practical or feasible for his small restaurant that employees 14 people and has a seating capacity of 40.

Proponent Adam McLane, stated that House Bill 648 would accomplish desirable goals and an increase in consumption should not be present.

Proponent Jerry Metcalf, stated that in the Kalispell area a liquor license is priced at approximately $400,000. House Bill 648 could be implemented without any cost to the state.

Proponent Roland D. Pratt, Executive Director, Montana Restaurant Association, offered his support of House Bill 648.

Opponent Bob Durkee, representing the Montana Tavern Association, stated that in 1982, Initiative 94 was defeated by 66% of the voters. A definition of meal or of a bonafide restaurant is not present in the bill. Mr. Durkee suggested to the committee that the bottle club section be repealed.

In closing, Representative Kadas stated that this is not a bottle club bill and he does not want to encourage bottle clubs. Alcohol would still be purchased in the regular stores and no impact on the quota would be felt.

Representative Pavlovich asked Representative Kadas, in a 24 hour restaurant, how drinking after 2:00 a.m. would be policed. Representative Kadas explained that the restaurant could jeopardize their license if drinking occurred after 2:00 a.m.

Representative Brown asked Representative Kadas if identification cards would be checked, Representative Kadas explained that yes, it would be the responsibility of the restaurant owner to prevent minors from drinking.

Representative Simon asked Representative Kadas if a person could drink as long as his companion had ordered a meal. Representative Kadas stated that the intention is that each person must order a meal in order to drink.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 648 was closed.

HOUSE BILL 391: Hearing commenced on House Bill 391. Representative Hal Harper, District #44, sponsor of the bill, stated that this bill allows a public employer to deduct a representation fee from the pay of an employee who is not a member of an exclusive bargaining representative. The bill is effective on passage and approval.

Proponent Phil Campbell, representing the Montana Education Association, stated that this would allow an employer to deduct a representation fee without the consent of the employee, if stated in the contract. If an employee refuses to pay, the employer is faced with dismissing the employee or being charged by the union for not complying. Exhibit 1 was presented by Mr. Campbell, showing 19 statutes in 13 states where this exists.

Proponent Nadiean Jensen, representing AFSCME and Tom Schneider, representing the Montana Public Employee Association, offered their support.

Opponent Wayne Buchanan, representing the Montana School Board Association, stated that agency shop is a benefit to a union, it increases the number of members, controls the rank and file and would serve as a balancing tool. The "agency shop" fee should be bargainable and not be removed or mandatory as House Bill 391 makes it. On page 2, line 1, the word "may" should be substituted for "shall". House Bill 391 changes the rules for all collective bargaining that is now in effect, added Mr. Buchanan.

Opponent Bill Verwolf, representing the City of Helena, stated that the payment of dues is between the union and the employee and an employer should not get involved.

Opponent Sue Robdy, representing the Montana University System, explained that the threat of being terminated usually will solve the problem. She supports the amendment proposed by Mr. Buchanan and does see that legal and constitutional problems may occur. Ms. Robdy presented Exhibit 2 which is attached hereto.

In closing, Representative Harper stated that the deduction would be made in whatever manner was agreed upon. Once a contract is signed, an individual should be held to the agreement. House Bill 391 would benefit the employee, employer, and the collective bargaining unit.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 391 was closed.

HOUSE BILL 387: Hearing commenced on House Bill 387. Representative Kelly Addy, District #94, sponsor of the bill, stated that this bill authorizes the Commissioner of Labor and Industry to make rules to implement Title 18, Chapter 2, page 4, which deals with special conditions of labor and includes sections on standard prevailing rate of wages, preference for Montana labor, fringe benefits, forfeiture by contractor for failure to pay prevailing wages, penalties, notice, bid specifications and submission of payroll records.

Proponent Dave Wanzenried, Commissioner, Department of Labor and Industry, stated that this would clarify the authority that is presently granted by statute. It would describe in detail how the process is to work and clarify what procedure is to be followed, added Mr. Wanzenried.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 387 was closed.

HOUSE BILL 437: Hearing commenced on House Bill 437. Representative Kelly Addy, District #94, sponsor of the bill, stated that this bill changes from 12% to 8% the annual allowable increase in total annual revenues that a municipality may realize from utility rate raises. Exhibits 3, 4, and 5 were distributed to the committee by Representative Addy.

Proponent Tom Monahan, representing the Public Service Commission, offered his support of House Bill 437.

Proponent Russ Brown, representing Northern Plains Resource Council, supplied written testimony which is attached hereto as Exhibit 6.

Proponent Jim Paine, representing the Montana Consumer Counsel, stated that it is healthy for communities to come before the Public Service Commission and not pass increases without their permission. The city governments are concerned with their citizens welfare, added Mr. Paine.

Proponent Teri England, representing the Montana Public Interest Research Group, offered her support of House Bill 437.

Proponent Riley Johnson, representing the Montana Homebuilders' Association, stated that a percentage increase may occur along with a hookup increase.

Opponent Allen Hansen, representing the Montana League of Cities and Towns, stated that cities have suffered due to regulating their own utilities. A municipal utility could increase 12% per year, yet are averaging a 4.2% increase per year.

Opponent Nathan Tubergen, Finance Director, City of Great Falls, submitted written testimony which is attached hereto as Exhibit 7.

Opponent Bill Verwolf, representing the City of Helena, supplied testimony as shown on his witness statement attached hereto.

Opponent Alan Towlerton, representing the City of Billings, presented testimony as shown on his witness statement attached hereto.

Opponent Doug Daniels, representing the Cities of Belgrade and Three Forks and the Town of Manhattan, supplied written testimony which is attached hereto as Exhibit 8.

Opponents Greg Jackson, representing the Urban Coalition and Henry Hathaway, representing the City of Belgrade, extended their opposition to House Bill 437.

In closing, Representative Addy explained that this issue is not dealing with general control. If a utility asks for more than an 8% increase, they must justify this increase. With the change in the economy, an 8% increase is adequate.

Representative Schultz asked Mr. Paine if in the Lewistown area where a 24% increase has already been approved for next year, the effect on said increase. Mr. Paine explained that an application would have to be submitted to the Public Service Commission and if their needs are well defined, a problem should not exist.

There being no further discussion by proponents or opponents, all were excused by the chairman and the hearing on House Bill 437 was closed.

ACTION ON HOUSE BILL 387: Representative Hansen made a motion that House Bill 387 DO PASS. Representative Hansen moved the Statement of Intent. Second was received and House Bill 387 PASSED WITH STATEMENT OF INTENT by a unanimous vote.

ACTION ON HOUSE BILL 453: Representative Kitselman moved that House Bill 453 DO PASS. Representative Kitselman moved the proposed amendments and explained the same. The amendments to House Bill 453 DO PASS unanimously. House Bill 453 PASSED AS AMENDED, with all but Representative Glaser voting yes.

ACTION ON HOUSE BILL 602: Representative Brandewie made a motion that House Bill 602 DO PASS. Representative Brandewie moved and explained the amendments attached hereto as Exhibit 9. The amendments PASSED unanimously. House Bill 602 PASSED AS AMENDED by a unanimous vote.

ACTION ON HOUSE BILL 437: Representative Wallin moved that House Bill 437 DO NOT PASS. Representative Driscoll expressed his position in favor of the bill. Representatives Glaser and Simon supported the motion by Representative Wallin. Representative Schultz stated that small towns who put in their own water system, should be given the right to make their own determinations. Question being called, House Bill 437 DOES NOT PASS, with all but Representatives Driscoll, McCormick, and Nisbet voting yes.

ACTION ON HOUSE BILL 284: Representative Kitselman moved that House Bill 284 DO PASS. Representative Kitselman then moved and explained the proposed amendments that are attached hereto as Exhibit 10. Sue Mohr, representing the Department of Labor and Industry, further explained the proposed amendments. Questions were raised by Representatives Schultz, Wallin, Driscoll, Brandewie, Bachini, Glaser, Simon, and Kadas. Question being called, the amendments DO PASS by a vote of 11 to 9. Representative Driscoll made a substitute motion to Representative Kitselman's motion that lines 23 and 24, on page 13, be stricken. The motion did fail by a vote of 9 to 11. House Bill 284 PASSED AS AMENDED, with 13 members voting yes and 7 members voting no.

ACTION ON HOUSE BILL 391: Representative Brandewie made a motion that House Bill 391 DO NOT PASS. Representative Kitselman made a substitute motion that House Bill 391 BE TABLED. Representative Kitselmen then withdrew his motion. Question being called, House Bill 391 DOES NOT PASS, by a vote of 13 to 7.

ACTION ON HOUSE BILL 648: Representative Kadas moved that House Bill 648 DO PASS. Representative Jones made a substitute motion that House Bill 648 DO NOT PASS. Representative Pavlovich expressed his concern of the 24 hour restaurants. Representative Jones' motion that House Bill 648 DO NOT PASS was carried with all but Representatives Kadas and Brown voting yes.

ACTION ON HOUSE BILL 338: Representative Jones explained the amendments that were proposed, removing the title plant requirement from the bill. Representative Bachini asked that action be delayed to allow him time to consult with interested parties.

ADJOURN: There being no further business before the committee, the meeting was adjourned at 11:00 a.m.

Representative Bob Pavlovich
Chairman

DAILY ROLL CALL

BUSINESS AND LABOR COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date Feb. 7, 1985

NAME	PRESENT	ABSENT	EXCUSED
Bob Pavlovich	✓		
Les Kitselman	✓		
Bob Bachini	✓		
Ray Brandewie	✓		
Jan Brown	✓		
Jerry Driscoll	✓		
Robert Ellerd	✓		~~✓~~
William Glaser	✓		
Stella Jean Hansen	✓		
Marjorie Hart	✓		
Ramona Howe	✓		
Tom Jones	✓		
Mike Kadas	✓		
Vernon Keller	✓		
Lloyd McCormich	✓		
Jerry Nisbet	✓		
James Schultz	✓		
Bruce Simon	✓		
Fred Thomas			✓
Norm Wallin	✓		

STANDING COMMITTEE REPORT

February 7 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 307

FIRST reading copy (WHITE color)

ADMINISTRATIVE RULES RELATING TO PUBLIC WORKS CONTRACTS

Respectfully report as follows: That HOUSE Bill No. 307

DO PASS
STATEMENT OF INTENT ATTACHED

Rep. Robert Pavlovich, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STATEMENT OF INTENT

Title 18, chapter 2, part 4, MCA, requires that a standard prevailing wage be paid for labor on all public works contracts and that Montana labor receive a preference for employment on all public contracts. The commissioner is given the duty to determine the prevailing wage by locality and to otherwise administer part 4. In early 1983, Judge Bennett found in Townsend Electric, Inc. v. Hunter, et al., First Judicial District of Montana (No. 47160), that the commissioner's determinations as to prevailing wage did not have the force of law because the legislature had never granted the commissioner express rulemaking authority to implement part 4. This bill is introduced to remedy this situation.

Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 7 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 453

FIRST reading copy (WHITE color)

RELATING TO TOTAL DISABILITY WORKERS' COMPENSATION BENEFITS

Respectfully report as follows: That HOUSE Bill No. 453

BE AMENDED AS FOLLOWS:

1) Page 5, line 14
Following: "permit"
Strike: the remainder of line 14 and line 15 through "39-71-1002"
Following: "."
Insert: "A worker shall be paid temporary total disability benefits during a reasonable period of retraining."

2) Page 6, line 3
Following: "and"
Insert: "temporary"

3) Page 6, line 3
Following: "benefits"
Strike: "must"
Insert: "may"

DO PASS

Rep. Robert Pavlovich

STATE PUB. CO.

4) Page 6, line 13
Following: "paid"
Insert: "temporary"

5) Page 6, line 19
Following: "benefits"
Strike: "until he is certified under 39-71-1002"

AND AS AMENDED,
DO PASS

STATE PUB. CO.
Helena, Mont.

Rep. Robert Pavlovich, Chairman.

STANDING COMMITTEE REPORT

February 7 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 602

FIRST reading copy (WHITE color)

ARTIST-ART DEALER RELATIONSHIP

Respectfully report as follows: That HOUSE Bill No. 602

BE AMENDED AS FOLLOWS:

1) Page 2, line 4
Following: "lithograph,"
Insert: "signed limited edition"

2) Page 2, line 5
Following: "print,"
Strike: "textiles,"

3) Page 2, line 6
Following: "calligraphy,"
Insert: "photographs, original works in ceramics, wood, metals, glass, plastic, wax, stone, or leather,"

DO PASS

Rep. Robert Pavlovich, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

4) Page 3, line 3
Following: "Montana."
Insert: "This relationship must be defined in writing and renewed at least every 3 years by the art dealer and the artist. It is the responsibility of the artist to identify clearly the work of art by securely attaching identifying marking to or clearly signing the work of art."

5) Page 3, line 8
Following: "art"
Insert: "while in the possession of or on the premises of the consignee"

6) Page 4, line 7
Following: "provide"
Insert: ", upon request from the artist in writing upon consignment of the work,"

7) Page 4, line 8
Following: "art"
Insert: "with purchase price of $200 or more"

AND AS AMENDED
DO PASS

STATE PUB. CO.
Helena, Mont.

Rep. Robert Pavlovich, Chairman.

STANDING COMMITTEE REPORT

February 7 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 437

FIRST reading copy (WHITE color)

LIMIT TO 8% UTILITY RATE INCREASE MUNICIPALITY MAY ALLOW WITHOUT PSC ASSENT

Respectfully report as follows: That HOUSE Bill No. 437

~~DO PASS~~
DO NOT PASS

Rep. Robert Pavlovich, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

February 7 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 284

FIRST reading copy (WHITE color)

MAKE UNEMPLOYMENT COMPENSATION TRUST FUND SOLVENT

Respectfully report as follows: That HOUSE Bill No. 284

BE AMENDED AS FOLLOWS:

1) Page 6, line 20

Strike:	"(.0270)	(.0260)	(.0245)	(.0225)"
Insert:	"(.0260)	(.0245)	(.0225)	(.0200)"

2) Page 8, line 18

Strike:	"(.[illegible])	(.0170)	(.0135)	(.0095)"
Insert:	"(.0170)	(.0135)	(.0095)	(.0075)"

AND AS AMENDED,

DO PASS

Rep. Robert Pavlovich, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

February 7 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 391

FIRST reading copy (WHITE color)

ALLOWING PUBLIC EMPLOYERS TO DEDUCT A UNION REPRESENTATION FEE: NONMEMBERS

Respectfully report as follows: That HOUSE Bill No. 391

~~DO PASS~~
DO NOT PASS

Rep. Robert Pavlovich, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

STANDING COMMITTEE REPORT

January 7 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

having had under consideration HOUSE Bill No. 648

FIRST reading copy (WHITE color)

RESTAURANT LICENSE FOR ON-PREMISES BEER AND WINE CONSUMPTION

Respectfully report as follows: That HOUSE Bill No. 648

DO PASS
DO NOT PASS

Rep. Robert Pavlovich, Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE 2/7/85 BILL NO. 284 TIME

NAME	AYE	NAY
Bob Pavlovich		✓
Les Kitselman	✓	
Bob Bachini		✓
Ray Brandewie	✓	
Jan Brown	✓	
Jerry Driscoll		✓
Robert Ellerd	✓	
William Glaser	✓	
Stella Jean Hansen		✓
Marjorie Hart		✓
Ramona Howe		✓
Tom Jones	✓	
Mike Kadas		✓
Vernon Keller		
Lloyd McCormick	✓	
Jerry Nisbet		✓
James Schultz		✓
Bruce Simon	✓	
Fred Thomas	✓	
Norm Wallin	✓	
	✓	

Secretary Debbie Aqui

Chairman Bob Pavlovich

Motion: amendment - Do Pass 11 - 9
by Labor Dept.

CS-31

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE 2/7/85 BILL NO. 284 TIME

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitselman		✓
Bob Bachini	✓	
Ray Brandewie		✓
Jan Brown		✓
Jerry Driscoll	✓	
Robert Ellerd		✓
William Glaser		✓
Stella Jean Hansen	✓	
Marjorie Hart	✓	
Ramona Howe	✓	
Tom Jones	✓	✓
Mike Kadas	✓	
Vernon Keller		✓
Lloyd McCormick	✓	
Jerry Nisbet	✓	
James Schultz		✓
Bruce Simon		✓
Fred Thomas		✓
Norm Wallin		✓

Secretary Debbie Aqui

Chairman Bob Pavlovich

Motion: amendment by Rep. Driscoll @ 9-11

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE 2/7/85 BILL NO. 284 TIME

NAME	AYE	NAY
Bob Pavlovich		✓
Les Kitselman	✓	
Bob Bachini	✓	
Ray Brandewie	✓	
Jan Brown	✓	
Jerry Driscoll		✓
Robert Ellerd	✓	
William Glaser	✓	
Stella Jean Hansen		✓
Marjorie Hart		✓
Ramona Howe		✓
Tom Jones	✓	
Mike Kadas	✓	
Vernon Keller	✓	
Lloyd McCormick		✓
Jerry Nisbet		✓
James Schultz	✓	
Bruce Simon	✓	
Fred Thomas	✓	
Norm Wallin	✓	

Secretary Debbie Aqui

Chairman Bob Pavlovich

Motion: DPAH 13-7

ROLL CALL VOTE

HOUSE COMMITTEE BUSINESS AND LABOR

DATE 2/7/85 BILL NO. 391 TIME

NAME	AYE	NAY
Bob Pavlovich	✓	
Les Kitselman	✓	
Bob Bachini	✓	
Ray Brandewie	✓	
Jan Brown	✓	
Jerry Driscoll		✓
Robert Ellerd	✓	
William Glaser	✓	
Stella Jean Hansen		✓
Marjorie Hart		✓
Ramona Howe		✓
Tom Jones	✓	
Mike Kadas		✓
Vernon Keller	✓	
Lloyd McCormick		✓
Jerry Nisbet		✓
James Schultz	✓	
Bruce Simon	✓	
Fred Thomas	✓	
Norm Wallin	✓	

Secretary Debbie Aqui

Chairman Bob Pavlovich

Motion: DNP · 13-7

Exhibit 1
HB 391
2/7/85
Submitted by:
Phil Campbell

DIST. OF COLUMBIA PUB. EES
~~STATE AND LOCAL PROGRAMS~~
— arg. auto. ded. of fees if dlr agree

owdown, or in the case of a labor organization, its agents or representatives condoning any such activity by ailing to take affirmative action to prent or stop it; and (5) engaging in a strike or refusal to handle goods or perform services, or threatening, coercing restraining any person with the object forcing or requiring any person to cease, delay or stop doing business with any other person or to force or to require employer to recognize for recognition urposes a labor organization not recognized pursuant to the procedures set forth in Sec. 1706 of this title.

Sec. 1705. Strikes prohibited. — It shall unlawful for any District government employee or labor organization to participate in, authorize or ratify a strike gainst the District.

Sec. 1706. Employee rights. — (a) All employees shall have the right: (1) to organize a labor organization free from terference, restraint or coercion; (2) to rm, join or assist any labor organization or to refrain from such activity; and (3) to bargain collectively through representa- of their own choosing as provided in tle.

(b) Notwithstanding any other provision in this act, an individual employee ay present a grievance at any time to s or her employer without the intervention of a labor organization: provided, however, that the exclusive representative is afforded an effective opportunity be present and to offer its view at any meetings held to adjust the complaint. ny employee or employees who utilize is avenue of presenting personal complaints to the employer may not do so under the name, or by representation, of labor organization. Adjustments of ievances must be consistent with the erms of the applicable collective bargaining agreement. Where the employee not represented by the union with clusive recognition for the unit, no djustment of a grievance shall be considered as a precedent or as relevant either to the interpretation of the collective bargaining agreement or to the adjustment of other grievances.

Sec. 1707. Union security; dues deduction. — Any labor organization which has been certified as the exclusive representative shall, upon request, have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues. Such authorization, costs and termination shall be proper subjects of collective bargaining. Service fees may be deducted from an employee's salary by the employer if such a provision is contained in the bargaining agreement.

Sec. 1708. Management rights; matters subject to collective bargaining. — (a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations: (1) to direct employees of the agencies; (2) to hire, promote, transfer, assign and retain employees in positions within the agency and to suspend, demote, discharge or take other disciplinary action against employees for cause; (3) to relieve employees of duties because of lack of work or other legitimate reasons; (4) to maintain the efficiency of the District government operations entrusted to them; (5) to determine the mission of the agency, its budget, its organization, the number of employees and the number, types and grades of positions of employees assigned to an organizational unit, work project or tour of duty, and the technology of performing its work; or its internal security practices; and (6) to take whatever actions may be necessary to carry out the mission of the District government in emergency situations.

(b) All matters shall be deemed negotiable except those that are proscribed by this title. Negotiations concerning compensation are authorized to the extent provided in Sec. 1716 of this title.

Sec. 1709. Unit determination. — (a) The determination of an appropriate unit will be made on a case to case basis and will be made on the basis of a properly supported request from a labor organization. No particular type of unit may be predetermined by management officials nor can there by any arbitrary limit upon the number of appropriate units within an agency. The essential ingredient in every unit is community of interest: provided, however, that an appropriate unit must also be one that promotes effective labor relations and efficiency of agency operations. A unit should include individuals who share certain interests such as skills, working conditions, common supervision, physical location, organization structure, distinctiveness of functions performed and the existence of integrated work processes. No unit shall be established solely on the basis of the extent to which employees in a proposed unit have organized, however, membership in a labor organization may be considered as one factor in evaluating the community of interest of employees in a proposed unit.

(b) A unit shall not be established if it includes the following: (1) any management official or supervisor: except, that with respect to firefighters, a unit that includes both supervisors and non-supervisors may be considered: provided, further, that supervisors employed by the District of Columbia Board of Education may form a unit which does not include non-supervisors; (2) a confidential employee; (3) an employee engaged in personnel work in other than a purely clerical capacity; (4) an employee engaged in administering the provisions of this title; (5) both professional and nonprofessional employees, unless a majority of the professional employees vote or petition for inclusion in the unit; or (6) employees of the Council of the District of Columbia.

less of the job description or title, having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. With respect to faculty or academic employees, any department chair, head of a similar academic unit or program, or other employee who performs the foregoing duties primarily in the interest of and on behalf of the members of the academic department, unit or program, shall not be deemed a supervisory employee solely because of such duties; provided, that with respect to the University of California and Hastings College of the Law, there shall be a rebuttable presumption that such an individual appointed by the employer to an indefinite term shall be deemed to be a supervisor. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

Sec. 3580.5. **[Prohibited acts]**—(a) Supervisory employees shall not participate in the handling of grievances on behalf of nonsupervisory employees. Nonsupervisory employees shall not participate in the handling of grievances on behalf of supervisory employees.

(b) Supervisory employees shall not participate in meet and confer sessions on behalf of nonsupervisory employees. Nonsupervisory employees shall not participate in meet and confer sessions on behalf of supervisory employees.

(c) The prohibition in subdivisions (a) and (b) shall not be construed to apply to the paid staff of an employee organization.

(d) Supervisory employees shall not vote on questions of ratification or rejection of memoranda of understanding reached on behalf of nonsupervisory employees.

Sec. 3581.1. **[Organizations, representation rights of supervisory employees]**—Supervisory employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of supervisory employee-employer relations as set forth in Sec. 3581.3. Supervisory employees also shall have the reight to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the employer.

Sec. 3581.2. **[Membership restrictions]**—Employee organizations shall have the right to represent their supervisory employee members in their employment relations, including grievances, with the employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of employees from membership. Nothing in this section shall prohibit any employee from appearing on his or her own behalf or through his or her chosen representative in his or her employment and grievances with the higher education employer.

Sec. 3581.3. **[Scope of representation]**—The scope of representation for supervisory employees shall include all matters relating to employment conditions and supervisory employee-employer relations including wages, hours, and other terms and conditions of employment.

Sec. 3581.4. **[Request for meet-and-confer]**—The higher education employer shall meet and confer with representatives of employee organizations upon request. Meet and confer means that they shall consider as fully as the employer deems reasonable such presentations as are made by the employee organization on behalf of its supervisory members prior to arriving at a determination of policy or course of action.

Sec. 3581.5. **[Paid timeoff]**—The higher education employer shall allow a reasonable number of supervisory public employee representatives of verified employee organizations reasonable time off without loss of compensation or other benefits when meeting and conferring with representatives of the higher education employer on matters within the scope of representation.

Sec. 3581.6. **[Unlawful acts]**—The higher education employer and employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against supervisory employees because of their exercise of their rights under this article.

Sec. 3581.7. **[Rules and regulations]**—Subject to review by the board, the higher education employer may adopt reasonable rules and regulations for the administration of supervisory employee-employer relations under this article. Such rules and regulations may include provisions for:

(a) Verifying that an employee organization does in fact represent supervisory employees of the employer.

(b) Verifying the official status of employee organization officers and representatives.

(c) Access of employee organization officers and representatives to work locations.

(d) Use of official bulletin boards and other means of communication by employee organizations.

(e) Furnishing nonconfidential information pertaining to supervisory employee relations to employee organizations.

(f) Such other matters as are necessary to carry out the purposes of this article.

Article 7—Organizational Security

Sec. 3582. **[Scope]**—Subject to the limitations set forth in this section, organizational security shall be within the scope of representation.

Sec. 3583. **[Union security]**—Permissible forms of organizational security shall be limited to an arrangement pursuant to which an employee may decide whether or not to join the recognized or certified employee organization, but which requires the employer to deduct from the wages or salary of any employee who does join, and pay to the employee organization which is the exclusive representative of such employee, the standard initiation fee, periodic dues, and general assessments of such organization for the duration of the written memorandum of understanding. However, no such arrangement shall deprive the employees of the right to resign from the employee organization within a period of 30 days prior to the expiration of a written memorandum of understanding.

Sec. 3585. **[Dues, checkoff]**—In the absence of an arrangement pursuant to Section 3583, an employer shall, upon written authorization by the employee involved, deduct and remit to the exclusive representative, or in the absence of an exclusive representative to the employee organization of the employee's choice, the standard initiation fee, peri-

lic dues, and general assessments of ch organization, until such time as an exclusive representative has been selected for the employee's unit. Thereafter, deductions shall be made only for the exclusive representative.

Sec. 3586. [Assignments]—The Trustees of the California State University shall continue all payroll assignments authorized by an employee prior to and until recognition or certification of an exclusive representative until notification is submitted by an employee to discontinue the employee's assignments. (As amended by Ch. 143, L. 1983, effective January 1, 1984)

Sec. 3587. [Records; financial statements]—Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by the president and treasurer or comparable officers. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion.

Article 8—Rights-Disputes Arbitration

Sec. 3589. [Final and binding arbitration]—(a) An employer and an exclusive representative who enter into a written memorandum of understanding may agree to procedures for final and binding arbitration of disputes that may arise under the memorandum of understanding or between the parties.

(b) Where a party to a memorandum of understanding is aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the procedures provided therefor in the memorandum, the aggrieved party may bring proceedings pursuant to Title 9 (commencing with Sec. 1280) of Part 3 of the Code of Civil Procedure for a court order directing that the arbitration proceed pursuant to the procedures provided therefor in such memorandum of understanding.

(c) An arbitration award made pursuant to this section shall be final and binding upon the parties and may be enforced by a court pursuant to Title 9 (commencing with Sec. 1280) of Part 3 of the Code of Civil Procedure.

(d) The board shall submit a list of names of arbitrators to employers and employee organizations upon their mutual request. Nothing in this subdivision shall preclude the parties from mutually agreeing to some other means of selecting an arbitrator. The board shall also, if mutually requested to do so, designate an arbitrator to hear and decide the rights dispute.

Article 9—Impasse Procedure

Sec. 3590. [Determination; request for mediator]—Either an employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties of their representatives, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable memorandum of understanding. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, the board shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter. If the parties agree upon their own mediation procedure, the cost of the services of any appointed mediator, unless appointed by the board, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

Sec. 3591. [Factfinding panel]—If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The board shall, within five days after such selection, select a chairman of the factfinding panel. The chairman designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Sec. 3590.

Sec. 3592. [Hearings; investigations]—The panel shall, within 10 days after its appointment, meet with the parties or their representatives and consider their respective positions. The panel may make additional inquiries and investigations, hold hearings, and take other steps as it may deem appropriate. For the purpose of the hearings, investigations, and inquiries, the panel may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The regents of the University of California, the directors of Hastings College of the Law, and the trustees of the California State University shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel, except for those records, books, and information which are confidential by statute. (As amended by Ch. 143, L. 1983, effective January 1, 1984)

Sec. 3593. [Finding; recommendations]—If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommend terms of settlement shall be submitted in writing to the parties privately before they are made public. The panel, subject to the rules and regulations of the board, may make such findings and recommendations public 10 days thereafter. During this 10-day period, the parties are prohibited from making the panel's findings and recommendations public. The costs for the services of the panel chairman, including, per diem fees, if any, and actual and necessary travel and subsistence expenses shall be borne by the board. Any other mutually incurred costs shall be borne equally by the employer and the exclusive representa-

state, and shall not exceed the standard initiation fee, membership dues, and general assessments of the recognized employee organization. (As amended by Ch. 1572, L. 1982)

Sec. 3514. [Penalties] — Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than $1,000.

Sec. 3514.5. [Determination of unfair practices] — The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review such settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that such settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based [on] alleged violation of such a agreement that would not also constitute an unfair practice under this chapter.

(c) The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

Sec. 3515. [Organization; representation] — Except as otherwise provided by the Legislature, state employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. State employees also shall have the right to refuse to join or participate in the activities of employee organizations, except that nothing shall preclude the parties from agreeing to a maintenance of membership provision, as defined in subdivision (h) of Sec. 3513, or a fair share fee provision, as defined in subdivision (j) of Sec. 3513, pursuant to a memorandum of understanding. In any event, state employees shall have the right to represent themselves individually in their employment relations with the state. (As amended by Ch. 1572, L. 1982, effective January 1, 1983)

ED. NOTE: At the request of an employee, an employer must remove the employee's name and address from the list of employees in one of the 20 bargaining units established by the Public Employer Relations Board, according to the state attorney general. Noting that Secs. 3515, above, and Sec. 3520.5, below, provide that an employer may refuse to participate in the activities of an employee organization, the attorney general said, "as part of a refusal to participate *** [an employee] may decline to have his or her name submitted by an employer to an employee organization." (Attorney General Opinion No. 80-108, issued February 14, 1980)

Sec. 3515.5. [Exclusive representation] — Employee organizations shall have the right to represent their members in their employment relations with the state, except that once an employee organization is recognized as the exclusive representative of an appropriate unit, the recognized employee organization is the only organization that may represent that unit in employment relations with the state. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the state.

Sec. 3515.6. [Dues deductions] — All employee organizations shall have the right to have membership dues, initiation fees, membership benefit programs, and general assessments deducted pursuant to subdivision (a) of Sec. 1152 and Sec. 1153 until such time as an employee organization is recognized as the exclusive representative for employees in an appropriate unit, and then such deductions as to any employee in the negotiating unit shall not be permissible except to the exclusive representative. (As amended by Ch. 1270, L. 1982, effective January 1, 1983)

Sec. 3515.7 [Organizational security agreements] — (a) Once an employee organization is recognized as the exclusive representative of an appropriate unit it may enter into an agreement with the state employer providing for organizational security in the form of maintenance of membership or fair share fee deduction.

(b) The state employer shall furnish the recognized employee organization with sufficient employment data to allow the organization to calculate membership fees and the appropriate fair share fees, and shall deduct the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee or the fair share fee. These fees shall be remitted monthly to the recognized employee organization along with an adequate itemized record of the deductions, including, if required by the recognized employee organization, machine readable data. Fair share fee deductions shall continue for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first. The Controller shall retain, from the fair share fee deduction, an amount equal to the cost of administering the provisions of this section. The state employer shall not be liable in any action by a state employee seeking recovery of, or damages for, improper use or calculation of fair share fees.

(c) Notwithstanding subdivision (b), any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to financially support the recognized employee organization. That employee, in lieu of a membership fee or a fair share fee deduction, shall instruct the employer to deduct and pay sums equal to the

fair share fee to a nonreligious, nonlabor organization, charitable fund approved by the State Board of Control for receipt of charitable contributions by payroll deductions.

(d) A fair share fee provision in a memorandum of understanding which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; (3) the vote may be taken at anytime during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during the term. If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote in a manner which it shall prescribe. Notwithstanding this subdivision, the state employer and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on a fair share fee provision.

(e) Every recognized employee organization which has agreed to a fair share fee provision shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees in the unit, within 90 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or comparable officers. In the event of failure of compliance with this section, any employee in the unit may petition the board for an order compelling this compliance, or the board may issue a compliance order on its own motion.

(f) If an employee who holds conscientious objections pursuant to subdivision (c) requests individual representation in a grievance, arbitration, or administrative hearing from the recognized employee organization, the recognized employee organization is authorized to charge the employee for the reasonable cost of the representation.

(g) An employee who pays a fair share fee shall be entitled to fair and impartial representation by the recognized employee organization. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith. (Sec. 3515.7 (a) to (g), as added by Ch. 1572, L. 1982)

Sec. 3515.8. [Fair share fees; pro rata share subject to refund] — Any state employee who pays a fair share fee shall have the right to demand and receive from the recognized employee organization, under procedures established by the recognized employee organization, a return of any part of that fee paid by him or her which represents the employee's additional pro rata share of expenditures by the recognized employee organization that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment, or applied towards the cost of any other benefits available only to members of the recognized employee organization: The pro rata share subject to refund shall not reflect, however, the costs of support of lobbying activities designed to foster policy goals and collective negotiations and contract administration, or to secure for the employees represented advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and conferring with the state employer. The board may compel the recognized employee organization to return that portion of a fair share fee which the board may determine to be subject to refund under the provisions of this section. (As added by Ch. 1572, L. 1982)

Sec. 3516. [Scope of representation] — The scope of representation shall be limited to wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include either of the following:

(a) Consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

(b) The amount of rental rates for state-owned housing charged to state employees. (As amended by Ch. 323, L. 1983, effective July 1, 1983)

Sec. 3516.5. [Notice of meet and confer] — Except in cases of emergency as provided in this section, the employer shall give reasonable written notice to each recognized employee organization affected by any law, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the employer, and shall give such recognized employee organizations the opportunity to meet and confer with the administrative officials or their delegated representatives as may be properly designated by law.

In cases of emergency when the employer determines that a law, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the administrative officials or their delegated representatives as may be properly designated by law shall provide such notice and opportunity to meet and confer in good faith at the earliest practical time following the adoption of such law, rule, resolution, or regulation. (Sec. 3516.5, as amended by Ch. 776, L. 1978)

Sec. 3517. [Good faith meet and confer] — The Governor, or his representative as may be properly designated by law, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

"Meet and confer in good faith" means that the Governor or such representatives as the Governor may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the state of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses.

Sec. 3517.5. [Memorandum of understanding] — If agreement is reached between the Governor and the recognized employee organization, they shall jointly prepare a written memorandum of such understanding which shall be presented, when appropriate, to the Legislature for determination.

Sec. 3517.6. [Limitations] — In any case where the provisions of subdivision (h) of Sec. 3513, or Secs. 13920, 13924, 14876, 18001, 18005, 18005.5, 18006, 18007, 18020, 18021, 18021.5, 18021.6, 18021.7, 18022, 18023, 18024, 18025,

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or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except to the extent of making such payment of amounts equivalent to regular dues to an exclusive representative as provided in Sec. 89-4. (Sec. 89-3, as amended by Act 180, L. 1981)

Sec. 89-4. Payroll deductions.—(a) Upon receiving from an exclusive representative a written statement specifying the amount of regular dues required of its members in the appropriate bargaining unit, the employer shall deduct this amount from the payroll of every member employee in the appropriate bargaining unit and remit the amount to the exclusive representative; provided that the employer shall make the deduction only upon written authorization from a member employee, such authorization being executed any time after his joining an employee organization. Additionally, the employer shall deduct an amount equivalent to the regular dues from the payroll of every nonmember employee in the appropriate bargaining unit, and shall remit the amount to the exclusive representative provided that the deduction from the payroll of every nonmember employee shall be made only for an exclusive representative which provides for a procedure for determining the amount of a refund to any employee who demands the return of any part of the deduction which represents the employees pro rate share of expenditures made by the exclusive representative for activities of a political and ideological nature unrelated to terms and conditions of employment. If a nonmember employee objects to the amount to be refunded, he may petition the board for review thereof within 15 days after notice of the refund has been received. If an employee organization is no longer the exclusive representative of the appropriate bargaining unit, the deduction from the payroll of members and nonmembers shall terminate. (Sec. 89-4(a), as amended by Act. 100, L. 1982)

(b) The employer shall, upon written authorization by an employee, executed at any time after his joining an employee organization, deduct from the payroll of the employee the amount of membership dues, initiation fees, group insurance premiums, and other association benefits and shall remit the amount to the employee organization designated by the employee. (Sec. 89-4(b), as amended by Act 180, L. 1981)

(c) The employer shall continue all payroll assignments authorized by an employee prior to the effective date of this chapter and all assignments authorized under subsection (b) until notification is submitted by an employee to discontinue his assignments.

Sec. 89-5. Hawaii public employment relations board.—(a) There is created a Hawaii public employment relations board composed of three members of which (1) one member shall be representative of management, (2) one member shall be representative of labor, and (3) the third member, the chairperson, shall be representative of the public. All members shall be appointed by the governor for terms of six years each, except that the terms of members first appointed shall be for four, five, and six years respectively as designated by the governor at the time of appointments. Public employers and employee organizations representing public employees may submit to the governor for consideration names of persons representing their interests to serve as members of the board and the governor shall first consider these persons in selecting the members of the board to represent management and labor. Each member shall hold office until his successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper administration of this chapter, it is declared to be in the public interest to continue board members in office as long as efficiency is demonstrated, notwithstanding the provision of Sec. 26-34, which limits the appointment of a member of a board or commission to two terms.

The members shall devote full time to their duties as members of the board. Effective July 1, 1981, the salary of the chairperson of the board shall be $46,750 a year, and the salary of each of the other members shall be $44,413 a year. Effective July 1, 1982, the salary of the chairperson of the board shall be $47,520 a year, and the salary of each of the other members shall be $44,550 a year. No member shall hold any other public office or be in the employment of the State or a county, or any department or agency thereof, or any employee organization during his term.

Any action taken by the board shall be by a simple majority of the members of the board. All decisions of the board shall be reduced to writing and shall state separately its finding of fact and conclusions. Any vacancy in the board shall not impair the authority of the remaining members to exercise all the powers of the board. The governor may appoint an acting member of the board during the temporary absence from the State or the illness of any regular member. An acting member, during his term of service, shall have the same powers and duties as the regular member.

The chairperson of the board shall be responsible for the administrative functions of the board. The board may apoint an executive officer, mediators, members of fact-finding boards, arbitrators, and hearings officers, and employ other assistants as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriations therefor. The provisions of Sec. 103-3 notwithstanding, an attorney employed by the board as a full-time staff member may represent the board in litigation, draft legal documents for the board, and provide other necessary legal services to the board and shall not be deemed to be a deputy attorney general.

The board shall be within the department of labor and industrial relations for budgetary and administrative purposes only. The members of the board and the employees of the board shall be exempt from chapters 76 and 77. Clerical and stenographic employees shall be appointed in accordance with Chs. 76 and 77.

At the close of each fiscal year, the board shall make a written report to the governor of such facts as it may deem essential to describe its activities, in-

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...ne production of evidence on any matter under inquiry; and administer oaths and affirmations. The governing boards shall sign and report in full an opinion in every case which they decide.

(g) Each governing board may appoint or employ an executive director, attorneys, hearing officers, mediators, fact-finders, arbitrators, and such other employees as they deem necessary to perform their functions. The governing boards shall prescribe the duties and qualifications of such persons appointed and, subject to the annual appropriation, fix their compensation and provide for reimbursement of actual and necessary expenses incurred in the performance of their duties.

(h) Each governing board shall exercise general supervision over all attorneys which it employs and over the other persons employed to provide necessary support services for such attorneys. The governing boards shall have final authority in respect to complaints brought pursuant to this Act.

(i) The following rules and regulations shall be adopted by the governing ...ards meeting in joint session: (1) pro...edural rules and regulations which shall govern all board proceedings; (2) procedures for election of exclusive bargaining representatives pursuant to Sec. 9, except for the determination of appropriate bargaining units; (3) appointment of counsel pursuant to subsection (k) of this section.

(j) Rules and regulations may be adopted, amended or rescinded only upon a vote of four of the five members of the state board and the local board meeting in joint session. The adoption, amendment or rescission of rules and regulations shall be in conformity with the requirements of the Illinois Administrative Procedure Act.

(k) The governing boards in joint session shall promulgate rules and regulations providing for the appointment of attorneys or other board representatives to represent persons in unfair labor practice proceedings before a governing board. The regulations governing appointment shall require the applicant to demonstrate an inability to pay for or inability to otherwise provide for adequate representation before a governing board. Such rules must also provide that an attorney may not be appointed in cases which, in the opinion of a board, are clearly without merit.

(l) The chairman of the governing boards shall serve as chairman of a joint session of the governing boards. Attendance of at least one member from each governing board, in addition to the chairman, shall constitute a guorum at a joint session. The governing boards shall meet in joint session within 60 days of the effective date of this Act and at least annually thereafter.

Sec. 6. Right to organize and bargain collectively; exclusive representation; and fair share arrangements. — (a) Employees of the State and any political subdivision of the State have, and are protected in the exercise of, the right of self-organization, and may form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment, not excluded by Sec. 4 of this Act, and to engage in other concerted activities not otherwise prohibited by law for the purposes of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion. Employees also have, and are protected in the exercise of, the right to refrain from participating in any such concerted activities. Employees may be required, pursuant to the terms of a lawful fair share agreement, to pay a fee which shall be their proportionate share of the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and other conditions of employment as defined in Sec. 3(g).

(b) Nothing in this Act prevents an employee from presenting a grievance to the employer and having the grievance heard and settled without the intervention of an employee organization; provided that the exclusive bargaining representative is afforded the opportunity to be present at such conference and that any settlement made shall not be inconsistent with the terms of any agreement in effect between the employer and the exclusive bargaining representative.

(c) A labor organization designated by the board as the representative of the majority of public employees in an appropriate unit in accordance with the procedures herein or recognized by a public employer as the representative of the majority of public employees in an appropriate unit is the exclusive representative for the employees of such unit for the purpose of collective bargaining with respect to rates of pay, wages, hours and other conditions of employment not excluded by Sec. 4 of this Act.

(d) Labor organizations recognized by a public employer as the exclusive representative or so designated in accordance with the provisions of this Act are responsible for representing the interests of all public employees in the unit. Nothing herein shall be construed to limit an exclusive representative's right to exercise its discretion to refuse to process grievances of employees that are unmeritorious.

(e) When a collective bargaining agreement is entered into with an exclusive representative, it may include in the agreement a provision requiring employees covered by the agreement who are not members of the organization to pay their proportionate share of the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and conditions of employment, as defined in Sec. 3(g), but not to exceed the amount of dues uniformly required of members. The organization shall certify to the employer the amount constituting each nonmember employee's proportionate share which shall not exceed dues uniformly required of members. In such case, the proportionate share payment in this section shall be deducted by the employer from the earnings of the nonmember employees and paid to the employee organization.

(f) Only the exclusive representative may negotiate provisions in a collective bargaining agreement providing for the payroll deduction of labor organization dues, fair share payment, initiation fees and assessments. Except as provided in subsection (e) of this section, any such deductions shall only be made upon an employee's written authorization, and

continued until revoked in writing in the same manner or until the termination date of an applicable collective bargaining agreement. Such payments shall be paid to the exclusive representative.

(g) Agreements containing a fair share agreement must safeguard the right of nonassociation of employees based upon bona fide religious tenets or teachings of a church or religious body of which such employees are members. Such employees may be required to pay an amount equal to their fair share, determined under a lawful fair share agreement, to a nonreligious charitable organization mutually agreed upon by the employees affected and the exclusive bargaining representative to which such employees would otherwise pay such service fee. If the affected employees and the bargaining representative are unable to reach an agreement on the matter, the board may establish an approved list of charitable organizations to which such payments may be made.

Sec. 7. Duty to bargain. — A public employer and the exclusive representative have the authority and the duty to bargain collectively set forth in this section.

For the purposes of this Act, "to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours, and other conditions of employment, not excluded by Sec. 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

The duty "to bargain collectively" shall also include an obligation to negotiate over any matter with respect to wages, hours and other conditions of employment, not specifically provided for in any other law or not specifically in violation of the provisions of any law. If any other law pertains, in part, to a matter affecting the wages, hours and other conditions of employment, such other law shall not be construed as limiting the duty "to bargain collectively" and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws.

The duty "to bargain collectively" shall also include negotiations as to the terms of a collective bargaining agreement. The parties may, by mutual agreement, provide for arbitration of impasses resulting from their inability to agree upon wages, hours and terms and conditions of employment to be included in a collective bargaining agreement. Such arbitration provisions shall be subject to the Illinois "Uniform Arbitration Act" unless agreed by the parties.

The duty "to bargain collectively" shall also mean that no party to a collective bargaining contract shall terminate or modify such contract, unless the party desiring such termination or modification:

(1) serves a written notice upon the other party to the contract of the proposed termination or modification 60 days prior to the expiration date thereof, or in the event such contract contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the board within 30 days after such notice of the existence of a dispute, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of 60 days after such notice is given to the other party or until the expiration date of such contract, whichever occurs later.

The duties imposed upon employers, employees and labor organizations by paragraphs (2), (3) and (4) shall become inapplicable upon an intervening certification of the board, under which the labor organization, which is a party to the contract, has been superseded as or ceased to be the exclusive representative of the employees pursuant to the provisions of subsection (a) of Sec. 9, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract.

Sec. 8. Grievance procedure. — The collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise. Any agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for the duration of the agreement. The grievance and arbitration provisions of any collective bargaining agreement shall be subject to the Illinois "Uniform Arbitration Act." The costs of such arbitration shall be borne equally by the employer and the employee organization.

Sec. 9. Elections; recognition. — (a) Whenever in accordance with such regulations as may be prescribed by the board a petition has been filed:

(1) by a public employee or group of public employees or any labor organization acting in their behalf demonstrating that 30 percent of the public employees in an appropriate unit (A) wish to be represented for the purposes of collective bargaining by a labor organization as exclusive representative, or (B) asserting that the labor organization which has been certified or is currently recognized by the public employer as bargaining representative is no longer the representative of the majority of public employees in the unit; or

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wages, hours and other terms and conditions of employment, and to execute a written contract incorporating any agreement reached by such obligation, provided such obligation does not compel either party to agree to a proposal or require the making of a concession.

(b) The parties to the collective bargaining process shall not effect or implement a provision in a collective bargaining agreement if the implementation of that provision would be in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of Illinois. The parties to the collective bargaining process may effect or implement a provision in a collective bargaining agreement if the implementation of that provision has the effect of supplementing any provision in any statute or statutes enacted by the General Assembly of Illinois pertaining to wages, hours or other conditions of employment; provided however, no provision in a collective bargaining agreement may be effected or implemented if such provision has the effect of negating, abrogating, replacing, reducing, diminishing, or limiting in any way any employee rights, guarantees or privileges pertaining to wages, hours or other conditions of employment provided in such statutes. Any provision in a collective bargaining agreement which has the effect of negating, abrogating, replacing, reducing, diminishing or limiting in any way any employee rights, guarantees or privileges provided in an Illinois statute or statutes shall be void and unenforceable, but shall not affect the validity, enforceability and implementation of other permissible provisions of the collective bargaining agreement.

(c) The collective bargaining agreement negotiated between representatives of the educational employees and the educational employer shall contain a grievance resolution procedure which shall apply to all employees in the unit and shall provide for binding arbitration of disputes concerning the administration or interpretation of the agreement. The agreement shall also contain appropriate language prohibiting strikes for the duration of the agreement. The costs of such arbitration shall be borne equally by the educational employer and the employee organization.

(d) Once an agreement is reached between representatives of the educational employees and the educational employer and is ratified by both parties, the agreement shall be reduced to writing and signed by the parties.

Sec. 11. **Non-member fair share payments.** — When a collective bargaining agreement is entered into with an exclusive representative, it may include a provision requiring employees covered by the agreement who are not members of the organization to pay to the organization a fair share fee for services rendered. The exclusive representative shall certify to the employer an amount not to exceed the dues uniformly required of members which shall constitute each non-member employee's fair share fee. The fair share fee payment shall be deducted by the employer from the earnings of the non-member employees and paid to the exclusive representative.

The amount certified by the exclusive representative shall not include any fees for contributions related to the election or support of any candidate for political office. Nothing in this section shall preclude the non-member employee from making voluntary political contributions in conjunction with his or her fair share payment.

Agreements containing a fair share agreement must safeguard the right of non-association of employees based upon bonafide religious tenets or teaching of a church or religious body of which such employees are members. Such employees may be required to pay an amount equal to their proportionate share, determined under a proportionate share agreement, to a non-religious charitable organization mutually agreed upon by the employees affected and the exclusive representative to which such employees would otherwise pay such fee. If the affected employees and the exclusive representative are unable to reach an agreement on the matter, the Illinois educational labor relations board may establish an approved list of charitable organizations to which such payments may be made.

Sec. 12. **Impasse procedures.** — If the parties engaged in collective bargaining have not reached an agreement by 90 days before the scheduled start of the forthcoming school year, the parties shall notify the Illinois educational labor relations board concerning the status of negotiations.

Upon demand of either party, collective bargaining between the employer and an exclusive bargaining representative must begin within 60 days of the date of certification of the representative by the board, or in the case of an existing exclusive bargaining representative, within 60 days of the receipt by a party of a demand to bargain issued by the other party. Once commenced, collective bargaining must continue for at least a 60 day period, unless a contract is entered into.

If after a reasonable period of negotiation and within 45 days of the scheduled start of the forthcoming school year the parties engaged in collective bargaining have reached an impasse, either party may petition the board to initiate mediation. Alternatively, the board on its own motion may initiate mediation during this period. However, the services of the mediators shall continuously be made available to the employer and to the exclusive bargaining representative for purposes of arbitration of grievances and mediation or arbitration of contract disputes. If requested by the parties, the mediator may perform fact-finding and in so doing conduct hearings and make written findings and recommendations for resolution of the dispute. Such mediation shall be provided by the board and shall be held before qualified impartial individuals. Nothing prohibits the use of other individuals or organizations such as the Federal Mediation and Conciliation Service or the American Arbitration Association selected by both the exclusive bargaining representative and the employer.

If the parties engaged in collective bargaining fail to reach an agreement within 15 days of the scheduled start of the forthcoming school year and have not requested mediation, the Illinois educational labor relations board shall invoke mediation.

MASS. — BOSTON & SUFFOLK COUNTY PUB. EES
~~STATE AND LOCAL PROGRAMS~~
— auto ded of fees

offer, or the recommendations of the fact-finder, if a fact-finding report and recommendations have been issued, and immediately shall give written notice of the selection to the parties. The selection shall be final and binding upon the parties, subject to appropriation. Within 30 calendar days of the last and best offer selection and award, the impartial chairperson of the arbitration panel or, the single arbitrator, shall issue a written opinion inclusive of an analysis of all statutory factors applicable to the proceedings.

At any time before the rendering of an award, the chairman of the arbitration panel or single arbitrator, if he is of the opinion that it would be useful or beneficial to do so, may remand the the dispute to the parties for further collective bargaining for a period not to exceed three weeks and notify the board of the remand. If the dispute is remanded for further collective bargaining the time provisions of this act shall be extended for a time period equal to that of the remand.

In the event that the representatives he parties mutually resolve each of the issues in dispute and agree to be bound accordingly, said representatives may, at any time prior to the final decisions by the panel, or single arbitrator, request that the arbitration proceedings be terminated, the panel, acting through its chairman or single arbitrator, shall terminate the proceedings.

The factors among others, to be given weight by the arbitration panel or single arbitrator in arriving at the decision shall include, when applicable:

(1) The financial ability of the district or of the commonwealth to meet the costs. Such factors which shall be taken into consideration shall include but not be limited to (a) the district's state reimbursements and assessments; (b) the commonwealth's or district's long and short term bonded indebtedness; (c) the district's estimated share in the metropolitan district commission deficit; (d) the district's estimated share in the Massachusetts Bay Transportation Authority's deficit.

(2) The interests and welfare of the public.

(3) The hazards of employment, physi- .. educational and mental qualifications, job training and skills involved.

(4) A comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable districts, communities, or other state or federal jurisdictions.

(5) The decisions and recommendations of the fact-finder, if any.

(6) The average consumer prices for goods and services, commonly known as the cos. of living.

(7) The overall compensation presently received by the employees, including direct wages and fringe benefits.

(8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(9) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in private employment.

(10) The stipulation of the parties.

Any determination or decision of the arbitration panel or single arbitrator if supported by material and substantive evidence on the whole record shall be subject to appropriation, binding upon the parties and may be enforced at the instance of either party, the single arbitrator or the arbitration panel in the superior court in equity, provided however, that the scope of arbitration in police matters shall be limited to wages, hours, and conditions of employment and shall not include the following matters of inherent managerial policy: the right to appoint, promote, assign, and transfer employees. Assignments shall not be within the scope; provided, however, that the subject matters of initial station assignment upon appointment or promotion shall be within the scope of arbitration. The subject matter of transfer shall not be within the scope of arbitration, provided however, that the subject matters of relationship of seniority to transfers and disciplinary and punitive transfers shall be within the scope of arbitration.

The commencement of a new fiscal year prior to the final awards by the arbitration panel shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the expiration date of the last contract.

If an employer, or an employee organization willfully disobeys a lawful order of enforcement pursuant to this section, or willfully encourages or offers resistance to such order, whether by strike or otherwise, the punishment for each day that such contempt continues may be a fine for each day to be determined at the discretion of said court.

Each of the parties shall provide compensation for the arbitrator which he has selected pursuant to this section. The remaining costs of arbitration proceedings under this section shall be divided equally between the parties. Compensation for the arbitrators shall be in accordance with a schedule of payment established by the American Arbitration Association.

ED. NOTE: Sec. 8A of Ch. 1078, as added by Ch. 594, L. 1979, and as amended by Ch. 346, L. 1982, effective 90 days after adjournment, states that the provisions of Sec. 4B shall terminate on June 30, 1985, and any arbitration proceedings pending on June 30, 1985, shall be completed under the provision of Sec. 4B.

Payroll Deductions

Following is the full text of Ch. 335, L. 1969, effective June 26, 1969, allowing the treasurer of the City of Boston and Suffolk County to make payroll deductions from the salaries of employees and to pay such deductions to the Collective Bargaining Agency as an agency service fee.

Sec. 1. — To assure that all employees of the city of Boston shall be adequately represented by their respective recognized or designated exclusive bargaining agents in bargaining collectively on questions of wages, hours and other conditions of employment, the collector-treasurer of said city shall deduct from each payment of salary made to each such employee during the life of a collective bargaining agreement so providing, and pay over to the exclusive bargaining agent of such employee, as an agency service fee, such sum, proportionately commensurate with the cost of collective bargaining and contract administration, as the collective bargaining agreement shall state; provided, however, that such sum shall not be deducted from any

payment of salary until such collective bargaining agreement has been formally executed pursuant to a vote of a majority of all employees in the bargaining unit.

Sec. 2. — To assure that all employees of the country of Suffolk shall be adequately represented by their respective recognized or designated exclusive bargaining agents in bargaining collectively on question of wages, hours and other conditions of employment, the county treasurer shall deduct from each payment of salary made to each such employee during the life of a collective bargaining agreement so providing, and pay over to the exclusive bargaining agent of such employee, as an agency service fee, such sum, proportionately commensurate with the cost of collective bargaining and contract administration, as the collective bargaining agreement shall state; provided, however, that such sum shall not be deducted from any payment of salary until such collective bargaining agreement has been formally executed pursuant to a vote of a majority of all employees in the bargaining unit.

Following is the text of Sec. 17G, Ch. 180 of the Gen. Stats, as enacted by Ch. 463, L. 1970, as amended by Ch. 281, L. 1971, and as last amended by S.B. 1929, L. 1973, effective July 1, 1974, allowing certain county and city treasurers to make payroll deductions from the salaries of employees as payment to collective bargaining agencies for service fees. Provisions of this chapter are not applicable to the city of Boston.

Deductions on payroll schedules shall be made from the salary of any state, county or municipal employee of any amount which such employee may specify in writing to any state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is employed for the payment of agency service fees to the employee organization, which, in accordance with the provisions of Ch. 150E is duly recognized by the employer or designated by the labor relations commission as the exclusive bargaining agent for the appropriate unit in which such employee is employed. Such agency service fees shall be proportionately commensurate with the cost of collective bargaining and contract administration. Any such authorization may be withdrawn by the employee by giving at least 60 days' notice in writing of such withdrawal to the state, county or municipal officer, or the head of the state, county or municipal department, board or commission, by whom or which he is then employed and by filing a copy thereof with the treasurer of the employee organization.

The state treasurer, the common paymaster as defined in Sec. 133 of Ch. 175, or the treasurer of the county or municipality by which such employee is employed shall deduct from the salary of such employee such amount of agency service fees as may be certified to him on the payroll and transmit the sum so deducted to the treasurer of such employee organization; provided that the state treasurer or county or municipal treasurer, as the case may be, is satisfied by such evidence as he may require that the treasurer of such employee organization has given to said organization a bond, in a form approved by the commissioner of corporations and taxation for the faithful performance of his duties, in such sum and with such surety or sureties as are satisfactory to the state treasurer, or the county or municipal treasurer. The provisions of this section shall not be applicable to the city of Boston.

Following is the text of Sec. 171, Ch. 180 of the Gen. Stats. as enacted by Ch. 723, L. 1981, effective March 24, 1982, allowing state, county, and municipal treasurers to make payroll deductions from the salaries of employees to employee organizations for insurance or employee benefits offered in conjunction with the employee organization.

Deductions on payroll schedules may be made from the salary of any state, county, municipal or other public employee of an amount which such employee may specify in writing to any state, county, or municipal officer, or public department head, board, commission or agency by whom or which he is employed, for any insurance or employee benefit offered in conjunction with the employee organization, which, in accordance with the provisions of Ch. 150E is duly recognized by the employer or designated by the labor relations commission as the exclusive bargaining agent for the appropriate unit in which such employee is employed; provided, however, that such purpose has been approved by the comptroller. Any such authorization may be withdrawn by the employee by giving at least 60 days notice in writing to the state, county or municipal officer, or public department head, board, commission or agency by whom or which he is then employed.

The state treasurer, the common paymaster, as defined in Sec. 133 of Ch. 175, or the treasurer of the county or municipality by which such employee is employed, shall deduct from the salary of such employee such amount of authorized deductions as may be certified to him on the payroll and transmit the sum so deducted to the recipient specified by such employee.

MINNESOTA PUB. EES
~~STATE AND LOCAL PROGRAMS~~
- auto. for fees; vol. for dues

tial employee," "essential employee," or "professional employee";

(b) to hear and decide appeals from determinations of the director relating to the appropriateness of a unit;

(c) to hear and decide on the record, determinations of the director relating to a fair share fee challenge.

5. The board shall adopt rules under Ch. 14 governing the presentation of issues and the taking of appeals relating to matters included in subdivision 4. All issues and appeals presented to the board shall be determined upon the record established by the director, except that the board may request additional evidence when necessary or helpful.

6. The board shall maintain a list of names of arbitrators qualified by experience and training in the field of labor management negotiations and arbitration. Names on the list may be selected and removed at any time by a majority of the board. In maintaining the list the board shall, to the maximum extent possible, select persons from varying geographical areas of the state.

7. The board shall provide the parties with a list of arbitrators under Sec. 179A.16, subdivision 4.

Sec. 179A.06. **Rights and obligations of employees.** — 1. Secs. 179A.01 to 179A.25 do not affect the right of any public employee or the employee's representative to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as this is not designed to and does not interfere with the full faithful and proper performance of the duties of employment or circumvent the rights of the exclusive representative. Sec. 179A.01 to 179A.25 do not require any public employee to perform labor or services against the employee's will.

If no exclusive representative has been certified, any public employee individually, or group of employees through their representative, has the right to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, by meeting with their public employer or the employer's representative, so long as this is not designed to and does not interfere with the full, faithful, and proper performance of the duties of employment.

2. Public employees have the right to form and join labor or employee organizations, and have the right not to form and join such organizations. Public employees in an appropriate unit have the right by secret ballot to designate an exclusive representative to negotiate grievance procedures and the terms and conditions of employment with their employer. Confidential employees of the state and the University of Minnesota are excluded from bargaining. Other confidential employees, supervisory employees, principals, and assistant principals may form their own organizations. An employer shall extend exclusive recognition to a representative of or an organization of supervisory or confidential employees, or principals and assistant principals, for the purpose of negotiating terms or conditions of employment, in accordance with Secs. 179A.01 to 179A.25, applicable to essential employees.

Supervisory or confidential employee organizations shall not participate in any capacity in any negotiations which involve units of employees other than supervisory or confidential employees. Except for organizations which represent supervisors who are: (1) firefighters, peace officers subject to licensure under Secs. 626.84 to 626.855, guards at correctional facilities, or employees at hospitals other than state hospitals; and (2) not state or University of Minnesota employees, a supervisory or confidential employee organization which is affiliated with another employee organization which is the exclusive representative of nonsupervisory or nonconfidential employees of the same public employer shall not be certified, or act as, an exclusive representative for the supervisory or confidential employees. For the purpose of this subdivision, affiliation means either direct or indirect and includes affiliation through a federation or joint body of employee organizations.

3. An exclusive representative may require employees who are not members of the exclusive representative to contribute a fair share fee for services rendered by the exclusive representative. The fair share fee shall be equal to the regular membership dues of the exclusive representative, less the cost of benefits financed through the dues and available only to members of the exclusive representative. In no event shall the fair share fee exceed 85 percent of the regular membership dues. The exclusive representative shall provide advance written notice of the amount of the fair share fee to the director, the employer, and to unit employees who will be assessed the fee. The employer shall provide the exclusive representative with a list of all unit employees.

A challenge by an employee or by a person aggrieved by the fee shall be filed in writing with the director, the public employer, and the exclusive representative within 30 days after receipt of the written notice. All challenges shall specify those portions of the fee challenged and the reasons for the challenge. The burden of proof relating to the amount of the fair share fee is on the exclusive representative. The director shall hear and decide all issues in these challenges.

The employer shall deduct the fee from the earnings of the employee and transmit the fee to the exclusive representative 30 days after the written notice was provided. If a challenge is filed, the deductions for a fair share fee shall be held in escrow by the employer pending a decision by the director.

auto for fee

4. Professional employees have the right to meet and confer under Sec. 179A.08 with public employers regarding policies and matters other than terms and conditions of employment.

5. Public employees, through their certified exclusive representative, have the right and obligation to meet and negotiate in good faith with their employer regarding grievance procedures and the terms and conditions of employment, but this obligation does not compel the exclusive representative to agree to a proposal or require the making of a concession.

6. Public employees have the right to request and be allowed dues checkoff for the exclusive representative. In the absence of an exclusive representative, public employees have the right to request and be allowed dues checkoff for the organization of their choice.

vol. for dues

Sec. 179A.07. **Rights and obligations of employers.** — 1. A public employer is not required to meet and negotiate on matters of inherent mana-

NEW JERSEY PUB. EES
~~STATE AND LOCAL PROGRAMS~~
- auto. ded of fees

Sec. 34:13A-5

reasonably designed to effectuate the purposes of this act, shall be affirmed and enforced in such proceeding.

ED. NOTE: The New Jersey Public Employment Relations Commission need not await judicial affirmance of decision before initiating action under Sec. 34:13A-5.4(f), above, for enforcement of order requiring board of education to cease unlawful conduct, the state Supreme Court ruled. Also, PERC is entitled to enforcement of its order requiring the board to bargain in good faith despite board's contention that the unfair labor practice charge was rendered moot when the parties agreed to a contract, since judicial enforcement of the order will deter recurrence of board's unlawful conduct and the board failed to demonstrate unreasonableness of expectation that it might resort to similar unfair labor practices, the court ruled. (Galloway Bd. of Educ. v. Educ. Assn., 100 LRRM 2250, NJ SupCt, August 1, 1978; reversing 95 LRRM 2862)

For other rulings, see LR ▶ 100.40, 38.031, 56.101, and 54.80.

2.a. Notwithstanding any other provisions of law to the contrary, the majority representative and the public employer of public employees in an appropriate unit shall, where requested by the majority representative, negotiate concerning the subject of requiring the payment by all nonmember employees in the unit to the majority representative of a representation fee in lieu of dues for services rendered by the majority representative. Where agreement is reached it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

b. The representation fee in lieu of dues shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event shall such fee exceed 85 percent of the regular membership dues, fees and assessments.

c. Any public employee who pays a representation fee in lieu of dues shall have the right to demand and receive from the majority representative, under proceedings established and maintained in accordance with Sec. 3 of this act [Ch. 477, L. 1980], a return of any part of that fee paid by him which represents the employee's additional pro rata share of expenditures by the majority representative that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment, or applied toward the cost of any other benefits available only to members of the majority representative. The pro rata share subject to refund shall not reflect, however, the costs of support of lobbying activities designed to foster policy goals in collective negotiations and contract administration or to secure for the employees represented advantages in wages, hours and other conditions of employment in addition to those secured through collective negotiations with the public employer.

3. Where a negotiated agreement is reached, pursuant to Sec. 2 of this act [Ch. 477,L.1980], a majority representative of public employees in an appropriate unit shall be entitled to a representation fee in lieu of dues by payroll deduction from the wages or salaries of the employees in such unit who are not members of a majority representative; provided, however, that membership in the majority representative is available to all employees in the unit on an equal basis and that the representation fee in lieu of dues shall be available only to a majority representative that has established and maintained a demand and return system which provides pro rata returns as described in Sec. 2(c) [Ch.477,L.1980]. The demand and return system shall include a provision by which persons who pay a representation fee in lieu of dues may obtain review of the amount returned through full and fair proceedings placing the burden of proof on the majority representative. Such proceedings shall provide for an appeal to a board consisting of three members to be appointed by the Governor, by and with the advice and consent of the senate, who shall serve without compensation but shall be reimbursed for actual expenses reasonably incurred in the performance of their official duties. Of such members, one shall be representative of public employers, one shall be representative of public employee organizations and one, as chairman, who shall represent the interest of the public as a strictly impartial member not having had more than a casual association or relationship with any public employers, public employer organizations or public employee organizations in the 10 years prior to appointment. Of the first appointees, one shall be appointed for one year, one for a term of two years and the chairman for a term of three years. Their successors shall be appointed for terms of two years each and until their successors are appointed and qualified, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whose office has become vacant. Nothing herein shall be deemed to require any employee to become a member of the majority representative.

4. Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between nonmembers who pay the said representation fee and members with regard to the payment of such fee other than as allowed under this act, shall be treated as an unfair practice within the meaning of subsection 1(a) or subsection 1(b) of this act. [Ch. 477, L. 1980]

5. Payment of the representation fee in lieu of dues shall be made to the majority representative during the term of the collective negotiation agreement affecting such nonmember employees and during the period, if any, between successive agreements so providing, on or after, but in no case sooner than the thirtieth day following the beginning of an employee's employment in a position included in the appropriate negotiations unit, and the tenth day following reentry into the appropriate unit for employees who previously served in a position included in the appropriate unit who continued in the employ of the public employer in an excluded position and individuals being reemployed in such unit from a reemployment list. For the purposes of this section, individuals employed on a 10-month basis or who are reappointed from year to year shall be considered to be in continuous employment. (Sec. 34:13A-5.4(1) to (5), as amended by Ch. 477, L. 1980)

Sec. 34:13A-6. Powers and duties. — (a) Upon its own motion, in an existing, imminent or threatened labor dispute in private employment, the board, through the Division of Private Employment Dispute Settlement, may and, upon the request of the parties or either party to the dispute, must take such steps as it may

NEW YORK PUB. EES
~~STATE AND LOCAL PROGRAMS~~
- auto. ded. of fees

to serve as mediators, arbitrators or members of fact-finding boards.

(j) To hold such hearings and make such inquiries as it deems necessary for it properly to carry out its functions and powers.

(k) For the purpose of such hearings and inquiries, to administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel the attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions. Such subpoenas shall be regulated and enforced under the civil practice laws and rules.

(l) To make, amend and rescind, from time to time, such rules and regulations, including but not limited to those governing its internal organization and conduct of its affairs, and to exercise such other powers, as may be appropriate to effectuate the purposes and provisions of this article.

Notwithstanding any other provisions of law, neither the president of the civil service commission nor the civil service commission or any other officer, employer, board or agency of the department of civil service shall supervise, direct or control the board in the performance of any of its functions or the exercise of any of its powers under this article; provided, however, that nothing herein shall be construed to exempt employees of the board from the provisions of the civil service law.

Sec. 206. Procedures for determination of representation status of local employees. — 1. Every government (other than the state or a state public authority), acting through its legislative body, is hereby empowered to establish procedures, not inconsistent with the provisions of section two hundred seven of this article and after consultation with interested employee organizations and administrators of public services, to resolve disputes concerning the representation status of employee organizations of employees of such government.

2. In the absence of such procedures, such disputes shall be submitted to the board in accordance with section two hundred five of this article.

Sec. 207. Determination of representation status. — For purposes of resolving disputes concerning representation status, pursuant to section two hundred five or two hundred six of this article, the board or government, as the case may be, shall

1. define the appropriate employer-employee negotiating unit taking into account the following standards:

(a) the definition of the unit shall correspond to community of interest among the employees to be included in the unit;

(b) the officals of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; and

(c) the unit shall be compatible with the joint responsiblities of the public employer and public employees to serve the public.

2. ascertain the public employees' choice of employee organization as their representative (in cases where the parties to a dispute have not agreed on the means to ascertain the choice, if any, of the employees in the unit) on the basis of dues deduction authorization and other evidences, or, if necessary, by conducting an election.

3. certify or recognize an employee organization upon (a) the determination that such organization represents that group of public employees it claims to represent, and (b) the affirmation by such organization that it does not assert the right to strike against any government, to assist or participate in any such strike, or to impose an obligation to conduct, assist or participate in such a strike.

Sec. 208. Rights accompanying certification or recognition. — 1. A public employer shall extend to an employee organization certified or recognized pursuant to this article the following rights:

(a) to represent the employees in negotiations notwithstanding the existence of an agreement with an employee organization that is no longer certified or recognized, and in the settlement of grievances; and

(b) to membership dues deduction; upon presentation of dues deduction authorization cards signed by individual employees.

ED. NOTE: In a petition by union for review of decision by the state Public Employees Relations Board, the state Supreme Court determined that Sec. 208(1) is not a violation of the Fifth and Fourteenth Amendments to the U.S. Constitution. (Police Benevolent Assn. v. Osterman, 82 LRRM 2448, NY SupCt, January 18, 1972)

For other rulings, see LR ► 100.02 and 34.10

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2. An employee organization certified or recognized pursuant to this article shall be entitled to unchallenged representation status until seven months prior to the expiration of a written agreement between the public employer and said employee organization determining terms and conditions of employment. For the purposes of this subdivision, (a) any such agreement for a term covering other than the fiscal year of the public employer shall be deemed to expire with the fiscal year ending immediately prior to the termination date of such agreement, (b) any such agreement having a term in excess of three years shall be treated as an agreement for a term of three years and (c) extensions of any such agreement shall not extend the period of unchallenged representation status. (As added by Ch. 503, L. 1971)

3. (a) Nothwithstanding provisions of and restrictions of Secs. 202 and 209-a of this article, and Sec. 6-a of the state finance law, every employee organization that has been recognized or certified as the exclusive representative of employees of the state within a negotiating unit of classified civil service em-

ployees or employees in a collective negotiating unit established pursuant to this article for the professional services in the state university, for the members of the state police or for the members of the capitol buildings police force of the office of general services shall be entitled to have deducted from the wage or salary of the employees in such negotiating unit who are not members of said employee organization the amount equivalent to the dues levied by such employee organization, and the state comptroller shall make such deductions and transmit the sum so deducted to such employee organization. Provided, however, that the foregoing provision of this subdivision shall only be applicable in the case of an employee organization which has established and maintained a procedure providing for the refund to any employee demanding the return any part of an agency shop fee deduction which represents the employee's pro rata share of expenditures by the organization in aid of activities or causes only incidentally related to terms and conditions of employment. Nothing herein shall be deemed to require an employee to become a member of such employee organization.

(b) Nothwithstanding the provisions of and restrictions of Secs. 202 and 209-a of this article, Sec. 93-b of the general municipal law and Sec. 6-a of the state finance law, every employee organization that has been recognized or certified as the exclusive representative or employees within a negotiating unit of other than state employees shall be entitled to negotiate as part of any agreement entered into pursuant to this article to have deductions from the wage or salary or employees of such negotiating unit who are not members of said employee organization the amount equivalent to the dues levied by such employee organization and the fiscal or disbursing officer of the local government or authority involved shall make such deductions and transmit the sum so deducted to such employee organization. Provided, however, that the foregoing provisions of this subdivision shall only be applicable in the case of an employee organization which has established and maintained a procedure providing for the refund to any employee demanding the return any part of an agency shop fee deduction which represents the employee's pro rata share of expenditures by the organization in aid of activities or causes of a political or ideological nature only incidentally related to terms and conditions of employment. (Sec. 208(3), as amended by Ch. 655, L. 1981, effective August 19, 1981; Sec. 208(3)(b) expires on October 1, 1983)

Sec. 209. Resolution of disputes in the course of collective negotiations. — 1. For purposes of this section, an impasse may be deemed to exist if the parties fail to achieve agreement at least 120 days prior to the end of the fiscal year of the public employer.

2. Public employers are hereby empowered to enter into written agreements with recognized or certified employee organizations setting forth procedures to be invoked in the event of disputes which reach an impasse in the course of collective negotiations. Such agreements may include the undertaking by each party to submit unresolved issues to impartial arbitration. In the absence or upon the failure of such procedures, public employers and employee organizations may request the board to render assistance as provided in this section, or the board may render such assistance on its own motion, as provided in subdivision three of this section, or, in regard to officers or members of any organized fire department, police force or police department of any county, city, except the city of New York, town, village or fire or police district, as provided in subdivision four of this section.

ED. NOTE: A school district may be compelled to arbitrate the grievance of teachers' association concerning the staff reduction in the school budget for the academic year, where collective bargaining agreement provides for the hiring of two additional teachers, the state Court of Appeals found, despite the district's contention that staff size, as a matter of law and policy, is within its prerogative. The court ruled that there is no restrictive policy limiting the freedom of contract concerning staff size and therefore, the district is free to bargain voluntarily and to agree to submit to arbitration disputes about staff size without violating the Taylor Act, decisional law or public policy. (School District v. Teachers' Association, 90 LRRM 3046, NY CtApp, October 30, 1975; affirming 88 LRRM 3320)

For other rulings, see LR ► 100.07 and 94.137.

School board practice of granting free tuition to children of non-resident teachers is a term and condition of employment and discontinuance of the practice is a proper subject of arbitration, according to the state Court of Appeals. Rejecting the school board's claim that the practice was unconstitutional, the court found no evidence that the practice was invalid as a denial of equal protection of the laws. Furthermore, the grievance was submitted under a broad arbitration agreement that covered "any claimed violation, misinterpretation, or inequitable application of the existing professional agreement." (New Paltz Bd. of Educ. v. United Teachers, 98 LRRM 2984, NY CtApp June 6, 1978)

For other rulings, see LR ► 94.101, 94.555, and 100.07.

In another case, the state Court of Appeals found that a dispute over a school district's obligation to deduct memebership dues owed to the teachers' association is arbitrable, both under the Taylor Act and the parties' negotiated agreement. The court rejected the school district's contention that the contract's provision for payroll deduction violated the General Municipal Law by restricting the teacher's right to withdraw dues checkoff. Noting that the municipal law expressly authorizes payroll deduction of dues, the court said, "no issue is raised as to the right of withdrawal or any restriction thereon. * * * [I]t would be immaterial to the present arbitration if it were to be assumed that the present restriction as to authorization withdrawal were to be deemed invalid." (Mineola Sch. Dist. v. Teachers Association, 101 LRRM, NY CtApp, March 29, 1979)

For other rulings, see LR ► 94.09, 94.141, 100.05, and 100.07.

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3. On request of either party or upon its own motion, as provided in subdivision two of this section, and in the event the board determines that an impasse exists in collective negotiations between such employee organization and a public employer as to the conditions of employment of public employees, the board shall render assistance as follows:

(a) to assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board:

(2) By the employer alleging that one or more employee organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit, the board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, provide for an appropriate hearing upon due notice to the parties.

If the board finds upon the record of a hearing that a question of representation exists, it shall direct an election and certify the results thereof. No one may vote in an election by mail or proxy. The board may also certify an employee organization as an exclusive representative if it determines that a free and untrammelled election cannot be conducted because of the employer's unfair labor practices and that at one time the employee organization had the support of the majority of the employees in the unit.

(B) Only the names of those employee organizations designated by more than 10 percent of the employees in the unit found to be appropriate may be placed on the ballot. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation. In conformity with the rules of the board, for the purpose of a consent election.

(C) The board shall conduct representation elections by secret ballot at times and places selected by the board subject to the following:

(1) The board shall give no less than 10 days' notice of the time and place of an election;

(2) The board shall establish rules concerning the conduct of any election including, but not limited to, rules to guarantee the secrecy of the ballot;

(3) The board may not certify a representative unless the representative receives a majority of the valid ballots cast;

(4) Except as provided in this section, the board shall include on the ballot a choice of "no representative";

(5) In an election where none of the choices on the ballot receives a majority, the board shall conduct a runoff election. In that case, the ballot shall provide for a selection between the two choices or parties receiving the highest and the second highest number of ballots cast in the election.

(6) The board may not conduct an election under this section in any appropriate bargaining unit within which a board-conducted election was held in the preceding 12-month period, nor during the term of any lawful collective bargaining agreement between a public employer and an exclusive representative.

Petitions for elections may be filed with the board no sooner than 120 days or later than 90 days before the expiration date of any collective bargaining agreement, or after the expiration date, until the public employer and exclusive representative enter into a new written agreement.

For the purposes of this section, extensions of agreements do not affect the expiration date of the original agreement.

Sec. 4117.08. [Scope of bargaining]—(A) All matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified in this section.

(B) The conduct and grading of civil service examinations, the rating of candidates, the establishment of eligible lists from the examinations, and the original appointments from the eligible lists are not appropriate subjects for collective bargaining.

(C) Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Ch. 4117 of the Revised Code impairs the right and responsibility of each public employer to:

(1) Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;

(2) Direct, supervise, evaluate, or hire employees;

(3) Maintain and improve the efficiency and effectiveness of governmental operations;

(4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;

(5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;

(6) Determine the adequacy of the work force;

(7) Determine the overall mission of the employer as a unit of government;

(8) Effectively manage the work force;

(9) Take actions to carry out the mission of the public employer as a governmental unit.

The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. A public employee or exclusive representative may raise a legitimate complaint or file a grievance based on the collective bargaining agreement.

Sec. 4117.09. [Agreement in writing; dues checkoff]—(A) The parties to any collective bargaining agreement shall reduce the agreement to writing and both execute it.

(B) The agreement shall contain a provision that:

(1) Provides for a grievance procedure which may culminate with final and binding arbitration of unresolved grievances, and disputed interpretations of agreements, and which is valid and enforceable under its terms when entered into in accordance with Ch. 4117 of the Revised Code. No publication thereof is required to make it effective. A party to the agreement may bring suits for violation of agreements or the enforcement of an award by an arbitrator in the court of common pleas of any

county wherein a party resides or transacts business.

(2) Authorizes the public employer to deduct the periodic dues, initiation fees, and assessments of members of the exclusive representative upon presentation of a written deduction authorization by the employee.

(c) The agreement may contain a provision that requires as a condition of employment, on or after a mutually agreed upon probationary period or 60 days following the beginning of employment, whichever is less, or the effective date of a collective bargaining agreement, whichever is later, that the employees in the unit who are not members of the employee organization pay to the employee organization a fair share fee. The arrangement does not require any employee to become a member of the employee organization, nor shall fair share fees exceed dues paid by members of the employee organization who are in the same bargaining unit. Any public employee organization representing public employees pursuant to Ch. 4117 the Revised Code shall prescribe an ernal procedure to determine a rebate, if any, for nonmembers which conforms to federal law. Provided a nonmember makes a timely demand on the employee organization. Absent arbitrary and capricious action, such determination is conclusive on the parties except that a challenge to such determination may be filed with the state employment relations board within 30 days of the determination date specifying the arbitrary or capricious nature of the determination and the state employment relations board shall review the rebate determination and decide whether it was arbitrary or capricious. The deduction of a fair share fee by the public employer from the payroll check of the employee and its payment to the employee organization is automatic and does not require the written authorization of the employee.

The internal rebate procedure shall provide for a rebate of expenditures in support of partisan politics or ideological causes not germaine to the work of employee organizations in the realm of collective bargaining.

Any public employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion or religious body which has historically held conscientious objections to joining or financially supporting an employee organization and which is exempt from taxation under the provisions of the Internal Revenue Code shall not be required to join or financially support any employee organization as a condition of employment. Upon submission of proper proof of religious conviction to the state employment relations board, the board shall declare the employee exempt from becoming a member of or financially supporting an employee organization. The employee shall be required, in lieu of the fair share fee, to pay an amount of money equal to such fair share fee to a nonreligious charitable fund exempt from taxation under Sec. 501(C)(3) of the Internal Revenue Code mutually agreed upon by the employee and the representative of the employee organization to which the employee would otherwise be required to pay the fair share fee. The employee shall furnish to the employee organization written receipts evidencing such payment, and failure to make such payment or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues under the applicable collective bargaining agreement.

No public employer shall agree to a provision requiring that a public employee become a member of an employee organization as a condition for securing or retaining employment.

(D) No agreement shall contain an expiration date that is later than three years from the date of execution. The parties may extend any agreement, but the extensions do not affect the expiration date of the original agreement.

Sec. 4117.10. [Scope of agreement; office of collective bargaining]—(A) An agreement between a public employer and an exclusive representative entered into pursuant to Ch. 4117 of the Revised Code governs the wages, hours, and terms and conditions of public employment covered by the agreement. If the agreement provides for a final and binding arbitration of grievances, public employers, employees, and employee organizations are subject solely to that grievance procedure and the state personnel board of review or civil service commissions have no jurisdiction to receive and determine any appeals relating to matters that were the subject of a final and binding grievance procedure. Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees. Laws pertaining to civil rights, affirmative action, unemployment compensation, workers' compensation, the retirement of public employees, residency requirements, the minimum educational requirements contained in the Revised Code pertaining to public education including the requirement of a certificate by the fiscal officer of a school district pursuant to Sec. 5705.41 of the Revised Code, and the minimum standards promulgated by the State Board of Education pursuant to division (D) of Sec. 3301.07 of the Revised Code prevail over conflicting provisions of agreements between employee organizations and public employers. Except for Secs. 306.08, 306.12, and 4981.22 of the Revised Code and arrangements entered into thereunder, and Sec. 4981.21 of the Revised Code as necessary to comply with Sec. 13(C) of the "Urban Mass Transportation Act of 1964," 87 Stat. 295, 49 U.S.C.A. 1609(C), as amended, and arrangements entered into thereunder, Ch. 4117 of the Revised Code prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in Ch. 4117 of the Revised Code or as otherwise specified by the General Assembly. Nothing in this section prohibits or shall be construed to invalidate the provisions of an agreement establishing supplemental workers' compensation or unemployment compensation benefits or exceeding minimum requirements contained in the Revised Code pertaining to public education or the minimum standards promulgated by the State Board of Education pursuant to Division (D) of Sec 3301.07 of the Revised Code.

RHODE ISLAND – auto. def of fees

There are five public employee bargaining statutes on the books in the State of Rhode Island. Separate laws cover state employees, municipal employees and teachers. In addition, two nearly identical statutes not only grant bargaining rights to firemen and policemen, but also provide compulsory, binding arbitration to resolve impasses. Full text of the laws follows:

State Public Employees: Right to Bargain

Text of Secs. 36-11-1 to 36-11-12, Title 36, establishing the right of state employees to organize, as enacted by Ch. 178, L. 1958, as amended by S. B. 28, L. 1970, and by H. B. 5354, L. 1972, and by Ch. 256, L. 1973, and as last amended by Ch. 356, L. 1980, effective May 19, 1980).

Sec. 36-11-1. Right to organize—Bargaining representatives.—(a) State employees, except for casual employees or seasonal employees, shall have the right to organize and designate representatives of their own choosing for the purpose of collective bargaining with respect to wages, hours and other conditions of employment. State employees, as used herein, shall include employees and members of state police below the rank of lieutenant. (As amended by Ch. 356, L. 1980)

(b) Said representatives of state employees are hereby granted the right to negotiate with the chief executive or his designee (appointed, elected or possessing classified status) on matters pertaining to wages, hours and working conditions. (As amended by H.B. 5354, L. 1972)

(c) The chief executive or his designee (appointed, elected or possessing classified status) is hereby authorized and required to recognize an organization designated by state employees for the purpose of collective bargaining as the collective bargaining agency for its members. (As amended by H.B. 5354, L. 1972)

Sec. 36-11-1.1. Definitions.—The following terms as used in this chapter shall have the following meaning: "Casual employees" shall mean those persons hired for an occasional period to perform special jobs or functions not necessarily related to the work performed by the regular employees in the collective bargaining unit.

"Seasonal employees" shall mean those persons employed in positions which are part of an annual job employment program. (As added by Ch. 356, L. 1980,)

Sec. 36-11-2. Discrimination because of membership in employee organization prohibited.—There shall be no discrimination against any state employee because such employee has formed, joined or chosen to be represented by any labor organization or employee organization. Membership in any employee organization may be determined by each individual employee; provided, however, that in areas where employees have selected an exclusive bargaining representative organization that all non-members of the exclusive bargaining representative organization shall pay to the exclusive organization a service charge as a contribution toward the negotiation and administration of any collective bargaining agreement in an amount equal to the regular bi-weekly membership dues of said organization with the state controller being hereby directed upon certification of the exclusive bargaining organization to deduct bi-weekly from said employee's salary said above amount and remit the same to the treasurer of the exclusive bargaining organization. Supervisory employees shall not endorse any particular employee organization or, by reason of membership in any such organization show prejudice or discriminate toward any individual employee. (As amended by Ch. 256, L. 1973)

Sec. 36-11-3. Action on grievances.—It shall be the responsibility of supervisors at all levels to consider and, commensurate with authority delegated by the head of the state department or agency, to take appropriate action promptly and fairly upon the grievances of their subordinates. To this end appropriate authority shall be delegated to supervisors by the heads of all state departments or agencies. It shall be the duty of the chief executive or his designee (appointed, elected or possessing classified status) to exert every reasonable effort to settle disputes involving hours, wages and working conditions, by collective negotiations with designated employee organizations and to reduce any and all agreements to writing in the form of signed collective bargaining agreements. Said agreements shall be deemed lawful documents. (As amended by H.B. 5354, L. 1972, effective May 8, 1972)

Sec. 36-11-4 Application of Chapter.—The provisions of this chapter and the procedures established hereunder shall be applicable in any state department or agency to conditions which are in whole or in part subject to the control of the head of such department or agency and which involve conditions of employment.

Sec. 36-11-5 Merit System Laws Applicable.—[Repealed by H.B. 5354, L. 1972, effective May 8, 1972]

Sec. 36-11-6. Powers of representative organizations. — Organizations representing state employees including the Rhode Island State Employees Association shall enjoy all the benefits of and be subject to all provisions of chapter 28-7 of the general laws, entitled "Labor Relations Act" except that state employees shall not have the right to strike.

Sec. 36-11-7. Obligation to bargain.—It shall be the obligation of the chief executive or his designee (appointed, elected or possessing classified status) to meet and confer in good faith with the representatives of the state employees' bargaining agent within 10 days after receipt of written notice from said bargaining agent of the request for a meeting for collective bargaining purposes. This obligation shall include the duty to cause any agreement resulting from negotiations to be reduced to a written contract. (As added by H.B. 5354, L. 1972, effective May 8, 1972)

Sec. 36-11-8. Unresolved issues—conciliation and fact finding.—In the event that the bargaining agent and the chief executive or his designee are unable within 30 days from and including the date of their first meeting, to reach an agreement on a contract, any and all unresolved issues shall within three days be submitted to the state labor relations board for conciliation and fact finding. The board shall immediately appoint one of its conciliators to meet with the parties and assist in a voluntary resolution of impasses. If within 10 days of the conciliator's appointment all impasses are not resolved, said conciliator shall make written findings of fact and recommendations with a view toward the voluntary settlement of unresolved issues and said findings and recommendations shall be sent to the board and the parties. The parties shall have five days in which

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~~STATE AND LOCAL PROGRAMS~~
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means any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment, and shall not include any persons solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

(e) Unless included within a bargaining unit pursuant to RCW 41.59.080 of this 1975 act, principals and assistant principals in school districts.

(5) The term "employer" means any school district or community college district.

(6) The term "exclusive bargaining representative" means any employee organization which has:

(a) Been selected or designated pursuant to the provisions of this chapter as the representative of the employees in an appropriate collective bargaining unit; or

(b) Prior to the effective date of this chapter, been recognized under a predecessor statute as the representative of the employees in an appropriate collective bargaining or negotiating unit.

(7) The term "person" means one or more individuals, organizations, unions, associations, partnerships, corporations, boards, committees, commissions, agencies, or other entities, or their representatives.

(8) The term "nonsupervisory employee" means all educational employees other than principals, assistant principals and supervisors.

ED. NOTE: Sec. 4 of S. B. 2500, L. 1975, relating to the creation of education employment relations commission, the filling of vacancy in the commission and the making of report by the commission to the state legislature, was vetoed by the State Governor on July 2, 1975.

Sec. 41.59.060. **Employee rights enumerated; fees and dues, deduction from pay.**—(1) Employees shall have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and shall also have the right to refrain from any or all of such activities except to the extent that employees may be required to pay a fee to any employee organization under an agency shop agreement authorized in this chapter.

(2) The exclusive bargaining representative shall have the right to have deducted from the salary of employees, upon receipt of an appropriate authorization form which shall not be irrevocable for a period of more than one year, an amount equal to the fees and dues required for membership. Such fees and dues shall be deducted monthly from the pay of all appropriate employees by the employer and transmitted as provided for by agreement between the employer and the exclusive bargaining representative, unless an automatic payroll deduction service is established pursuant to law, at which time such fees and dues shall be transmitted as therein provided. If an agency shop provision is agreed to and becomes effective pursuant to RCW 41.59.100 of this 1975 act, except as provided in that section, the agency fee equal to the fees and dues required of membership in the exclusive bargaining representative shall be deducted from the salary of employees in the bargaining unit.

Sec. 41.59.070. Election to ascertain exclusive bargaining representative, when; run-off election; decertification election. — (1) Any employee organization may file a request with the commission for recognition as the exclusive representative. Such request shall allege that a majority of the employees in an appropriate collective bargaining unit wish to be represented for the purpose of collective bargaining by such organization, shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate, shall be supported by credible evidence demonstrating that at least 30 percent of the employees in the appropriate unit desire the organization requesting recognition as their exclusive representative, and shall indicate the name, address, and telephone number of any other interested employee organization, if known to the requesting organization.

(2) The commission shall determine the exclusive representative by conducting an election by secret ballot, except under the following circumstances:

(a) In instances where a serious unfair labor practice has been committed which interfered with the election process and precluded the holding of a fair election, the commission shall determine the exclusive bargaining representative by an examination of organization membership rolls or a comparison of signatures on organization bargaining authorization cards.

(b) In instances where there is then in effect a lawful written collective bargaining agreement between the employer and another employee organization covering any employees included in the unit described in the request for recognition, the request for recognition shall not be entertained unless it shall be filed within the time limits prescribed in subsection (3) of this section for decertification or a new recognition election.

(c) In instances where within the previous 12 months another employee organization has been lawfully recognized or certified as the exclusive bargaining representative of any employees included in the unit described in the request for recognition, the request for recognition shall not be entertained.

(d) In instances where the commission has within the previous 12 months conducted a secret ballot election involving any employees included in the unit described in the request for recognition in which a majority of the valid ballots cast chose not to be represented by any employee organization, the request for recognition shall not be entertained.

(3) Whenever the commission conducts an election to ascertain the exclusive bargaining representative, the ballot shall contain the name of the proposed bargaining representative and of any other bargaining representative showing written proof of at least 10 percent representation of the educational employees within the unit, together with a choice for any educational employee to designate that he or she does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and neither of the three or more choices receives a majority of the valid ballots cast by the educational employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall contain the two choices which receive the largest and second largest number of votes. No question concerning representation may be raised within one year of a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than 90 nor less than 60 days prior

to the expiration date of the agreement. In the event that a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for three years, then the question of representation may be raised not more than 90 nor less than 60 days prior to the third anniversary date of the agreement or any renewal or extensions thereof as long as such renewals and extensions do not exceed three years; and if the exclusive bargaining representative is removed as a result of such procedure, the then existing collective bargaining agreement shall be terminable by the new exclusive bargaining representative so selected within 60 days after its certification or terminated on its expiration date, whichever is sooner, or if no exclusive bargaining representative is so selected then the agreement shall be deemed to be terminated and its expiration date or as of such third anniversary date, whichever is sooner.

(4) Within the time limits prescribed in subsection (3) of this section, a petition may be filed signed by at least 30 percent of the employees then represented by an exclusive bargaining representative, alleging that a majority of the employees in that unit do not wish to be represented by an employee organization, requesting that the exclusive bargaining representative be decertified, and indicating the name, address and telephone number of the exclusive bargaining representative and any other interested employee organization, if known. Upon the verification of signatures on the petition, the commission shall conduct an election by secret ballot as prescribed by subsection (3) of this section.

Ed. Note: Upholding prior opinions, the state attorney general ruled that the Board of Regents of the University of Washington may not bargain on an exclusive basis with an agent duly selected by a majority of the academic employees with respect to wages and other conditions of employment. (Attorney General Opinion (AGLO 1976) No. 61, issued October 4, 1976)

Sec. 41.59.080. Determination of bargaining unit; standards. — The commission, upon proper application for certification as an exclusive bargaining representative or upon petition for change of unit definition by the employer or any employee organization within the time limits specified in RCW 41.59.070 (3) of this 1975 act, and after hearing upon reasonable notice, shall determine the unit appropriate for the purpose of collective bargaining. In determining, modifying or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the educational employees; the history of collective bargaining; the extent of organization among the educational employees; and the desire of the educational employees; except that:

(1) A unit including nonsupervisory educational employees shall not be considered appropriate unless it includes all such nonsupervisory educational employees of the employer; and

(2) A unit that includes only supervisors may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

(3) A unit that includes only principals and assistant principals may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

(4) A unit that includes both principals and assistant principals and other supervisory employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(5) A unit that includes supervisors and/or principals and assistant principals and nonsupervisory educational employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(6) A unit that includes only employees in vocational-technical institutes or occupational skill centers may be considered to constitute an appropriate bargaining unit if the history of bargaining in any such school district so justifies; and

(7) Notwithstanding the definition of collective bargaining, a unit that contains only supervisors and/or principals and assistant principals shall be limited in scope of bargaining to compensation, hours of work, and the number of days of work in the annual employment contracts.

Sec. 41.59.090. Certification of exclusive bargaining representative; scope of representation. — The employee organization which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent all the employees within the unit without regard to membership in that bargaining representative: Provided, That any employee at any time may present his grievance to the employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, as long as such representative has been given an opportunity to be present at the adjustment and to make its views known, and as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect.

Sec. 41.59.100 Union security provisions; scope; agency shop provision collection of dues or fees. — A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions must safeguard the right of nonassociation of employees based on bona fide Religious tenents or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreeement on such matter, the commission shall designate the charitable organization.

Sec. 41.59.110 Commission, rules and regulations of; Federal precedents as standards. — (1) The commission shall promulgate, revise, or rescind in the manner prescribed by the administrative procedure act, Ch. 34.04 RCW such rules and regulations as it may deem necessary and appropriate to administer the provisions of this chapter, in conformity with the intent and purpose of this chapter, and consistent

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employment. This paragraph does not apply to fair-share or maintenance of membership agreements. (As amended by Ch. 160, L. 1984, effective March 20, 1984)

(d) To refuse to bargain collectively with a representative of a majority of its employes in an appropriate collective bargaining unit. Where the employer has a good faith doubt as to whether a labor organization claiming the support of a majority of its employes in appropriate bargaining unit does in fact have that support, it may file with the commission a petition requesting an election as to that claim. It shall not be deemed to have refused to bargain until an election has been held and the results thereof certified to it by the commission. The violation shall include, though not limited to, the refusal to execute a collective bargaining agreement previously orally agreed upon.

(e) To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting state employes, including an agreement to arbitrate, or to accept the terms of an arbitration award, where previously the parties have agreed to accept such award as final and binding upon them.

(f) To deduct labor organization dues from an employe's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally, and terminable by at least the end of any year of its life or earlier by the employee giving at least 30 but not more than 120 days' written notice of such termination to the employer and to the representative labor organization, except if there is a fair-share or maintenance of membership agreement in effect. The employer shall give notice to the labor organization of receipt of such termination. (As amended by Ch. 160, L. 1984, effective March 20, 1984)

(2) It is an unfair practice for an employe individually or in concert with others:

(a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in Sec. 111.82.

(b) To coerce, intimidate or induce any officer or agent of the employer to interfere with any of its employes in the enjoyment of their legal rights, including those guaranteed in Sec. 111.82 or to engage in any practice with regard to its employes which would constitute an unfair labor practice if undertaken by him on his own initiative.

(c) To refuse to bargain collectively on matters set forth in Sec. 111.91(1) with the duly authorized officer or agent of the employer is the recognized or certified exclusive collective bargaining representative of employes in an appropriate collective bargaining unit. Such refusal to bargain shall include, but not be limited to, the refusal to execute a collective bargaining agreement previously orally agreed upon.

(d) To violate the provisions of any written agreement with respect to terms and conditions of employment affecting employes, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such awards as final and binding upon them.

(e) To engage in, induce or encourage any employes to engage in a strike, or a concerted refusal to work or perform their usual duties as employes.

(f) To coerce or intimidate a supervisory employe, officer or agent of the employer, working at the same trade or profession as its employes, to induce him to become a member of or act in concert with the labor organization of which the employe is a member.

(3) It is an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employes, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subs. (1) and (2).

(4) Any controversy concerning unfair labor practices may be submitted to the commission as provided in Sec. 111.07, except that the commission shall fix hearing on complaints involving alleged violations of sub. (2)(e) within three days after filing of such complaints, and notice shall be given to each party interested by service on him personally, or by telegram, advising him of the nature of the complaint and of the date, time and place of hearing thereon. The commission may in its discretion appoint a substitute tribunal to hear unfair labor practice charges by either appointing a three-member panel or submitting a seven-member panel to the parties and allowing each to strike two names. Such panel shall report its finding to the commission for appropriate action. (Sec. 111.84, as amended by A.B. 475, L. 1971)

Sec. 111.85. Fair-share and maintenance of membership agreements. — (1)(a) No fair-share or maintenance of membership agreement may become effective unless authorized by referendum. The commission shall order a referendum whenever it receives a petition supported by proof that at least 30 percent of the employees or supervisors in a collective bargaining unit desire that a fair-share or maintenance of membership agreement be entered into between the employer and a labor organization. A petition may specify that a referendum is requested on a maintenance of membership agreement only, in which case the ballot shall be limited to that question.

(b) For a fair-share agreement to be authorized, at least two-thirds of the eligible employees or supervisors voting in a referendum shall vote in favor of the agreement. For a maintenance of membership agreement to be authorized, at least a majority of the eligible employees or supervisors voting in a referendum shall vote in favor of the agreement. In a referendum on a fair-share agreement, if less than two-thirds but more than one-half of the eligible employees or supervisors vote in favor of the agreement, a maintenance of membership agreement is authorized.

(c) If a fair-share or maintenance of membership agreement is authorized in

a referendum, the employer shall enter into such an agreement with the labor organization named on the ballot in the referendum. Each fair-share or maintenance of membership agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employees or supervisors affected by the agreement and to pay the amount so deducted to the labor organization. Unless the parties agree to an earlier date, the agreement shall take effect 60 days after certification by the commission that the referendum vote authorized the agreement. The employer shall be held harmless against any claims, demands, suits and other forms of liability made by the employees or supervisors or local labor organizations which may arise for actions taken by the employer in compliance with this section. All such lawful claims, demands, suits and other forms of liability are the responsibility of the labor organization entering into the agreement.

(d) Under each fair-share or maintenance of membership agreement, an employee or supervisor who has religious convictions against dues payments to a labor organization based on teachings or tenets of a church or religious body of which he or she is a member shall, on request to the labor organization, have his or her dues paid to a charity mutually agreed upon by the employee or supervisor and the labor organization. Any dispute concerning this paragraph may be submitted to the commission for adjudication.

(2) (a) Once authorized, a fair-share or maintenance of membership agreement shall continue in effect subject to the right of the employer or labor organization concerned to petition the commission to conduct a new referendum. Such petition must be supported by proof that at least 30 percent of the employees or supervisors in the collective bargaining unit desire that the fair-share or maintenance of membership agreement be discontinued. Upon so finding, the commission shall conduct a new referendum. If the continuance of the fair-share or maintenance of membership agreement is approved in the referendum by at least the percentage of eligible voting employees or supervisors required for its initial authorizations, it shall be continued in effect, subject to the right of employer or labor organization to later initiate a further vote following the procedure described in this subsection. If the continuation of the agreement is not supported in any referendum, it is deemed terminated at the termination of the collective bargaining agreement, or one year from the date of certification of the result of the referendum, whichever is earlier.

(b) The commission shall declare any fair-share or maintenance of membership agreement suspended upon such conditions and for such time as the commission decides whichever it finds that the labor organization involved has refused on the basis of race, color, sexual orientation or creed to receive as a member of any employee or supervisor in the collective bargaining unit involved, and the agreement shall be made subject to the findings and orders of the commission. Any of the parties to the agreement, or any employee or supervisor covered thereby, may come before the commission, as provided in Sec. 111.07, and petition the commission to make such a finding.

(3) A stipulation for a referendum executed by an employer and a labor organization may not be filed until after the representation election has been held and the results certified.

(4) The commission may, under rules adopted for that purpose, appoint as its agent an official of the state department or agency involved to conduct the referenda provided for herein. (Sec. 111.85, as amended by Ch. 160, L. 1984, effective March 20, 1984)

Sec. 111.86. Arbitration in general. — Parties to the dispute pertaining to the interpretation of a collective bargaining agreement may agree in writing to have the commission or any other appointing agency serve as arbitrator or may designate any other competent, impartial and disinterested persons to so serve. Such arbitration proceedings shall be governed by Ch. 298. (Sec. 111.86, as amended by A.B. 475, L. 1971)

Sec. 111.87. Mediation. — The board may appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon its own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the commission shall have any power of compulsion in mediation proceedings. (Sec. 111.87, as amended by A.B. 475, L. 1971)

Sec. 111.88. Fact finding. — (1) If a dispute has not been settled after a reasonable period of negotiation and after the settlement procedures, if any, established by the parties have been exhausted, the representative, which has either been certified by the commission after an election, or has been duly recognized by the employer, as the exclusive representative of employes in an appropriate collective bargaining unit, and the employer, its officers and agents, after a reasonable period of negotiation, are deadlocked with respect to any dispute existing between them arising in the collective bargaining process, the parties jointly, may petition the commission in writing, to initiate fact finding under this section, and to make recommendations to resolve the deadlock.

(2) Upon receipt of a petition to initiate fact-finding, the commission shall make an investigation with or without a formal hearing, to determine whether a deadlock exists. After its investigation, the commission shall certify the results thereof. If the commission decides that fact-finding should be initiated, it shall appoint a qualified, disinterested person or 3-member panel when jointly requested by the parties, to function as a fact finder.

(3) The fact finder may establish dates and place of hearings and shall conduct the hearings under rules established by the commission. Upon request, the com-

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and recommendations for resolution of the dispute and shall cause the same to be served on the employer and the employee organization involved.

(d) The employer or those employee organizations which are designated as exclusive representatives under Secs. 5-270 to 5-280 shall be proper parties in initiating fact finding proceedings.

(e) The cost of fact finding proceedings shall be divided equally between the employer and the employee organizatin except as provided in subdivision (3) of subsection (b) of Sec. 5-274. Compensation for the fact finder shall be in accordance with a schedule of payment established by the board of mediation and arbitration.

(f) Nothing in this section shall be construed to prohibit the fact finder from endeavoring to mediate the dispute for which he has been selected or appointed as fact finder.

Sec. 5-278. **Employer representatives: duties; legislative appropriation; agreements.**—(a) When an employee organization has been designated, in accordance with the provisions of Secs. 5-270 to 5-280, inclusive, as the exclusive representative of employees in an appropriate unit, the employer shall be represented in collective bargaining with such employee organization in the following manner: (1) In the case of an executive branch employer, by the chief executive officer whether elected or appointed, or his designated representative; who shall maintain a close liaison with the legislature relative to the negotiations and the potential fiscal ramifications of any proposed settlement; (2) in the case of a judicial branch employer, by the chief court administrator or his designated representative; and (3) in the case of each segment of the system of higher education, the faculty and professional employees shall negotiate with their own board of trustees or its designated representative. (As amended by P. A. 818, L. 1983, effective October 1, 1983)

(b) Any agreement reached by the negotiators shall be reduced to writing. A request for funds necessary to implement such written agreement and for approval of any provisions of the agreement which are in conflict with any statute or any regulation such as those of the personnel board shall be submitted by the bargaining representative of the employer within 14 days of the date on which such agreemtn is reached to the legislature which may approve or reject such request as a whole by a majority vote of those present and voting on the matter; but, if rejected, the matter shall be returned to the parties for further bargaining. Failure by the bargaining representative of the employer to submit such request to the legislature within such 14 day period shall be considered to be a prohibited practice committed by the employer. If the legislature is in session, it shall vote to approve or reject such request within 30 days of the end of the 14-day period for submission to said body. If the legislature is not in session when such request is received, such request shall be submitted to the legislature within 10 days of the first day of the next regular session or special session called for such purpose and shall be deemed approved if the legislature fails to vote to approve or reject such request within 30 days after such submission. The 30-day period shall not begin or expire unless the legislature is in regular session.

(c) Notwithstanding any provision of any general statute or special act to the contrary, the legislature shall appropriate whatever funds are required to comply with a collective bargaining agreement, provided the request called for in subsection (b) of this section has been approved by the legislature.

(d) No provision of any general statute or special act shall prevent negotiations between an employer and an employee organization which has been designated as the exclusive representative of employees in an appropriate unit, from continuing after the final date for setting the state budget. An agreement between an employer and an employee organization shall be valid and in force under its terms when entered into in accordance with the provisions of this law and signed by the chief executive officer or administrator as a ministerial act. Such terms may make any such agreement effective on a date prior to the date on which the agreement is entered. No publication thereof shall be required to make it effective. The procedure for the making of an agreement between the employer and an employee organization provided by this act shall be the exclusive method for making a valid agreement for employees represented by an employee organization, and any provisions in any general statute or special act to the contrary shall not apply to such an agreement.

(e) Where there is a conflict between any agreement reached by an employer and an employee organization and approved in accordance with the provisions of Secs. 5-270 to 5-280, inclusive, on matters appropriate to collective bargaining, as defined in said sections and any general statute or special act, or rules or regulations adopted by state agents such as a personnel board, the terms of such agreement shall prevail; provided if participation of any employees in a retirement system is effected by such agreement, the effective date of participation in said system, notwithstanding any contrary provision in such agreement, shall be the first day of the third month following the month in which a certified copy of such agreement is received by the retirement commission or board or such later date as may be specified in the agreement.

Sec. 5-279. **Strike prohibited.**—Nothing in Secs. 5-270 to 5-280 shall constitute a grant of the right to strike to state employees and such strikes are prohibited.

Sec. 5-280. **Nonmember service fees; payroll deductions.**—(a) If an exclusive representative has been designated for the employees in an appropriate collective bargaining unit, each employee in such unit who is not a member of the exclusive representative shall be required, as a condition of continued employment, to pay to such organization for the period that it is the exclusive representative, an amount equal to the regular dues, fees and assessments that a member is charged.

(b) Employers and employee organizations are authorized to negotiate provisions in a collective bargaining agreement calling for the payroll deduction of employee organization dues and initiation fees and for payroll deduction of the service fee described in subsection (a) of this section.

CONNECTICUT PUB. TEACHER - doesn't authorize or prohibit ~~STATE AND LOCAL PROGRAMS~~ auto. ded. of fees

Teachers: Right to Organize and Bargain Collectively

Following is the full text of Secs. 10-153a to 10-153g of Title 10, establishing the right of teachers to organize and bargain collectively, as enacted by Ch. 166, L. 1958, as amended by P.A. 752, L. 1967, by P.A. 811, L. 1969, by P.A. 385, L. 1973, by P.A. 403, L. 1976, by P.As. 235 and 614, Ls. 1977, by P.As. 84, 218, and 303, Ls. 1978, by P.As. 405, 422, and 504, Ls. 1979, by P.As. 192 and 483, Ls. 1980, by P.A. 225, L. 1982, by P. As. 72 and 308, Ls. 1983, and as last amended by P. A. 459, L. 1984, effective July 1, 1984.

Sec. 10-153a. (a) Members of the teaching profession shall have and shall be protected in the exercise of the right to form, join or assist, or refuse to form, join or assist, any organization for professional or economic improvement and to negotiate in good faith through representatives of their own choosing with respect to salaries and other conditions of employment free from interference, restraint, coercion or discriminatory practices by any employing board of education or administrative agents or representatives thereof in derogation of the rights guaranteed by this section and Secs. 10-153b to 10-153n, inclusive, as amended by Secs. 1 to 8, inclusive, of this [1983] act. (As amended by P.A. 72, L. 1983)

(b) Nothing in this section or in any other section of the general statutes shall preclude a local or regional board of education from making an agreement with an exclusive bargaining representative to require as a condition of employment that all employees in a bargaining unit pay to the exclusive bargaining representative of such employees an annual service fee, not greater than the amount of dues uniformly required of members of the exclusive bargaining representative organization which represents the costs of collective bargaining, contract administration and grievance adjustment; and that such service fee be collected by means of a payroll deduction from each employee in the bargaining unit. (Sec. 10-153a(b), as added by P.A. 422, L. 1979)

ED. NOTE: Teachers employed by the school board in summer school programs are covered by the Teachers Negotiation Act, the state Supreme Court ruled. Noting that Sec. 10-53a, above, covers "members of the teaching profession," the court rejected the board's contention that the act covers only teachers employed for the regular 180-day school year required by statute. According to the court, "there are strong reasons of public policy for not reading such a limitation into the statute ••• [D]isputes and controversies arising during a summer school session can be as productive of labor strife as disputes arising during the regular school year." (Conn. State Bd. v. Bd. of Ed., 100 LRRM 3065, Conn SupCt, March 13, 1979)

The state Supreme Court ruled that Sec. 10.153a, above, applies to teachers whose employment contracts antedate amendment permiting service fee clauses in collective bargaining agreements, even though clause may have been prohibited by state law when agreed to. Finding that the clause does not contravene public policy, the court held that it is not a nulity. (Dowaliby v. AFT, LOCAL 1018, 109 LRRM 3015, Conn SupCt, May 6, 1980)

For related cases, see LR ► 8.81 and 100.05.

Sec. 10-153b. (a) Whenever used in this section or in Secs. 10-153c to 10-153n, inclusive, as amended by Secs. 1 to 8, inclusive, of this [1983] act: (1) The "administrators' unit" means those certified professional employees in a school district who are employed in positions requiring an intermediate administor or supervisor certificate, or the equivalent thereof, and are not excluded from the purview of Secs. 10-153a to 10-153n, inclusive, as amended by Secs. 1 to 8, inclusive, of this [1983] act. (2) The "teachers' unit" means the group of certified professional employees who are employed by a local or regional board of education in positions requiring a teaching or other certificate and are not included in the administrators' unit or excluded from the purview of Secs. 10-153a to 10-153n, inclusive, as amended by Secs. 1 to 8, inclusive, of this [1983] act. (3) "Commissioner" means the commissioner of education. (4) "To post a notice" means to post a copy of the indicated material on each bulletin board for teachers in every school in the school district or, if there are no such bulletin boards, to give a copy of such information to each employee in the unit affected by such notice. (5) "Budget submission date" means the date on which a school district is to submit its itemized estimate of the cost of maintenance of public schools for the next following year to the board of finance in each local having a board of finance, to the board of selectmen in each local having no board of finance and, in any city having a board of finance, to said board, and otherwise to the authority making appropriations therein. (6) "Days" means calendar days.

(b) The superintendent of schools, assistant superintendents, certified professional employees who act for the board of education in negotiations with certified professional personnel or are directly responsible to the board of education for personnel relations or budget preparation, temporary substitutes and all non-certified employees of the board of education are excluded from the purview of this section and Secs. 10-153c to 10-153n, inclusive, as amended by Secs. 3 to 8, inclusive of this [1983] act.

(c) The employees in either unit defined in this section may designate any organization of certified professional employees to represent them in negotiations with respect to salaries and other conditions of employment with the local or regional board of education which employs them by filing, during the period between March first and March thirty-first of any school year, with the board of education a petition which requests recognition of such organization for purposes of negotiation under this section and Secs. 10-153c and 10-153n, inclusive, as amended by Secs. 3 to 8, inclusive, of this [1983] act, and is signed by a majority of the employees in such unit. Where a new school district is formed as the result of the creation or dissolution of a regional school district, a petition for designation shall also be considered timely if it is filed at any time during the first school year of operation of any such school district. Within three school days next following the receipt of such petition, such board

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(4) The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations and functions of government; and

(5) It is the purpose of ORS 243.650 to 243.782 to obligate public employers, public employes and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.782 to promote the improvement of employer-employe relations within the various public employers by providing a uniform basis for recognizing the right of public employes to join organizations of their own choice, and to be represented by such organizations in their employment relations with public employers.

Sec. 243.662. Rights of public employes to join labor organizations.—Public employes have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations.

Sec. 243.666. Certified or recognized labor organization as exclusive employe group representative; protection of employe nonassociation rights; representation of certain school district employes.—(1) A labor organization certified by the Public Employe Relations Board or recognized by the public employer is the exclusive representative of the employes of a public employer for the purposes of collective bargaining with respect to employment relations. Nevertheless any agreements entered into involving union security including an all-union agreement or agency shop agreement must safeguard the rights of nonassociation of employes, based on bona fide religious tenets or teachings of a church or religious body of which such employe is a member. Such employe shall pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employe affected and the representative of the labor organization to which such employe would otherwise be required to pay dues. The employe shall furnish written proof of his employer that this has been done.

ED. NOTE: A teacher's nonreligious beliefs do not fall within the statutory exemption from fair share payments to labor organizations under Sec. 243.666(1) above, the state Court of Appeals ruled. Affirming a determination by the Public Employment Relations Board, the court found that the teacher "has failed to carry out her burden of demonstrating a nexus between her beliefs and her unwillingness to join or pay dues to the Association." Furthermore, the court rejected the education association's contention that PERB's determination was not subject to judicial review since PERB did not issue a final order in this case. According to the court, since the school district already was withholding a fair share amount from the teacher's salary, no further action by PERB was necessary to dispose of the teacher's or union's claims and PERB's decision was as effective as a final order. (Gorham v. Roseburg Education Association, 101 LRRM 2049, Ore. CtApp, March 19, 1979)

For other rulings, see LR ▶ 100.40 and 9.105.

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(2) Notwithstanding the provisions of subsection (1) of this section, an individual employe or group of employes at any time may present grievances to their employer and have such grievances adjusted, without the intervention of the labor organization, if:

ED. NOTE: The teacher has neither a statutory nor a constitutional right to be represented at teacher evaluation conferences to measure the teacher's annual development and growth in the teaching profession. (Attorney General Opinion No. 7381, issued December 29, 1976)

(a) The adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect; and

(b) The labor organization has been given opportunity to be present at the adjustment.

(3) Nothing in this section prevents a public employer from recognizing a labor organization which represents at least a majority of employes as the exclusive representative of the employes of a public employer when the board has not designated the appropriate bargaining unit or when the board has not certified an exclusive representative in accordance with ORS 243.686.

(4) Those employes who selected representation as provided in ORS 342.460 or 342.760 shall be allowed to continue such representation until challenged by ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785. Representation by committee shall not be recognized after July 1, 1974. In addition, those employes covered under both the teacher and the classified school employe consultation statutes shall have the opportunity to challenge the incumbent organization or committee during the first 30 days after the beginning of the 1973-74 school year.

ED. NOTE: The collective bargaining rights in Sec. 243.662, above, apply to all public employees, including unclassified members of the Oregon State Police Department, the state attorney general ruled. "The definition of 'public employee' set forth in Sec. 243.650(17) makes no differentiation between 'classified' and 'unclassified' employees and both are entitled to the rights of collective bargaining conferred by Sec. 243.662," according to the attorney general. (Attorney General Opinion No. 7460, issued June 1, 1977)

Sec. 243.672. Unfair labor practices; filing complaints—(1) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce employes in or because of the exercise of rights guaranteed in ORS 243.662.

(b) Dominate, interfere with or assist in the formation, existence or administration of any employe organization.

(c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employe organization. Nothing in this section is intended to prohibit the entering into of a fairshare agreement between a public employer and the exclusive bargaining representative of its employes. If such a "fair-share" agreement has been agreed to by the public employer and exclusive representative, nothing shall prohibit the deduction of the payment-in-lieu-of-dues from the salaries or wages of such employes.

(d) Discharge or otherwise discriminate against an employe because the employe has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.782.

CITY OF EUGENE, ORE. PUB. EES
- not as arguable as ~~STATE AND LOCAL PROGRAMS~~ Ore Pub. Ed Law, as it ~~as~~ States only that "nothing" in ~~this~~ code" ~~can~~ prohibits auto. ded.

Strike means a city employee's refusal in concerted action with others to report for duty, or his wilfull absence from his position or his stoppage of work, or his absence in whole or in part from the full, faithful or proper performance of his duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of city employment; however, nothing shall limit or impair the right of any city employee to lawfully express or communicate a complaint or opinion on any matter related to the conditions of employment. Picketing activity for the purpose of inducing, influencing or coercing a change in a lawful collective bargaining agreement is striking. The city is not obligated to provide employment during a strike.

Supervisory Employee means any individual having authority in the interest of the city to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees, or having responsibility to direct them, or to adjust their grievances or effectively to recommend such action, if in connection therewith, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. However, the exercise of any function of authority enumerated in this definition does not necessarily require the conclusion that the individual so exercising that function is a supervisor.

2.878 Labor Management Relations - Purpose

The city council declares that it is the public policy of the city and the purpose of sections 2.876 to 2.896 of this code to promote harmonious, peaceful and cooperative relationships between the city and its employees, and to protect the public by assuring, at all times, the responsive and effective operation of government. Inasmuch as unresolved disputes in the public service are injurious to the public, the city, and its employees as well, adequate means are herein provided for preventing or minimizing disputes between the city and its employees, and for resolving such disputes when they occur. Neither this code nor any agreement pursuant thereto revokes any constitutional, common law, charter, statutory or traditional right or responsibility of the city to act unilaterally to:

(a) Determine the overall mission of the city as a unit of government;

(b) Maintain and improve the efficiency and effectiveness of city operations;

(c) Determine the services to be rendered, the operations to be performed, the technology to be utilized or the matters to be budgeted;

(d) Determine the overall methods, processes, means, job classifications or personnel by which city operations are to be conducted;

(e) Direct, supervise or hire employees;

(f) Promote, suspend, discipline, discharge, transfer, assign, schedule, retain or layoff employees;

(g) Temporarily relieve or layoff employees from duties because of lack of work or funds, or under conditions where the city determines continued work would be inefficient or non-productive;

(h) Take whatever other actions may be necessary to carry out the public policy not otherwise specified herein or limited by a collective bargaining agreement; or

(i) Take actions to carry out the mission of the city as the governmental unit in situations of emergency.

Nothing in this code limits the discretion of the city to voluntarily confer with city employees or employee representatives in the process of developing policies to effectuate or implement any of the above enumerated rights.

2.880 Labor-Management Relations - Employee Rights.

City employees shall have the right to self-organization, to form, join or assist labor organizations, and to bargain collectively through representatives of their own choosing with respect to wages, hours and other terms and conditions of employment.

2.882 Labor-Management Relations - Unfair Labor Practices.

(1) It is an unfair labor practice for the city or its designated representative to:

(a) Interfere with, restrain, or coerce city employees in the exercise of their rights guaranteed in sections 2.876 to 2.896 of this code;

(b) Dominate, interfere with, or assist in the formation, existence or administration of any labor organization. The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under this subsection or (a) above if such expression contains no threat of reprisal or force, or promise of benefit. Nothing in this code prohibits a fair-share agreement between the city and an exclusive bargaining agent or the deduction of a payment-in-lieu-of-dues from the wages of city employees affected by such an agreement;

(c) Discriminate in hiring, tenure, or any term or condition of employment, in order to encourage or discourage membership in any labor organization;

(d) Refuse to meet at reasonable times and bargain collectively in good faith with employee representatives of the bargaining agent as required in sections 2.876 to 2.896 of this code;

(e) Discharge or otherwise discriminate against any employee because the employee has filed charges or given testimony under sections 2.876 to 2.896 of this code;

(f) Communicate directly or indirectly during the period of negotiations with employees in the bargaining unit other than the designated employee representatives regarding issues under negotiation except for matters relating to the performance of the employee work involved. This restriction does not prohibit the processing of grievances, the issuance of a public statement by the hearings official under the provisions of section 2.888(9), or the issuance of press releases under ground rules negotiated between the city and the bargaining agent.

(g) Refuse to reduce to writing or refuse to sign a collective bargaining agreement reached under sections 2.876 to 2.896 of this code;

(h) Refuse to accept an arbitration decision arrived at under the provisions of sections 2.876 to 2.896 of this code.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) Restrain or coerce:

1. Employees in the exercise of their rights guaranteed in sections 2.876 to 2.896 of this code, except that this subsection does not impair the right of a labor organization to prescribe its own reasonable rules with respect to the acquisition or retention of membership therein; or

2. The city in selection of its agents for the purpose of entering into the collective bargaining process.

(b) Cause or attempt to cause the city to discriminate against an employee in violation of this section. The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under subsection (a) or this subsection if such expression contains no threat of reprisal or force, or promise of benefit;

Exhibit 2
HB 391
2/7/85 Sub. by: Sue Rodby

the judicial system on their island for 23 years before deciding that a local appellate court would best serve their needs. This hiatus, therefore, does not indicate that Guam lacked the power to act, as the Court assumes, *ante*, at 1778, but rather that the people deemed it unwise at that stage in their development to do so. Moreover, as careful analysis of the relevant sections of other territorial charters demonstrates, see *Agana Bay Development Corp. v. Supreme* 1208 *Court of Guam*, 529 F.2d 952, 957–958 (CA9 1976), "the Guam Organic Act is unique and it delegates the widest powers of any of the territories to the legislature for the creation of appellate courts." *Id.*, at 957.

If there are constitutional problems with this interpretation of the Organic Act, see *ante*, at 1778–1779, 1780, they do not arise from the action of the Guam Legislature in creating a local appellate court. Rather, they stem from the absence of a statute expressly providing for appeals from the Guam courts to an Art. III tribunal. As petitioners note, Brief, at 15–19, Congress has in its dealings with Guam historically reacted to the developing legal needs of the island rather than anticipating them. See, *e. g., Corn v. Guam Coral Co.*, 318 F.2d 622, 624–627 (CA9 1963). This is not surprising; since the Organic Act did not set up a local court structure, it was impossible for Congress to foresee the manner in which the system as actually established would mesh with the Art. III courts. Most recently, Congress authorized Guam to design a local court system as part of the drafting of a new constitution, recognizing that it would thereafter be necessary to enact legislation "regulating the relationship between the local courts of Guam [and] the Federal judicial system." Pub.L. No. 94–584, 90 Stat. 2899, § 2(b)(7).

In view of the willingness of Congress to accommodate both the aspirations of the people of Guam and the requirements of federal jurisdiction, I think there is no need to search for constitutional questions where none yet exist.[3] In the meantime, we should not eviscerate the court system carefully devised by the people of Guam in the exercise of their right of self-government.

I respectfully dissent.

3. Nowhere in respondent's presentation to this Court is there any claim of federal constitutional or statutory infirmities in his conviction for violation of the laws of Guam.

WEST KEYNUMBERSYSTEM

431 U.S. 209, 52 L.Ed.2d 261

D. Louis ABOOD et al., Appellants,

v.

DETROIT BOARD OF EDUCATION et al.

No. 75–1153.

Argued Nov. 9, 1976.

Decided May 23, 1977.

Rehearing Denied June 27, 1977.

See 433 U.S. 915, 97 S.Ct. 2989.

Detroit teachers sought declaration that agency shop provision of collective bargaining agreement was invalid under state law and the Federal Constitution. The Wayne County Circuit Court, Charles Kaufman, J., rendered summary judgment for defendants. The Court of Appeals, 60 Mich.App. 92, 230 N.W.2d 322, reversed and remanded. The Michigan Supreme Court denied review, and plaintiffs appealed. The Supreme Court, Mr. Justice Stewart, held that: (1) insofar as service charges were used to finance expenditures by the union for collective bargaining, contract administration and grievance adjustment purposes, the agency shop clause was valid; (2) First Amendment principles prohibited union and board of education from requiring any teacher to contribute to support of an ideological cause he might oppose as a condition of holding a job as a public school teacher; and (3) in view of fact that union had

Agency shop ~~from state~~ concept OK — can't be required to pay portions not germane to collective bargaining rep.

adopted an internal remedy for dissenters it was appropriate to defer further judicial proceedings pending voluntary utilization of such remedy as a practical means of settling the dispute.

Opinion of Michigan Court of Appeals vacated and remanded.

Mr. Justice Rehnquist filed concurring opinion.

Mr. Justice Stevens filed concurring opinion.

Mr. Justice Powell filed an opinion concurring in judgment, in which Mr. Chief Justice Burger and Mr. Justice Blackmun joined.

1. Federal Courts ⇐503

Since purpose of remand by Michigan Court of Appeals was only for a ministerial purpose, such as correction of language in trial court's judgment, the judgment of the Court of Appeals was final for purposes of United States Supreme Court's appellate jurisdiction, the Michigan Supreme Court having denied review. 28 U.S.C.A. § 1257(2).

2. Declaratory Judgment ⇐147

Challenge to agency shop provision of public schoolteachers' bargaining agreement was not rendered moot on ground that the only such clause placed in issue by the complaint was contained in a now expired bargaining agreement where successor agreement contained substantially identical provisions and state appellate court appeared to have taken judicial notice of the latter agreement in rendering its decision. 28 U.S.C.A. § 1257(2); U.S.C.A.Const. art. 3, § 1 et seq.

3. Federal Courts ⇐510

Fact that public teachers' bargaining agreement may have expired since state appellate court upheld validity of agency shop clause did not affect continuing validity of the controversy for purpose of United States Supreme Court review, since some of the teachers had refused to pay the service charge or had paid it under protest and their contention that they could not be constitutionally compelled to contribute such charge, or at least a portion thereof, survived expiration of the bargaining agreement. 28 U.S.C.A. § 1257(2); U.S.C.A. Const. art. 3, § 1 et seq.

4. Labor Relations ⇐251

Although a union shop denies an employee the option of not formally becoming a union member, under federal law it is the practical equivalent of an agency shop. Railway Labor Act, § 2, subd. 11, 45 U.S.C.A. § 152, subd. 11; National Labor Relations Act, § 8(a)(3) as amended 29 U.S.C.A. § 158(a)(3).

5. Constitutional Law ⇐218

Principle of exclusive union representation, which underlies National Labor Relations Act as well as Railway Labor Act, is a central element in the congressional structuring of industrial relations; designation of a single representative avoids the confusion that would result from attempting to enforce two or more agreements containing different terms and conditions of employment and prevents interunion rivalries from creating dissent within the work force and also frees the employer from the possibility of facing conflicting demands from different unions and permits the employer and a union to reach agreements on settlements that are not subject to attack from rival labor organizations. Railway Labor Act, § 2, subd. 11, 45 U.S.C.A. § 152, subd. 11; National Labor Relations Act, § 8(a)(3) as amended 29 U.S.C.A. § 158(a)(3).

6. Constitutional Law ⇐218

Although being required to help finance a union as collective bargaining agent might well be thought to interfere in some way with an employee's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit, such interference is constitutionally justified by the legislative assessment of the important contribution of the union and agency shop to the system of labor relations established by Congress. Railway Labor Act, § 2, subd. 11, 45 U.S.C.A. § 152, subd. 11; National

Labor Relations Act, § 8(a)(3) as amended 29 U.S.C.A. § 158(a)(3).

7. Labor Relations ⇐52

Under National Labor Relations Act the regulation of labor relations of state and local governments is left to the states. National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2).

8. Labor Relations ⇐251

For purpose of validity of agency shop provisions in public employee bargaining agreements the desirability of labor peace is no less important in the public sector, nor is the risk of "free riders" any smaller. M.C.L.A. § 423.210(1)(c), (2); National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2).

9. Constitutional Law ⇐70.3(9)

In ruling on challenge to validity of agency shop provision in public teachers' bargaining agreement it was not the province of the Supreme Court to judge the wisdom of Michigan's decision to authorize the agency shop in public employment; rather, function of the court was to adjudicate the constitutionality of that decision. M.C.L.A. § 423.210(1)(c), (2); U.S.C.A.Const. Amend. 1.

10. Constitutional Law ⇐82(6)
Labor Relations ⇐251

Agency shop clause of public teachers' bargaining agreement, which clause was authorized by Michigan law, was valid and did not violate First Amendment, insofar as the service charges were used to finance expenditures by the union for collective bargaining, contract administration and grievance adjustment purposes. M.C.L.A. § 423.211; National Labor Relations Act, § 2(2) as amended 29 U.S.C.A. § 152(2); U.S.C.A.Const. Amend. 1.

11. Constitutional Law ⇐90.1(7)

Although public employees' union activities are political to the extent they attempt to influence governmental policy making, differences in the nature of collective bargaining between the public and private sectors do not mean that a public employee has a weightier First Amendment interest than a private employee in not being compelled to contribute to the costs of exclusive union representation; a public employee who believes that a union representing him is urging a course that is unwise as a matter of public policy is not barred from expressing his viewpoint since, among other things, he is largely free to express his views in public or private. U.S.C.A.Const. Amend. 1.

12. Constitutional Law ⇐90.1(1)

There may be limits on the extent to which a public employee in a sensitive or policy-making position may freely criticize his superiors and the policies they espouse. U.S.C.A.Const. Amend. 1.

13. Labor Relations ⇐191

Principle of exclusivity of union representation cannot constitutionally be used to muzzle a public employee who, like any other citizen, may wish to express his views about governmental decisions concerning labor relations. U.S.C.A.Const. Amend. 1.

14. Constitutional Law ⇐90.1(7)

Although attempts of public employee unions to influence governmental policy making may properly be termed political, such characterization does not raise the ideas and beliefs of public employees onto a higher plane than ideas and beliefs of private employees, differences between public and private sector collective bargaining simply do not translate into differences in First Amendment rights. U.S.C.A.Const. Amends. 1, 14.

15. Constitutional Law ⇐91, 274.1(1)

Freedom to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments. U.S.C.A.Const. Amends. 1, 14.

16. Constitutional Law ⇐82(11)

Government may not require an individual to relinquish right guaranteed by the First Amendment as a condition of public employment. U.S.C.A.Const. Amends. 1, 14.

17. Labor Relations ⇐104

Principles that under the First Amendment an individual should be free to believe as he will and that in a free society one's belief should be shaped by his mind and his conscience rather than coerced by the state prohibited public teachers' association and board of education from requiring any public school teacher, under agency shop clause of bargaining agreement, to contribute to support of an ideological cause he might oppose as a condition of holding a job as a public school teacher. M.C.L.A. §§ 423.210(1)(c), (2), 423.211; U.S.C.A.Const. Amends. 1, 14.

18. Constitutional Law ⇐91

Contributing to an organization for purpose of spreading a political message is protected by the First Amendment. U.S.C.A.Const. Amends. 1, 14.

19. Constitutional Law ⇐82(11)

Fact that pursuant to agency shop clause of bargaining agreement public school teachers were compelled to make, rather than prohibited from making, contributions for political purposes worked no less an infringement of their First Amendment rights. U.S.C.A.Const. Amends. 1, 14.

20. Constitutional Law ⇐82(3)

At the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one's belief should be shaped by his mind and his conscience rather than coerced by the state; freedom of belief is no incidental or secondary aspect of the First Amendment's protection. U.S.C.A.Const. Amends. 1, 14.

21. Constitutional Law ⇐84, 91

First Amendment prohibits the state from compelling any individual to affirm his belief in God or to associate with a political party as a condition of retaining public employment. M.C.L.A. § 423.211.

22. Labor Relations ⇐104

The Constitution requires that a union's expenditures for ideological cause not germane to its duties as a collective bargaining representative be financed by charges, dues, or assessments paid by employees who do not object to advancing such causes and who are not coerced into doing so against their will by the threat of loss of government employment. U.S.C.A.Const. Amends. 1, 14.

23. Labor Relations ⇐104

To extent that contributions of union funds involve support of political candidates it must be conducted consistently with any applicable and constitutional system of election campaign regulations.

24. Labor Relations ⇐104

Limiting use of actual dollars collected from dissenting public employees to collective bargaining purposes was not an adequate remedy to constitutional violation inherent in compelling public schoolteachers, under agency shop clause, to contribute to support of an ideological cause they might oppose as a condition to holding a job as a public schoolteacher. M.C.L.A. §§ 423.210(1)(c), (2), 423.211; U.S.C.A.Const. Amends. 1, 14.

25. Federal Civil Procedure ⇐633
Labor Relations ⇐797

Indication of specific union expenditures to which public schoolteachers objected was not a prerequisite to injunction restraining union from expending service charges for ideological causes opposed by a teacher; to require greater specificity than allegation that teachers opposed ideological expenditures of any sort that were unrelated to collective bargaining would confront an individual employee with the dilemma of relinquishing either his right to withhold support of ideological causes to which he objected or his freedom to maintain his own beliefs without public disclosure and would place on employees the burden of monitoring the numerous and shifting expenditures. M.C.L.A. §§ 423.210(1)(c), (2), 423.211; U.S.C.A.Const. Amends. 1, 14.

26. Labor Relations ⇐136

Where following commencement of litigation challenging validity of agency shop

provision in schoolteachers' collective bargaining agreement the union adopted an internal remedy for those opposing ideological expenditures unrelated to collective bargaining it was appropriate to defer further judicial proceedings pending voluntary utilization of such remedy as a means of settling the dispute. M.C.L.A. §§ 423.210(1)(c), (2), 423.211; U.S.C.A.Const. Amends. 1, 14.

Syllabus *

A Michigan statute authorizing union representation of local governmental employees permits an "agency shop" arrangement, whereby every employee represented by a union, even though not a union member, must pay to the union, as a condition of employment, a service charge equal in amount to union dues. Appellant teachers filed actions (later consolidated) in Michigan state court against appellee Detroit Board of Education and appellee Union (which represented teachers employed by the Board) and Union officials, challenging the validity of the agency-shop clause in a collective-bargaining agreement between the Board and the Union. The complaints alleged that appellants were unwilling or had refused to pay Union dues, that they opposed collective bargaining in the public sector, that the Union was engaged in various political and other ideological activities that appellants did not approve and that were not collective-bargaining activities, and prayed that the agency-shop clause be declared invalid under state law and under the United States Constitution as a deprivation of appellants' freedom of association protected by the First and Fourteenth Amendments. The trial court dismissed the actions for failure to state a claim upon which relief could be granted. The Michigan Court of Appeals, while reversing and remanding on other grounds, upheld the constitutionality of the agency-shop clause, and, although recognizing that the expenditure of compulsory service charges to further "political purposes" unrelated to collective bargaining could violate appellants' First and Fourteenth Amendment rights, held that since the complaints had failed to allege that appellants had notified the Union as to those causes and candidates to which they objected, appellants were not entitled to restitution of any portion of the service charges. *Held*:

1. Insofar as the service charges are used to finance expenditures by the Union for collective-bargaining, contract-administration, and grievance-adjustment purposes, the agency-shop clause is valid. *Railway Employes' Dept. v. Hanson*, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112; *Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141. Pp. 1790–1798.

(a) That government employment is involved, rather than private employment, does not mean that *Hanson, supra*, and *Street, supra*, can be distinguished by relying in this case upon the doctrine that public employment cannot be conditioned upon the surrender of First Amendment rights, for the railroad employees' claim in *Hanson* that a union-shop agreement was invalid failed not because there was no governmental action but because there was no First Amendment violation. P. 1795. 1210

(b) Although public employee unions' activities are political to the extent they attempt to influence governmental policymaking, the differences in the nature of collective bargaining between the public and private sectors do not mean that a public employee has a weightier First Amendment interest than a private employee in not being compelled to contribute to the costs of exclusive union representation. A public employee who believes that a union representing him is urging a course that is unwise as a matter of public policy is not barred from expressing his viewpoint, but, besides voting in accordance with his convictions, every public employee is largely free to express his views, in public or pri-

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

vate, orally or in writing, and, with some exceptions not pertinent here, is free to participate in the full range of political and ideological activities open to other citizens. Pp. 1795–1798.

2. The principles that under the First Amendment an individual should be free to believe as he will and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State, prohibit appellees from requiring any of the appellants to contribute to the support of an ideological cause he may oppose as a condition of holding a job as a public schoolteacher. Pp. 1798–1800.

(a) That appellants are compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their constitutional rights. P. 1799.

(b) The Constitution requires that a union's expenditures for ideological causes not germane to its duties as a collective-bargaining representative be financed from charges, dues, or assessments paid by employees who do not object to advancing such causes and who are not coerced into doing so against their will by the threat of loss of governmental employment. Pp. 1799–1800.

3. The Michigan Court of Appeals erred in holding that appellants were entitled to no relief even if they can prove their allegations and in depriving them of their right to such remedies as enjoining the Union from expending the service charges for ideological causes opposed by appellants, or ordering a refund of a portion of such charges, in the proportion such expenditures bear to the total Union expenditures. *Hanson, supra; Railway Clerks* v. *Allen*, 373 U.S. 113, 83 S.Ct. 1158, 10 L.Ed.2d 235. [211] In view, however, of the fact that since the commencement of this litigation appellee Union has adopted an internal Union remedy for dissenters, it may be appropriate to defer further judicial proceedings pending the voluntary utilization by the parties of that internal remedy as a possible means of settling the dispute. Pp. 1800–1803.

60 Mich.App. 92, 230 N.W.2d 322, vacated and remanded.

Sylvester Petro, Winston-Salem, N. C., for appellants.

Theodore Sachs, Detroit, Mich., for appellees.

Mr. Justice STEWART delivered the opinion of the Court.

The State of Michigan has enacted legislation authorizing a system for union representation of local governmental employees. A union and a local government employer are specifically permitted to agree to an "agency shop" arrangement, whereby every employee represented by a union—even though not a union member—must pay to the union, as a condition of employment, a service fee equal in amount to union dues. The issue before us is whether this arrangement violates the constitutional rights of government employees who object to public-sector unions as such or to various union activities financed by the compulsory service fees.

I

After a secret ballot election, the Detroit Federation of Teachers (Union) was certified in 1967 pursuant to Michigan law as [212] the exclusive representative of teachers employed by the Detroit Board of Education (Board).[1] The Union and the Board there-

1. The certification was authorized by Mich. Comp.Laws § 423.211 (1970), which provides:

"Representatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the public employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the public employer: Provided, That any individual employee at any time may present grievances to his employer and have the grievances adjusted, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, provided that the bar-

after concluded a collective-bargaining agreement effective from July 1, 1969, to July 1, 1971. Among the agreement's provisions was an "agency shop" clause, requiring every teacher who had not become a Union member within 60 days of hire (or within 60 days of January 26, 1970, the effective date of the clause) to pay the Union a service charge equal to the regular dues required of Union members. A teacher who failed to meet this obligation was subject to discharge. Nothing in the agreement, however, required any teacher to join the Union, espouse the cause of unionism, or participate in any other way in Union affairs.

On November 7, 1969—more than two months before the agency-shop clause was to become effective—Christine Warczak and a number of other named teachers filed a class action in a state court, naming as defendants the Board, the Union, and several Union officials. Their complaint, as amended, alleged that they were unwilling or had refused to pay dues[2] and that they
|213 opposed collective bargaining in the public sector. The amended complaint further alleged that the Union "carries on various social activities for the benefit of its members which are not available to non-members as a matter of right," and that the Union is engaged

> "in a number and variety of activities and programs which are economic, political, professional, scientific and religious in nature of which Plaintiffs do not approve, and in which they will have no voice, and which are not and will not be collective bargaining activities, i. e., the negotiation and administration of contracts with Defendant Board, and that a substantial part of the sums required to be paid under said Agency Shop Clause are used and will continue to be used for the support of such activities and programs, and not solely for the purpose of defraying the cost of Defendant Federation of its activities as bargaining agent for teachers employed by Defendant Board."[3]

The complaint prayed that the agency-shop clause be declared invalid under state law and also under the United States Constitution as a deprivation of, *inter alia*, the plaintiffs' freedom of association protected by the First and Fourteenth Amendments, and for such further relief as might be deemed appropriate.

Upon the defendants' motion for summary judgment, the trial court dismissed the action for failure to state a claim upon which relief could be granted.[4] *Warczak v. Board of Education*, 73 LRRM 2237 (Cir. |214
Ct. Wayne County). The plaintiffs appealed, and while their appeal was pending the Michigan Supreme Court ruled in *Smigel v. Southgate Community School Dist.*, 388 Mich. 531, 202 N.W.2d 305, that state law prohibited an agency shop in the public sector. Accordingly, the judgment in the *Warczak* case was vacated and remanded to the trial court for further proceedings consistent with the *Smigel* decision.

Meanwhile, D. Louis Abood and other named teachers had filed a separate action in the same state trial court. The allegations in the complaint were virtually identi-

gaining representative has been given opportunity to be present at such adjustment."

2. Some of the plaintiffs were Union members and were paying agency-shop fees under protest; others had refused either to pay or to join the Union; still others had joined the Union and paid the fees without any apparent protest. The agency-shop clause itself prohibits the discharge of an employee engaged in litigation concerning his service charge obligation until his legal remedies have been exhausted, and no effort to enforce the clause against any of the plaintiffs has been made.

3. The nature of these activities and of the objections to them were not described in any further detail.

4. A grant of summary judgment under Mich. Gen.Ct.Rule 117.2(1) is equivalent to dismissal under Fed.Rule Civ.Proc. 12(b)(6) for failure to state a claim upon which relief can be granted. *See Bielski v. Wolverine Ins. Co.*, 379 Mich. 280, 150 N.W.2d 788; *Hiers v. Brownell*, 376 Mich. 225, 136 N.W.2d 10; *Handwerk v. United Steelworkers of America*, 67 Mich.App. 747, 242 N.W.2d 514; *Crowther v. Ross Chem. & Mfg. Co.*, 42 Mich.App. 426, 202 N.W.2d 577.

cal to those in *Warczak*,[5] and similar relief was requested.[6] This second action was held in abeyance pending disposition of the *Warczak* appeal, and when that case was remanded the two cases were consolidated in the trial court for consideration of the defendants' renewed motion for summary judgment.

On November 5, 1973, that motion was granted. The trial court noted that following the *Smigel* decision, the Michigan Legislature had in 1973 amended its Public Employment Relations Act so as expressly to authorize an agency shop. 1973 Mich.Pub. Acts, No. 25, codified as Mich.Comp.Laws § 432.210(1)(c).[7] This amendment was ap- 1215 plied retroactively by the trial court to validate the agency-shop clause predating 1973 as a matter of state law, and the court ruled further that such a clause does not violate the Federal Constitution.

[1–3] The plaintiffs' appeals were consolidated by the Michigan Court of Appeals, which ruled that the trial court had erred in giving retroactive application to the 1973 legislative amendment. The appellate court proceeded, however, to consider the constitutionality of the agency-shop clause, and upheld its facial validity on the authority of this Court's decision in *Railway Employes' Dept. v. Hanson*, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112, which upheld the constitutionality under the First Amendment of a union-shop clause, authorized by the Railway Labor Act, requiring financial support of the exclusive bargaining representative by every member of the bargaining unit. *Id.*, at 238, 76 S.Ct., at 721. Noting, however, that Michigan law also permits union expenditures for legislative lobbying and in support of political candidates, the state appellate court identified an issue explicitly not considered in *Hanson*—the constitutionality of using compulsory service charges to further "political purposes" unrelated to collective bargaining. Although recognizing that such expenditures "could violate plaintiffs' First and Fourteenth Amendment rights," the court read this Court's more recent decisions to require that an employee who seeks to vindicate such rights must "make known to the union those causes and candidates to which he objects." Since the complaints had failed to allege that any such notification had been given, the court held that the plaintiffs were not entitled to restitution of any portion of the service charges. The trial court's error on the retroactivity question, however, led the appellate court to reverse and remand the case.[8] 60 Mich.App. 92, 1216 230 N.W.2d 322. After the Supreme Court

5. The only material difference was that *Abood* was not a class action.

6. The *Abood* complaint prayed for declaratory and injunctive relief against discharge of any teacher for failure to pay the service charge, and for such other relief as might be deemed appropriate.

7. That section provides in relevant part:
"[N]othing in this act or in any law of this state shall preclude a public employer from making an agreement with an exclusive bargaining representative as defined in section 11 to require as a condition of employment that all employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative . . . ."

8. The purpose of the remand was not expressly indicated. The trial court had entered judgment for the defendants upon the ground that the complaint failed to state a claim on which relief could be granted. The state appellate court's ruling that the 1973 amendment was not to be given retroactive effect did not undermine the validity of the trial court's judgment, for the Court of Appeals' determination that any possibly meritorious claims raised by the plaintiffs were prematurely asserted required the same result as that ordered by the trial court. The remand "as to the retroactive application given to [the 1973 amendment]" must, therefore, have been only for a ministerial purpose, such as the correction of language in the trial court's judgment for the defendants. In these circumstances, the judgment of the Court of Appeals is final for purposes of 28 U.S.C. § 1257(2). See, *e. g., Pope v. Atlantic Coast Line R. Co.*, 345 U.S. 379, 382, 73 S.Ct. 749, 750, 97 L.Ed. 1094; *Republic Natural Gas Co. v. Oklahoma*, 334 U.S. 62, 67–68, 68 S.Ct. 972, 976, 92 L.Ed. 1212; *Richfield Oil Corp. v. State Bd. of Equalization*, 329 U.S. 69, 72–74, 67 S.Ct. 156, 158–59, 91 L.Ed. 80.

of Michigan denied review, the plaintiffs appealed to this Court, 28 U.S.C. § 1257(2), and we noted probable jurisdiction, 425 U.S. 949, 96 S.Ct. 1723, 48 L.Ed.2d 192.[9]

[217] II

A

Consideration of the question whether an agency-shop provision in a collective-bargaining agreement covering governmental employees is, as such, constitutionally valid must begin with two cases in this Court that on their face go far toward resolving the issue. The cases are *Railway Employes' Dept. v. Hanson*, *supra*, and *Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141.

[4] In the *Hanson* case a group of railroad employees brought an action in a Nebraska court to enjoin enforcement of a union-shop agreement.[10] The challenged clause was authorized, and indeed shielded [218] from any attempt by a State to prohibit it, by the Railway Labor Act, 45 U.S.C. § 152 Eleventh.[11] The trial court granted the re-

9. At oral argument the suggestion was made that this case might be moot. The only agency-shop clause placed in issue by the complaints was contained in a collective-bargaining agreement that expired in 1971. That clause was unenforceable as a matter of state law after the decision in *Smigel* and the ruling of the State Court of Appeals in the present cases that the 1973 statute should not be given retroactive application.

But both sides acknowledged in their briefs submitted to the Michigan Court of Appeals that a successor collective-bargaining agreement effective in 1973 contained substantially the identical agency-shop provision. The Court of Appeals appears to have taken judicial notice of this agreement in rendering its decision, for otherwise its ruling that the 1973 amendment was not retroactive would have disposed of the case without the need to consider any constitutional questions. Since the state appellate court considered the 1973 agreement to be part of the record in making its ruling, we proceed upon the same premise.

The fact that the 1973 agreement may have expired since the state appellate court rendered its decision does not affect the continuing vitality of this controversy for Art. III purposes. Some of the plaintiffs in both *Warczak* and *Abood* either refused to pay the service charge or paid it under protest. See n. 2, *supra*. Their contention that they cannot constitutionally be compelled to contribute the service charge, or at least some portion of it, thus survives the expiration of the collective-bargaining agreement itself.

10. Under a union-shop agreement, an employee must become a member of the union within a specified period of time after hire, and must as a member pay whatever union dues and fees are uniformly required. Under both the National Labor Relations Act and the Railway Labor Act, "[i]t is permissible to condition employment upon membership, but membership, insofar as it has significance to employment rights, may in turn be conditioned only upon payment of fees and dues." *NLRB v. General Motors*, 373 U.S. 734, 742, 83 S.Ct. 1453, 1459, 10 L.Ed.2d 670. See 29 U.S.C. § 158(a)(3); 45 U.S.C. § 152 Eleventh, quoted in n. 11, *infra*. Hence, although a union shop denies an employee the option of not formally becoming a union member, under federal law it is the "practical equivalent" of an agency shop, *NLRB v. General Motors*, *supra*, at 743, 83 S.Ct. at 1459. See also *Lathrop v. Donohue*, 367 U.S. 820, 828, 81 S.Ct. 1826, 1830, 6 L.Ed.2d 1191.

Hanson was concerned simply with the requirement of financial support for the union, and did not focus on the question whether the additional requirement of a union-shop arrangement that each employee formally join the union is constitutionally permissible. See *NLRB v. General Motors*, *supra*, 373 U.S. at 744, 83 S.Ct. at 1460. ("Such a difference between the union and agency shop may be of great importance in some contexts . . . "); cf. *Storer v. Brown*, 415 U.S. 724, 745–746, 94 S.Ct. 1274, 1286, 39 L.Ed.2d 714. As the agency shop before us does not impose that additional requirement, we have no occasion to address that question.

11. In relevant part, that section provides:

"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 employ-

lief requested. The Nebraska Supreme Court upheld the injunction on the ground that employees who disagreed with the objectives promoted by union expenditures were deprived of the freedom of association protected by the First Amendment. This Court agreed that "justiciable questions under the First and Fifth Amendments were presented," 351 U.S., at 231, 76 S.Ct., at
[219] 718,[12] but reversed the judgment of the Nebraska Supreme Court on the merits. Acknowledging that "[m]uch might be said *pro* and *con*" about the union shop as a policy matter, the Court noted that it is Congress that is charged with identifying "[t]he ingredients of industrial peace and stabilized labor-management relations . . . ." *Id.*, at 233–234, 76 S.Ct. at 719. Congress determined that it would promote peaceful labor relations to permit a union and an employer to conclude an agreement requiring employees who obtain the benefit of union representation to share its cost, and that legislative judgment was surely an allowable one. *Id.*, at 235, 76 S.Ct. at 719.

The record in *Hanson* contained no evidence that union dues were used to force ideological conformity or otherwise to impair the free expression of employees, and the Court noted that "[i]f 'assessments' are in fact imposed for purposes not germane to collective bargaining, a different problem would be presented." *Ibid.* at 720. (footnote omitted). But the Court squarely held that "the requirement for financial support of the collective-bargaining agency by all who receive the benefits of its work . . . does not violate . . . the First . . . Amendmen[t]." *Id.*, at 238, 76 S.Ct., at 721.

The Court faced a similar question several years later in the *Street* case, which also involved a challenge to the constitutionality of a union shop authorized by the Railway Labor Act. In *Street*, however, the record contained findings that the union treasury to which all employees were required to contribute had been used "to finance the campaigns of candidates for federal and state offices whom [the plaintiffs] opposed, and to promote the propagation of political and economic doctrines, concepts and ideologies with which [they] disagreed." 367 U.S., at 744, 81 S.Ct., at 1787.

The Court recognized, *id.*, at 749, that these findings presented constitutional "questions of the utmost gravity" not [220] decided in *Hanson*, and therefore considered whether the Act could fairly be construed to avoid these constitutional issues. 367 U.S., at 749–750, 81 S.Ct., at 1789–90.[13] The Court concluded that the Act could be so construed, since only expenditures related to the union's functions in negotiating and administering the collective-bargaining agreement and adjusting grievances and disputes fell within "the reasons . . .

ees 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."

12. Unlike § 14(b) of the National Labor Relations Act, 29 U.S.C. § 164(b), the Railway Labor Act pre-empts any attempt by a State to prohibit a union-shop agreement. Had it not been for that federal statute, the union-shop provision at issue in *Hanson* would have been invalidated under Nebraska law. The *Hanson* Court accordingly reasoned that government action was present: "[T]he federal statute is the source of the power and authority by which any private rights are lost or sacrificed. . . . The enactment of the federal statute authorizing union shop agreements is the governmental action on which the Constitution operates . . . ." 351 U.S., at 232, 76 S.Ct. at 718. See also *id.*, at 232 n. 4 ("Once courts enforce the agreement the sanction of government is, of course, put behind them. See *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161; *Hurd v. Hodge*, 334 U.S. 24, 68 S.Ct. 847, 92 L.Ed. 1187; *Barrows v. Jackson*, 346 U.S. 249, 73 S.Ct. 1031, 97 L.Ed. 1586").

13. In suggesting that *Street* "significantly undercut," and constituted a "rethinking" of, *Hanson*, *post*, at 1806, the opinion concurring in the judgment loses sight of the fact that the record in *Street*, unlike that in *Hanson*, potentially presented constitutional questions arising from union expenditures for ideological purposes unrelated to collective bargaining.

accepted by Congress why authority to make union-shop agreements was justified," *id.*, at 768, 81 S.Ct. at 1800. The Court rule, therefore, that the use of compulsory union dues for political purposes violated the Act itself. Nonetheless, it found that an injunction against enforcement of the union-shop agreement as such was impermissible under *Hanson*, and remanded the case to the Supreme Court of Georgia so that a more limited remedy could be devised.

[5] The holding in *Hanson*, as elaborated in *Street*, reflects familiar doctrines in the federal labor laws. The principle of exclusive union representation, which underlies the National Labor Relations Act[14] as well as the Railway Labor Act, is a central element in the congressional structuring of industrial relations. *E. g., Emporium Capwell Co. v. Western Addition Community Org.*, 420 U.S. 50, 62–63, 95 S.Ct. 977, 984–85, 43 L.Ed.2d 12; *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180, 87 S.Ct. 2001, 2006, 18 L.Ed.2d 1123; *Medo Corp. v. NLRB*, 321 U.S. 678, 684–685, 64 S.Ct. 830, 833, 88 L.Ed. 1007; *Virginian R. Co. v. System Federation No. 40*, 300 U.S. 515, 545–549, 57 S.Ct. 592, 598–600, 81 L.Ed. 789. The designation of a single representative avoids the confusion that would result from attempting to enforce two or more agreements specifying different terms and conditions of employment. It prevents inter-union rivalries from creating dissension within the work force and eliminating the advantages to the employee of collectivization. It also frees the employer from the possibility of facing conflicting demands from different unions, and permits the employer and a single union to reach agreements and settlements that are not subject to attack from rival labor organizations. See generally *Emporium Capwell Co. v. Western Addition Community Org., supra*, 420 U.S. at 67–70, 95 S.Ct., at 987–988. S.Rep.No.573, 74th Cong., 1st Sess., 13 (1935).

The designation of a union as exclusive representative carries with it great responsibilities. The tasks of negotiating and administering a collective-bargaining agreement and representing the interests of employees in settling disputes and processing grievances are continuing and difficult ones. They often entail expenditure of much time and money. See *Street*, 367 U.S., at 760, 81 S.Ct., at 1795. The services of lawyers, expert negotiators, economists, and a research staff, as well as general administrative personnel, may be required. Moreover, in carrying out these duties, the union is obliged "fairly and equitably to represent all employees . . ., union and nonunion," within the relevant unit. *Id.*, at 761, 81 S.Ct., at 1796.[15] A union-shop arrangement has been thought to distribute fairly the cost of these activities among those who benefit, and it counteracts the incentive that employees might otherwise have to become "free riders"—to refuse to contribute to the union while obtaining ben-

14. 29 U.S.C. § 151 *et seq.*

15. See *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 564, 96 S.Ct. 1048, 1056, 47 L.Ed.2d 231:

"Because '[t]he collective bargaining system as encouraged by Congress and administered by the NLRB of necessity subordinates the interests of an individual employee to the collective interests of all employees in a bargaining unit,' *Vaca v. Sipes*, 386 U.S. 171, 182, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967), the controlling statutes have long been interpreted as imposing upon the bargaining agent a responsibility equal in scope to its authority, 'the responsibility and duty of fair representation.' *Humphrey v. Moore, supra*, 375 U.S. 335, at 342, 84 S.Ct. 363, 11 L.Ed.2d 370. The union as the statutory representative of the employees is 'subject always to complete good faith and honesty of purpose in the exercise of its discretion.' *Ford Motor Co. v. Huffman*, [345 U.S. 330, 338, 73 S.Ct. 681, 97 L.Ed. 1048]. Since *Steele v. Louisville & N. R. Co.*, 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173 (1944), with respect to the railroad industry, and *Ford Motor Co. v. Huffman, supra*, and *Syres v. Oil Workers*, 350 U.S. 892, 76 S.Ct. 152, 100 L.Ed. 785 (1955), with respect to those industries reached by the National Labor Relations Act, the duty of fair representation has served as a 'bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law.' *Vaca v. Sipes, supra*, 386 U.S. at 182, 87 S.Ct. 903."

efits of union representation that necessarily accrue to all employees. *Ibid.*; see *Oil Workers v. Mobil Oil Corp.*, 426 U.S. 407, 415, 96 S.Ct. 2140, 2145, 48 L.Ed.2d 736; *NLRB v. General Motors*, 373 U.S. 734, 740–741, 83 S.Ct. 1453, 1458, 10 L.Ed.2d 670.

[6] To compel employees financially to support their collective-bargaining representative has an impact upon their First Amendment interests. An employee may very well have ideological objections to a wide variety of activities undertaken by the union in its role as exclusive representative. His moral or religious views about the desirability of abortion may not square with the union's policy in negotiating a medical benefits plan. One individual might disagree with a union policy of negotiating limits on the right to strike, believing that to be the road to serfdom for the working class, while another might have economic or political objections to unionism itself. An employee might object to the union's wage policy because it violates guidelines designed to limit inflation, or might object to the union's seeking a clause in the collective-bargaining agreement proscribing racial discrimination. The examples could be multiplied. To be required to help finance the union as a collective-bargaining agent might well be thought, therefore, to interfere in some way with an employee's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit.[16] But the judgment clearly made in *Hanson* and *Street* is that such interference as exists is constitutionally justified by the legislative assessment of the important contribution of the union shop to the system of labor relations established by Congress. 1223 "The furtherance of the common cause leaves some leeway for the leadership of the group. As long as they act to promote the cause which justified bringing the group together, the individual cannot withdraw his financial support merely because he disagrees with the group's strategy. If that were allowed, we would be reversing the *Hanson* case, *sub silentio*." *Machinists v. Street*, 367 U.S., at 778, 81 S.Ct., at 1805. (Douglas, J., concurring).

B

[7] The National Labor Relations Act leaves regulation of the labor relations of state and local governments to the States. See 29 U.S.C. § 152(2). Michigan has chosen to establish for local government units a regulatory scheme which, although not identical in every respect to the NLRA or the Railway Labor Act,[17] is broadly modeled after federal law. *E. g., Rockwell v. Crestwood School Dist. Bd. of Ed.*, 393 Mich. 616, 635–636, 227 N.W.2d 736, 744–745, appeal dismissed *sub nom. Crestwood Ed. Assn. v. Board of Ed. of Crestwood*, 427 U.S. 901, 96 S.Ct. 3184, 49 L.Ed.2d 1195; *Detroit Police Officers Assn. v. Detroit*, 391 Mich. 44, 53, 214 N.W.2d 803, 807–808; *Michigan Employment Relations Comm'n v. Reeths-Puffer School Dist.*, 391 Mich. 253, 260, and n. 11, 215 N.W.2d 672, 675, and n. 11. Under Michigan law employees of local government units enjoy rights parallel to those protected under federal legislation: the rights to self-organization and to bargain collectively, Mich.Comp.Laws §§ 423.209, 423.215 (1970); see 29 U.S.C. § 157; 45 U.S.C. § 152 Fourth; and the right to secret-ballot representation elections, Mich. Comp.Laws § 423.212 (1970); see 29 U.S.C. § 159(e)(1); 45 U.S.C. § 152 Ninth.

Several aspects of Michigan law that mirror provisions of the Railway Labor Act are of particular importance here. A union that obtains the support of a majority of employees in the appropriate bargaining 1224 unit is designated the exclusive representative of those employees. Mich.Comp.Laws § 423.211 (1970).[18] A union so designated is under a duty of fair representation to all employees in the unit, whether or not union members. *E. g., Lowe v. Hotel & Restaurant Employees Local 705*, 389 Mich. 123,

16. See *infra*, at 1799–1800.

17. See, e. g., *infra*, at 1796.

18. See n. 1, *supra*.

145–152, 205 N.W.2d 167, 177–180; *Wayne County Community College Federation of Teachers Local 2000 v. Poe*, 1976 Mich.Emp.Rel.Comm'n 347, 350–353; *Local 835, AFSCME v. Solomon*, 1976 Mich.Emp.Rel.Comm'n 84, 89. And in carrying out all of its various responsibilities, a recognized union may seek to have an agency-shop clause included in a collective-bargaining agreement. Mich.Comp.Laws § 423.210(1)(c) (1970). Indeed, the 1973 amendment to the Michigan Law [19] was specifically designed to authorize agency shops in order that "employees in the bargaining unit . . . share fairly in the financial support of their exclusive bargaining representative . . ." § 423.210(2).

[8] The governmental interests advanced by the agency-shop provision in the Michigan statute are much the same as those promoted by similar provisions in federal labor law. The confusion and conflict that could arise if rival teachers' unions, holding quite different views as to the proper class hours, class sizes, holidays, tenure provisions, and grievance procedures, each sought to obtain the employer's agreement, are no different in kind from the evils that the exclusivity rule in the Railway Labor Act was designed to avoid. See *Madison School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 178, 97 S.Ct. 421, 425, 50 L.Ed.2d 376 (Brennan, J., concurring in judgment). The desirability of labor peace is no less important in the public sector, nor is the risk of "free riders" any smaller.

[9, 10] Our province is not to judge the wisdom of Michigan's decision to authorize 225
the agency shop in public employment.[20] Rather, it is to adjudicate the constitutionality of that decision. The same important government interests recognized in the *Hanson* and *Street* cases presumptively support the impingement upon associational freedom created by the agency shop here at issue. Thus, insofar as the service charge is used to finance expenditures by the Union for the purposes of collective bargaining, contract administration, and grievance ad- 226
justment, those two decisions of this Court appear to require validation of the agency-shop agreement before us.

While recognizing the apparent precedential weight of the *Hanson* and *Street* cases, the appellants advance two reasons why those decisions should not control decision of the present case. First, the appellants note that it is *government* employment that is involved here, thus directly implicating

19. See at 1788–1789, and n. 7.

20. See *Hanson*, 351 U.S., at 233–234, 76 S.Ct., at 718–719 (footnote omitted):
"Powerful arguments have been made here that the long-run interests of labor would be better served by the development of democratic traditions in trade unionism without the coercive element of the union or the closed shop. Mr. Justice Brandeis, who had wide experience in labor-management relations prior to his appointment to the Court, wrote forcefully against the closed shop. He feared that the closed shop would swing the pendulum in the opposite extreme and substitute 'tyranny of the employee' for 'tyranny of the employer.' But the question is one of policy with which the judiciary has no concern, as Mr. Justice Brandeis would have been the first to concede. Congress, acting within its constitutional powers, has the final say on policy issues. If it acts unwisely, the electorate can make a change. The task of the judiciary ends once it appears that the legislative measure adopted is relevant or appropriate to the constitutional power which Congress exercises. The ingredients of industrial peace and stabilized labor-management relations are numerous and complex. They may well vary from age to age and from industry to industry. What would be needful one decade might be anathema the next. The decision rests with the policy makers, not with the judiciary."
See also *Adair v. United States*, 208 U.S. 161, 191–192, 28 S.Ct. 277, 287, 52 L.Ed. 436 (Holmes, J., dissenting):
"I quite agree that the question what and how much good labor unions do, is one on which intelligent people may differ,—I think that laboring men sometimes attribute to them advantages, as many attribute to combinations of capital disadvantages, that really are due to economic conditions of a far wider and deeper kind—but I could not pronounce it unwarranted if Congress should decide that to foster a strong union was for the best interest, not only of the men, but of the railroads and the country at large."

constitutional guarantees, in contrast to the private employment that was the subject of the *Hanson* and *Street* decisions. Second, the appellants say that in the public sector collective bargaining itself is inherently "political," and that to require them to give financial support to it is to require the "ideological conformity" that the Court expressly found absent in the *Hanson* case. 351 U.S., at 238, 76 S.Ct., at 721. We find neither argument persuasive.

Because it is employment by the State that is here involved, the appellants suggest that this case is governed by a long line of decisions holding that public employment cannot be conditioned upon the surrender of First Amendment rights.[21] But, while the actions of public employers surely constitute "state action," the union shop, as authorized by the Railway Labor Act, also was found to result from governmental action in *Hanson*.[22] The plaintiffs' claims in *Hanson* failed, not because there was no governmental action, but because there was no First Amendment violation.[23] The]227 appellants' reliance on the "unconstitutional conditions" doctrine is therefore misplaced.

The appellants' second argument is that in any event collective bargaining in the public sector is inherently "political" and thus requires a different result under the First and Fourteenth Amendments. This contention rests upon the important and often-noted differences in the nature of collective bargaining in the public and private sectors.[24] A public employer, unlike his private counterpart, is not guided by the profit motive and constrained by the normal operation of the market. Municipal services are typically not priced, and where they are]228 they tend to be regarded as in some sense "essential" and therefore are often price-inelastic. Although a public employer, like a private one, will wish to keep costs down, he lacks an important discipline against agreeing to increases in labor costs that in a market system would require price increases. A public-sector union is correspondingly less concerned that high prices due to costly

21. See, *e. g.*, cases cited, *infra*, at 1799–1800.

22. See, at 1791, and n. 12.

23. Nothing in our opinion embraces the "premise that public employers are under no greater constitutional constraints than their counterparts in the private sector," *post*, at 1804 (POWELL, J., concurring in judgment), or indicates that private collective-bargaining agreements are, without more, subject to constitutional constraints, see *post* at 1808. We compare the agency-shop agreement in this case to those executed under the Railway Labor Act simply because the existence of governmental action in both contexts requires analysis of the free expression question.

It is somewhat startling, particularly in view of the concession that *Hanson* was premised on a finding that governmental action was present, see *post*, at 1805 (POWELL, J., concurring in judgment), to read in Mr. Justice Powell's concurring opinion that *Hanson* and *Street* "provide little or no guidance for the constitutional issues presented in this case." *post*, at 1809. *Hanson* nowhere suggested that the constitutional scrutiny of the union-shop agreement was watered down because the governmental action operated less directly than is true in a case such as the present one. Indeed, Mr. Justice Douglas, the author of *Hanson*, expressly repudiated that suggestion:

"Since neither Congress nor the state legislatures can abridge [First Amendment] rights, they cannot grant the power to private groups to abridge them. As I read the First Amendment, it forbids any abridgment by government whether directly or indirectly." *Street*, 367 U.S., at 777, 81 S.Ct., at 1804 (concurring opinion).

24. See, *e. g.*, K. Hanslowe, The Emerging Law of Labor Relations in Public Employment (1967); H. Wellington & R. Winter, Jr., The Unions and the Cities (1971); Hildebrand, The Public Sector, in J. Dunlop and N. Chamberlain (eds.), Frontiers of Collective Bargaining 125–154 (1967); Rehmus, Constraints on Local Governments in Public Employee Bargaining, 67 Mich.L.Rev. 919 (1969); Shaw & Clark, The Practical Differences Between Public and Private Sector Collective Bargaining, 19 U.C.L.A. L.Rev. 867 (1972); Smith, State and Local Advisory Reports on Public Employment Labor Legislation: A Comparative Analysis, 67 Mich. L.Rev. 891 (1969); Summers, Public Employee Bargaining: A Political Perspective, 83 Yale L.J. 1156 (1974); Project, Collective Bargaining and Politics in Public Employment, 19 U.C.L.A. L.Rev. 887 (1972). The general description in the text of the differences between private- and public-sector collective bargaining is drawn from these sources.

wage demands will decrease output and hence employment.

The government officials making decisions as the public "employer" are less likely to act as a cohesive unit than are managers in private industry, in part because different levels of public authority—department managers, budgetary officials, and legislative bodies—are involved, and in part because each official may respond to a distinctive political constituency. And the ease of negotiating a final agreement with the union may be severely limited by statutory restrictions, by the need for the approval of a higher executive authority or a legislative body, or by the commitment of budgetary decisions of critical importance to others.

Finally, decisionmaking by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which for this purpose can be viewed as comprising three overlapping classes of voters—taxpayers, users of particular government services, and government employees. Through exercise of their political influence as part of the electorate, the employees have the opportunity to affect the decisions of government representatives who sit on the other side of the bargaining table. Whether these representatives accede to a union's demands will depend upon a blend of political ingredients, including community sentiment about unionism generally and the involved union in particular, the degree of taxpayer resistance, and the views of voters as to the importance of the service involved and the relation between the demands and the quality of service. It is
[229] surely arguable, however, that permitting public employees to unionize and a union to bargain as their exclusive representative gives the employees more influence in the decisionmaking process than is possessed by employees similarly organized in the private sector.

The distinctive nature of public-sector bargaining has led to widespread discussion about the extent to which the law governing labor relations in the private sector provides an appropriate model. To take but one example, there has been considerable debate about the desirability of prohibiting public employee unions from striking,[25] a step that the State of Michigan itself has taken, Mich.Comp.Laws § 423.202 (1970). But although Michigan has not adopted the federal model of labor relations in every respect, it has determined that labor stability will be served by a system of exclusive representation and the permissive use of an agency shop in public employment. As already stated, there can be no principled basis for according that decision less weight in the constitutional balance than was given in *Hanson* to the congressional judgment reflected in the Railway Labor Act.[26] The only remaining constitutional inquiry evoked by the appellants' argument, therefore, is whether a public employee has a weightier First Amendment interest than a private employee in not being compelled to contribute to the costs of exclusive union representation. We think he does not.

[11–13] Public employees are not basically different from private employees; on the whole, they have the same sort of skills,
[230] the same needs, and seek the same advantages. "The uniqueness of public employment is *not in the employees* nor in the work performed; the uniqueness is in the special character of the employer." Summers, Public Sector Bargaining: Problems of Governmental Decisionmaking, 44 U.Cin. L.Rev. 669, 670 (1975) (emphasis added). The very real differences between exclusive-agent collective bargaining in the pub-

25. See, *e. g.*, Anderson, Strikes and Impasse Resolution in Public Employment, 67 Mich.L. Rev. 943 (1969); Burton & Krider, The Role and Consequences of Strikes by Public Employees, 79 Yale L.J. 418 (1970); Hildebrand, *supra*, n. 24; Kheel, Strikes and Public Employment, 67 Mich.L.Rev. 931 (1969); Wellington & Winter, The Limits of Collective Bargaining in Public Employment, 78 Yale L.J. 1107 (1969); Wellington & Winter, More on Strikes by Public Employees, 79 Yale L.J. 441 (1970).

26. See n. 20, *supra*.

lic and private sectors are not such as to work any greater infringement upon the First Amendment interests of public employees. A public employee who believes that a union representing him is urging a course that is unwise as a matter of public policy is not barred from expressing his viewpoint. Besides voting in accordance with his convictions, every public employee is largely free to express his views, in public or private orally or in writing. With some exceptions not pertinent here,[27] public employees are free to participate in the full range of political activities open to other citizens. Indeed, just this Term we have held that the First and Fourteenth Amendments protect the right of a public school teacher to oppose, at a public school board meeting, a position advanced by the teachers' union. *Madison School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 97 S.Ct. 421, 50 L.Ed.2d 376. In so ruling we recognized that the principle of exclusivity cannot constitutionally be used to muzzle a public employee who, like any other citizen, might wish to express his view about governmental decisions concerning labor relations, *id.*, at 174, 97 S.Ct. at 426.

[14] There can be no quarrel with the truism that because public employee unions attempt to influence governmental policymaking, their activities—and the views of members who disagree with them—may be properly termed political. But that characterization does not raise the ideas and beliefs of public employees onto a higher plane than the ideas and beliefs of private employees. It is no doubt true that a central purpose of the First Amendment "'was to protect the free discussion of governmental affairs.'" *Post*, at 1811, quoting *Buckley v. Valeo*, 424 U.S. 1, 14, 96 S.Ct. 612, 632, 46 L.Ed.2d 659, and *Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1436, 16 L.Ed.2d 484. But our cases have never suggested that expression about philosophical social, artistic, economic, literary, or ethical matters—to take a nonexhaustive list of labels—is not entitled to full First Amendment protection.[28] Union members

27. Employees of state and local governments may be subject to a "little Hatch Act" designed to ensure that government operates effectively and fairly, that public confidence in government is not undermined, and that government employees do not become a powerful political machine controlled by incumbent officials. See, *e. g.*, *Broadrick v. Oklahoma*, 413 U.S. 601, 603–604, 93 S.Ct. 2908, 2911–12, 37 L.Ed.2d 830; *CSC v. Letter Carriers*, 413 U.S. 548, 554–567, 93 S.Ct. 2880, 2885–91, 37 L.Ed.2d 796. Moreover, there may be limits on the extent to which an employee in a sensitive or policymaking position may freely criticize his superiors and the policies they espouse. See *Pickering v. Board of Education*, 391 U.S. 563, 570, 88 S.Ct. 1731, 1735, 20 L.Ed.2d 811 n.3.

28. See, *e. g.*, *Wooley v. Maynard*, 430 U.S. 705, 714, 97 S.Ct. 1428, 1435, 51 L.Ed.2d 752 (the First Amendment "secures the right to proselytize religious, political, *and ideological* causes") (emphasis supplied); *Young v. American Mini Theatres*, 427 U.S. 50, 70, 96 S.Ct. 2440, 49 L.Ed.2d 310 (plurality opinion) (protection of the First Amendment is fully applicable to the communication of social, political, or philosophical messages); *id.*, at 87, 96 S.Ct. at 2460 (dissenting opinion) (even offensive speech that does not address "important topics" is not less worthy of constitutional protection); *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95–96, 92 S.Ct. 2286, 2289–90, 33 L.Ed.2d 212; *Cohen v. California*, 403 U.S. 15, 25, 91 S.Ct. 1780, 1788, 29 L.Ed.2d 284; quoting *Winters v. New York*, 333 U.S. 507, 528, 68 S.Ct. 665, 676, 92 L.Ed. 840 (Frankfurter, J., dissenting); *Street v. New York*, 394 U.S. 576, 593, 89 S.Ct. 1354, 1366, 22 L.Ed.2d 572, quoting *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 641–642, 63 S.Ct. 1178, 1186–87, 87 L.Ed. 1628 (" '[N]o official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or *other matters of opinion*' ") (emphasis supplied); *NAACP v. Button*, 371 U.S. 415, 444–445, 83 S.Ct. 328, 343–44, 9 L.Ed.2d 405; *Kingsley Pictures Corp. v. Regents*, 360 U.S. 684, 688, 79 S.Ct. 1362, 1365, 3 L.Ed.2d 1512 (suppression of a motion picture because it expresses the idea that under certain circumstances adultery may be proper behavior strikes at the very heart of First Amendment protection); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460, 78 S.Ct. 1163, 1171, 1170, 2 L.Ed.2d 1488 ("it is immaterial whether the beliefs sought to be advanced . . . pertain to political, economic, religious, or cultural matters"); *Roth v. United States*, 354 U.S. 476, 488, 77 S.Ct. 1304, 1310, 1 L.Ed.2d 1498; quoting *Thornhill v. Alabama*, 310 U.S. 88, 101–102, 60 S.Ct. 736, 703–44, 84 L.Ed. 1093.

in both the public and private sectors may find that a variety of union activities con-
1232 flict with their beliefs. Compare, e. g., *supra*, at 1793, with *post*, at 1810–1811. Nothing in the First Amendment or our cases discussing its meaning makes the question whether the adjective "political" can properly be attached to those beliefs the critical constitutional inquiry.

The differences between public- and private-sector collective bargaining simply do not translate into differences in First Amendment rights. Even those commentators most acutely aware of the distinctive nature of public-sector bargaining and most seriously concerned with its policy implications agree that "[t]he union security issue in the public sector . . . is fundamentally the same issue . . . as in the private sector. . . . No special dimension results from the fact that a union represents public rather than private employees." H. Wellington & R. Winter, Jr., The Unions and the Cities 95–96 (1971). We conclude that the Michigan Court of Appeals was correct in viewing this Court's decisions in *Hanson* and *Street* as controlling in the present case insofar as the service charges are applied to collective-bargaining, contract administration, and grievance-adjustment purposes.

C

Because the Michigan Court of Appeals ruled that state law "sanctions the use of nonunion members' fees for purposes other than collective bargaining," 60 Mich.App., at 99, 230 N.W.2d, at 326, and because the complaints allege that such expenditures were made, this case presents constitutional issues not decided in *Hanson* or *Street*. Indeed, *Street* embraced an interpretation of the Railway Labor Act not without its difficulties, see 367 U.S., at 784–786, 81 S.Ct. at 1807–08. (Black, J., dissenting); *id.*, at 799–803, 81 S.Ct. at 1814–16. (Frankfurter, J., dissenting), precisely to avoid facing the constitutional issues presented by the use of union-shop dues for political and ideological purposes unrelated to collective bargaining, *id.*, at 749–750, 81 S.Ct. at 1789–90. Since the state court's construction of the Michigan statute is authoritative, however, we 1233
must confront those issues in this case.[29]

[15–17] Our decisions establish with unmistakable clarity that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments. *E. g., Elrod v. Burns*, 427 U.S. 347, 355–357, 96 S.Ct. 2673, 2680–82, 49 L.Ed.2d 547 (plurali-

29. In *Lathrop v. Donohue*, 367 U.S. 820, 81 S.Ct. 1826, 6 L.Ed.2d 1191, a companion case to *Street*, a lawyer sued for the refund of dues paid (under protest) to the integrated Wisconsin State Bar. The dues were required as a condition of practicing law in Wisconsin. The plaintiff contended that the requirement violated his constitutionally protected freedom of association because the dues were used by the State Bar to formulate and to support legislative proposals concerning the legal profession to which the plaintiff objected.

A plurality of four Justices found that the requirement was not on its face unconstitutional, relying on the analogy to *Hanson*. And the plurality ruled, as had the Court in *Hanson*, that the constitutional questions tendered were not ripe, for the Court was nowhere "clearly apprised as to the views of the appellant on any particular legislative issues on which the State Bar has taken a position, or as to the way in which and the degree to which funds compulsorily exacted from its members are used to support the organization's political activities." 367 U.S., at 845–846, 81 S.Ct. at 1839. The other five Members of the Court disagreed with the plurality and thought that the constitutional questions ought to be reached. Three Justices would have upheld the constitutionality of using compulsory dues to finance the State Bar's legislative activities even where opposed by dissenting members. See *id.*, at 848, 81 S.Ct. at 1840. (Harlan, J., concurring in judgment); *id.*, at 865, 81 S.Ct. at 1849. (Whittaker, J., concurring in result). The other two Justices would have held such activities to be unconstitutional. See *ibid.* (Black, J., dissenting); *id.*, at 877, 81 S.Ct. at 1855 (Douglas, J., dissenting).

The only proposition about which a majority of the Court in *Lathrop* agreed was that the constitutional issues should be reached. However, due to the disparate views of those five Justices on the merits and the failure of the other four Members of the Court to discuss the constitutional questions, *Lathrop* does not provide a clear holding to guide us in adjudicating the constitutional questions here presented.

ty opinion: *Cousins v. Wigoda*, 419 U.S. 477, 487, 95 S.Ct. 541, 547, 42 L.Ed.2d 595; *Kusper v. Pontikes*, 414 U.S. 51, 56–57, 94 S.Ct. 303, 307, 38 L.Ed.2d 260; *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–461, 78 S.Ct. 1163, 1170–71, 2 L.Ed.2d 1234 1488. Equally clear is the proposition that a government may not require an individual to relinquish rights guaranteed him by the First Amendment as a condition of public employment. *E. g., Elrod v. Burns, supra*, 427 U.S. at 357–360, 96 S.Ct. at 2681–2683 and cases cited; *Perry v. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570; *Keyishian v. Board of Regents*, 385 U.S. 589, 87 S.Ct. 675, 17 L.Ed.2d 629. The appellants argue that they fall within the protection of these cases because they have been prohibited, not from actively associating, but rather from refusing to associate. They specifically argue that they may constitutionally 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. We have concluded that this argument is a meritorious one.

[18] One of the principles underlying the Court's decision in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659, was that contributing to an organization for the purpose of spreading a political message is protected by the First Amendment. Because "[m]aking a contribution . . . enables like-minded persons to pool their resources in furtherance of common political goals," *id.*, at 22, 96 S.Ct. at 636, the Court reasoned that limitations upon the freedom to contribute "implicate fundamental First Amendment interests," *id.*, at 23, 96 S.Ct. at 636.[30]

[19, 20] The fact that the appellants are compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their constitutional rights.[31] For at the heart of the First Amendment is the notion 1235 that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State. See *Elrod v. Burns, supra*, 427 U.S. at 356–357, 95 S.Ct. at 2681–82; *Stanley v. Georgia*, 394 U.S. 557, 565, 89 S.Ct. 1243, 1248, 22 L.Ed.2d 542; *Cantwell v. Connecticut*, 310 U.S. 296, 303–304, 60 S.Ct. 900, 903, 84 L.Ed. 1213. And the freedom of belief is no incidental or secondary aspect of the First Amendment's protections:

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 642, 63 S.Ct. 1178, 1187, 87 L.Ed. 1628.

[21] These principles prohibit a State from compelling any individual to affirm his belief in God, *Torcaso v. Watkins*, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982, or to associate with a political party, *Elrod v. Burns, supra*; see 427 U.S., at 363–364, n. 17, 95 S.Ct., at 2685, as a condition of retaining public employment. They are no less applicable to the case at bar, and they thus prohibit the appellees from requiring any of the appellants to contribute to the support of an ideological cause he may op-

30. See also *Shelton v. Tucker*, 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231 (state statute which required every teacher to file annually an affidavit listing every organization to which he had belonged or *regularly contributed* is unconstitutional because of its unlimited and indiscriminate interference with freedom of association).

31. This view has long been held. James Madison, the First Amendment's author, wrote in defense of religious liberty: "Who does not see [t]hat the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?" 2 The Writings of James Madison 186 (Hunt ed. 1901). Thomas Jefferson agreed that "'to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical.'" I. Brant, James Madison: The Nationalist 354 (1948).

pose as a condition of holding a job as a public school teacher.

[22] We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative.[32] Rather, the Constitution requires
1236 only that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment.

[23] There will, of course, be difficult problems in drawing lines between collective-bargaining activities, for which contributions may be compelled, and ideological activities unrelated to collective bargaining, for which such compulsion is prohibited.[33] The Court held in *Street*, as a matter of statutory construction, that a similar line must be drawn under the Railway Labor Act, but in the public sector the line may be somewhat hazier. The process of establishing a written collective-bargaining agreement prescribing the terms and conditions of public employment may require not merely concord at the bargaining table, but subsequent approval by other public authorities; related budgetary and appropriations decisions might be seen as an integral part of the bargaining process. We have no occasion in this case, however, to try to define such a dividing line. The case comes to us after a judgment on the pleadings, and there is no evidentiary record of any kind. The allegations in the complaints are general ones, see *supra*, at 1788–1789, and the parties have neither briefed nor argued the question of what specific Union activities in the present context properly fall under the definition of collective bargaining. The lack of factual concreteness and adversary presentation to aid us in approaching the difficult line-drawing questions highlights the importance of avoiding 1237
unnecessary decision of constitutional questions.[34] All that we decide is that the general allegations in the complaints, if proved, establish a cause of action under the First and Fourteenth Amendments.

III

[24] In determining what remedy will be appropriate if the appellants prove their allegations, the objective must be to devise a way of preventing compulsory subsidization of ideological activity by employees who object thereto without restricting the Union's ability to require every employee to contribute to the cost of collective-bargaining activities.[35] This task is simplified by

32. To the extent that this activity involves support of political candidates, it must, of course, be conducted consistently with any applicable (and constitutional) system of election campaign regulation. See generally *Buckley* v. *Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659; Developments in the Law—Elections, 88 Harv.L. Rev. 1111, 1237–1271 (1975).

33. The appellants' complaints also alleged that the Union carries on various "social activities" which are not open to nonmembers. It is unclear to what extent such activities fall outside the Union's duties as exclusive representative or involve constitutionally protected rights of association. Without greater specificity in the description of such activities and the benefit of adversary argument, we leave those questions in the first instance to the Michigan courts.

34. A further reason to avoid anticipating difficult constitutional questions in this case is the possibility that the dispute may be settled by resort to a newly adopted internal Union remedy. See *infra*, at 1802, and n. 41.

35. It is plainly not an adequate remedy to limit the use of the actual dollars collected from dissenting employees to collective-bargaining purposes:

"[Such a limitation] is of bookkeeping significance only rather than a matter of real substance. It must be remembered that the service fee is admittedly the exact equal of membership initiation fees and monthly dues . . . and that . . . dues collected from members may be used for a 'variety of purposes, in addition to meeting the union's costs of collective bargaining.' Unions 'rather typically' use their membership dues 'to do those things which the members authorize the union to do in their interest and on their behalf.' If the union's total budget is divided between collective bargaining and institutional expenses and if nonmember payments, equal to those of a

the guidance to be had from prior decisions. In *Street*, the plaintiffs had proved at trial that expenditures were being made for po- 1238 litical purposes of various kinds, and the Court found those expenditures illegal under the Railway Labor Act. See *supra*, at 1791–1792. Moreover, in that case each plaintiff had "made known to the union representing his craft or class his dissent from the use of his money for political causes which he opposes." 367 U.S., at 750, 81 S.Ct., at 1790; see *id.*, at 771, 81 S.Ct. at 1801. The Court found that "[i]n that circumstance, the respective unions were without power to use payments thereafter tendered by them for such political causes." *Ibid.* Since, however, *Hanson* had established that the union-shop agreement was not unlawful as such, the Court held that to enjoin its enforcement would "[sweep] too broadly." 367 U.S., at 771, 81 S.Ct., at 1801. The Court also found that an injunction prohibiting the union from expending dues for political purposes would be inappropriate, not only because of the basic policy reflected in the Norris-La Guardia Act[36] against enjoining labor unions, but also because those union members who do wish part of their dues to be used for political purposes have a right to associate to that end "without being silenced by the dissenters." *Id.*, at 772–773, 81 S.Ct., at 1802.[37]

After noting that "dissent is not to be presumed" and that only employees who have affirmatively made known to the union their opposition to political uses of their funds are entitled to relief, the Court sketched two possible remedies: First, "an injunction against expenditure for political causes opposed by each complaining employee of a sum, from those moneys to be spent by the union for political purposes, which is so much of the moneys exacted from him as is the proportion of the union's total expenditures made for such political activities to the union's total budget"; and second, restitution of a fraction of union dues paid equal to the fraction of total union expenditures that were made for political purposes opposed by the employee. *Id.*, at 774–775, 81 S.Ct., at 1802–03.[38]

The Court again considered the remedial 1239 question in *Railway Clerks v. Allen*, 373 U.S. 113, 83 S.Ct. 1158, 10 L.Ed.2d 235. In that case employees who had refused to pay union-shop dues obtained injunctive relief in state court against enforcement of the union-shop agreement. The employees had not notified the union prior to bringing the lawsuit of their opposition to political expenditures, and at trial, their testimony was principally that they opposed such expenditures, as a general matter. *Id.*, at 118–119, n. 5, 83 S.Ct., at 1161–62. The Court held that the employees had adequately established their cause of action by manifesting "opposition to *any* political expenditures by the union," *id.*, at 118, 83 S.Ct., at 1162 (emphasis in original), and that the requirement in *Street* that dissent be affirmatively indicated was satisfied by the allegations in the complaint that was filed, 373 U.S., at 118–119, and n. 6, 83 S.Ct., at 1161–62.[39]

member, go entirely for collective bargaining costs, the nonmember will pay more of these expenses than his pro rata share. The member will pay less and to that extent a portion of his fees and dues is available to pay institutional expenses. The union's budget is balanced. By paying a larger share of collective bargaining costs the nonmember subsidizes the union's institutional activities." *Retail Clerks v. Schermerhorn*, 373 U.S. 746, 753–754, 83 S.Ct. 1461, 1465, 10 L.Ed.2d 678.

36. 29 U.S.C. §§ 101–115.

37. See *supra*, at 1799, and n. 30.

38. In proposing a restitution remedy, the *Street* opinion made clear that "[t]here should be no necessity, however, for the employee to trace his money up to and including its expenditure; if the money goes into general funds and no separate accounts of receipts and expenditures of the funds of individual employees are maintained, the portion of his money the employee would be entitled to recover would be in the same proportion that the expenditures for political purposes which he had advised the union he disapproved bore to the total union budget." 367 U.S., at 775, 81 S.Ct. at 1803.

39. *Allen* can be viewed as a relaxation of the conditions established in *Street* governing eligibility for relief. See *Allen*, 373 U.S., at 129–131, 83 S.Ct. at 1167–1168 (Harlan, J., concurring in part and dissenting in part). *Street*

The Court indicated again the appropriateness of the two remedies sketched in *Street*; reversed the judgment affirming issuance of the injunction; and remanded for determination of which expenditures were properly to be characterized as political and what percentage of total union expenditures they constituted.[40]

[240] The Court in *Allen* described a "practical decree" that could properly be entered, providing for (1) the refund of a portion of the exacted funds in the proportion that union political expenditures bear to total union expenditures, and (2) the reduction of future exactions by the same proportion. 373 U.S., at 122, 83 S.Ct., at 1163. Recognizing the difficulties posed by judicial administration of such a remedy, the Court also suggested that it would be highly desirable for unions to adopt a "voluntary plan by which dissenters would be afforded an internal union remedy." *Ibid.* This last suggestion is particularly relevant to the case at bar, for the Union has adopted such a plan since the commencement of this litigation.[41]

[25] Although *Street* and *Allen* were concerned with statutory rather than constitutional violations, that difference surely could not justify any lesser relief in this case. Judged by the standards of those cases, the Michigan Court of Appeals' ruling that the appellants were entitled to no relief at this juncture was unduly restrictive. For all the reasons outlined in *Street*, [241] the court was correct in denying the broad injunctive relief requested. But in holding that as a prerequisite to any relief each appellant must indicate to the Union the *specific* expenditures to which he objects, the Court of Appeals ignored the clear holding of *Allen*. As in *Allen*, the employees here indicated in their pleadings that they opposed ideological expenditures of *any* sort that are unrelated to collective bargaining. To require greater specificity would confront an individual employee with the dilemma of relinquishing either his right to withhold his support of ideological causes to which he objects or his freedom to maintain his own beliefs without public disclosure.[42]

seemed to imply that an employee would be required to identify the *particular* causes which he opposed. 367 U.S., at 774–775, 81 S.Ct., at 1802–03. Any such implication was clearly disapproved in *Allen*, and, as explained today, see *infra*, at 1802, there are strong reasons for preferring the approach of *Allen*.

40. The Court in *Allen* went on to elaborate: "[S]ince the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion. Absolute precision in the calculation of such proportion is not, of course, to be expected or required; we are mindful of the difficult accounting problems that may arise. And no decree would be proper which appeared likely to infringe the unions' right to expend uniform exactions under the union-shop agreement in support of activities germane to collective bargaining and, as well, to expend nondissenters' such exactions in support of political activities." 373 U.S., at 122, 83 S.Ct., at 1163.

41. Under the procedure adopted by the Union, as explained in the appellees' brief, a dissenting employee may protest at the beginning of each school year the expenditure of any part of his agency-shop fee for " 'activities or causes of a political nature or involving controversial issues of public importance only incidentally related to wages, hours, and conditions of employment.' " The employee is then entitled to a pro rata refund of his service charge in accordance with the calculation of the portion of total Union expenses for the specified purposes. The calculation is made in the first instance by the Union, but is subject to review by an impartial board.

42. In *Buckley v. Valeo*, the Court recognized that compelled disclosure of political campaign contributions and expenditures "can seriously infringe on privacy of association and belief guaranteed by the First Amendment." 424 U.S., at 64, 96 S.Ct. at 656. See, *e. g.*, *Gibson v. Florida Legislative Comm.*, 372 U.S. 539, 83 S.Ct. 889, 9 L.Ed.2d 929; *Bates v. Little Rock*, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480; *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488. The Court noted that "the invasion of privacy of belief may be as great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations," and that therefore our past decisions have extended constitutional protection to contributors and members interchangeably. 424 U.S., at 66, 96 S.Ct., at 657, citing *California Bankers Assn. v. Shultz*, 416 U.S. 21, 78–79, 94 S.Ct. 1494,

It would also place on each employee the considerable burden of monitoring all of the numerous and shifting expenditures made by the Union that are unrelated to its duties as exclusive bargaining representative.

[26] The Court of Appeals thus erred in holding that the plaintiffs are entitled to no 1242 relief if they can prove the allegations contained in their complaints,[43] and in depriving them of an opportunity to establish their right to appropriate relief, such, for example, as the kind of remedies described in *Street* and *Allen*.[44] In view of the newly adopted Union internal remedy, it may be appropriate under Michigan law, even if not strictly required by any doctrine of exhaustion of remedies, to defer further judicial proceedings pending the voluntary utilization by the parties of that internal remedy as a possible means of settling the dispute.[45]

The judgment is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice REHNQUIST, concurring.

Had I joined the plurality opinion in *Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), I would find it virtually impossible to join the Court's opinion in this case. In *Elrod*, the plurality stated:

> "The illuminating source to which we turn in performing the task [of constitutional adjudication] is the system of 1243 government the First Amendment was intended to protect, a democratic system whose proper functioning is indispensably dependent on the unfettered judgment of each citizen on matters of political concern. Our decision in obedience to the guidance of that source does not outlaw political parties or political campaigning and management. Parties are free to exist and their concomitant activities are free to continue. We require only that the rights of every citizen to believe as he will and to act and associate according to his beliefs be free to continue as well." *Id.*, at 372, 96 S.Ct., at 2689, 49 L.Ed.2d 547.

I do not read the Court's opinion as leaving intact the "unfettered judgment of each citizen on matters of political concern" when it holds that Michigan may, consistently with the First and Fourteenth Amendments, require an objecting member of a public employees' union to contribute to the funds necessary for the union to carry out its bargaining activities. Nor does the Court's opinion leave such a member free "to believe as he will and to act and associate according to his beliefs." I agree with the Court, and with the views expressed in Mr. Justice Powell's opinion

1525–26, 39 L.Ed.2d 812 (POWELL, J., concurring); *Bates v. Little Rock*, *supra*, 361 U.S., at 518, 80 S.Ct., at 414; and *United States v. Rumely*, 345 U.S. 41, 73 S.Ct. 543, 97 L.Ed. 770.

Disclosure of the specific causes to which an individual employee is opposed (which necessarily discloses, by negative implication, those causes the employee does support) may subject him to "economic reprisal . . . threat of physical coercion, and other manifestations of public hostility," and might dissuade him from exercising the right to withhold support "because of fear of exposure of [his] beliefs . . . and of the consequences of this exposure." *NAACP v. Alabama ex rel. Patterson*, *supra*, 357 U.S., at 462–463, 78 S.Ct., at 1172.

43. Although the appellants did not specifically pray for either of the remedies described in *Street* and *Allen*, the complaints in both *Abood* and *Warczak* included a general prayer for "such further and other relief as may be necessary, or may to the Court seem just and equitable."

The *Warczak* complaint was styled as a class action, but the trial court dismissed the complaint without addressing the propriety of class relief under Michigan law. We therefore have no occasion to address the question whether an individual employee who is not a named plaintiff but merely a member of the plaintiff class is, without more, entitled to relief under *Street* and *Allen* as a matter of federal law.

44. See *supra* at 1800–1802, and nn. 38, 40.

45. We express no view as to the constitutional sufficiency of the internal remedy described by the appellees. If the appellants initially resort to that remedy and ultimately conclude that it is constitutionally deficient in some respect, they would of course be entitled to judicial consideration of the adequacy of the remedy.

concurring in the judgment, that the positions taken by public employees' unions in connection with their collective-bargaining activities inevitably touch upon political concern if the word "political" be taken in its normal meaning. Success in pursuit of a particular collective-bargaining goal will cause a public program or a public agency to be administered in one way; failure will result in its being administered in another way.

I continue to believe, however, that the dissenting opinion of Mr. Justice Powell in *Elrod v. Burns*, *supra*, which I joined, correctly stated the governing principles of First and Fourteenth Amendment law in the case of public employees such as this. I am unable to see a constitutional distinction between a governmentally imposed requirement that a public employee be a Democrat
1244 or Republican or else lose his job, and a similar requirement that a public employee contribute to the collective-bargaining expenses of a labor union. I therefore join the opinion and judgment of the Court.

Mr. Justice STEVENS, concurring.

By joining the opinion of the Court, including its discussion of possible remedies, I do not imply—nor do I understand the Court to imply—that the remedies described in *Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141, and *Railway Clerks v. Allen*, 373 U.S. 113, 83 S.Ct. 1158, 10 L.Ed.2d 235, would necessarily be adequate in this case or in any other case. More specifically, the Court's opinion does not foreclose the argument that the Union should not be permitted to exact a service fee from nonmembers without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance ideological activities unrelated to collective bargaining. Any final decision on the appropriate remedy must await the full development of the facts at trial.*

Mr. Justice POWELL, with whom THE CHIEF JUSTICE and Mr. Justice BLACKMUN join, concurring in the judgment.

The Court today holds that a State cannot constitutionally compel public employees to contribute to union political activities which they oppose. On this basis the Court concludes that "the general allegations in the complaints, if proved, establish a cause of action under the First and Fourteenth Amendments." *Ante*, at 1800. With this much of the Court's opinion I agree, and I therefore join the Court's judgment remanding this case for further proceedings.

But the Court's holding and judgment are 1245
but a small part of today's decision. Working from the novel premise that public employers are under no greater constitutional constraints than their counterparts in the private sector, the Court apparently rules that public employees can be compelled by the State to pay full union dues to a union with which they disagree, subject only to a possible rebate or deduction if they are willing to step forward, declare their opposition to the union, and initiate a proceeding to establish that some portion of their dues has been spent on "ideological activities unrelated to collective bargaining." *Ante*, at 1800. Such a sweeping limitation of First Amendment rights by the Court is not only unnecessary on this record; it is in my view unsupported by either precedent or reason.

I

The Court apparently endorses the principle that the State infringes interests protected by the First Amendment when it compels an individual to support the political activities of others as a condition of employment. See *ante*, at 1792–1793, 1798–1799. One would think that acceptance of this principle would require a careful in-

* The case is before us on the equivalent of a motion to dismiss. *Ante*, at 1788 n. 4. Our knowledge of the facts is limited to a bald assertion that the Union engages "'in a number and variety of activities and programs which are economic, political, professional, scientific and religious in nature of which Plaintiffs do not approve . . . .'" *Ante*, at 1788, and n. 3. What if anything, will be proved at trial is a matter for conjecture.

quiry into the constitutional interests at stake in a case of this importance. But the Court avoids such an inquiry on the ground that it is foreclosed by this Court's decisions in *Railway Employes' Dept. v. Hanson*, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956), and *Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961). With all respect, the Court's reliance on these cases, which concerned only congressional authorization of union-shop agreements in the private sector, is misplaced.

A

The issue before the Court in *Hanson* was the constitutionality of the Railway Labor Act's authorization of union-shop agreements in the private sector. Section 2 Eleventh of that Act, 45 U.S.C. § 152 Eleventh, provides in essence that, notwithstanding any contrary provision of state law, employ-
1246 ers and unions are permitted to enter into voluntary agreements whereby employment is conditioned on payment of full union dues and fees. See *ante*, at 1790, n. 11. The suit was brought by nonunion members who claimed that Congress had forced them into "ideological and political associations which violate their right to freedom of conscience, freedom of association, and freedom of thought protected by the Bill of Rights." 351 U.S., at 236, 76 S.Ct., at 720.

Acceptance of this claim would have required adoption by the Court of a series of far-reaching propositions: (i) that there was sufficient governmental involvement in the private union-shop agreement to justify inquiry under the First Amendment; (ii) that a refusal to pay money to a union could be "speech" protected by the First Amendment; (iii) that Congress had interfered with or infringed that protected speech interest by authorizing union shops; and (iv) that the interference was unwarranted by any overriding congressional objective. The Court adopted only the first of these propositions: it agreed with the Supreme Court of Nebraska that § 2 Eleventh, by authorizing union-shop agreements that otherwise might be forbidden by state law, had involved Congress sufficiently to justify examination of the First Amendment claims.

On the merits the Court concluded that there was no violation of the First Amendment. The reasoning behind this conclusion was not elaborate. Some language in the opinion appears to suggest that even if Congress had compelled employers and employees to enter into union-shop agreements, the required financial support for the union would not infringe any protected First Amendment interest.[1] But the Court did 1247
not lose sight of the distinction between governmentally compelled financial support and the actual effect of the Railway Labor Act: "The union shop provision of the Railway Labor Act is only permissive. Congress has not compelled nor required carriers and employees to enter into union shop agreements." (Footnote omitted.) 351 U.S., at 231, 76 S.Ct., at 718. As the Court later reflected in *Street*:

> "[A]ll that was held in *Hanson* was that § 2, Eleventh was constitutional in its bare authorization of union-shop contracts requiring workers to give 'financial support' to unions legally authorized to act as their collective bargaining agents. . . ." 367 U.S., at 749, 81 S.Ct., at 1790.

To the extent that *Hanson* suggests that withholding financial support from unions is unprotected by the First Amendment against governmental compulsion, it is significantly undercut by the subsequent decision in *Street*. The claim before the Court in *Street* was similar to that in *Hanson*: minority employees complained that they

1. The Court compared the union shop to the organized bar: "On the present record there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar." 351 U.S., at 238, 76 S.Ct., at 721. Mr. Justice Douglas, author of the Court's opinion in *Hanson*, later remarked that "on reflection the analogy fails." *Lathrop v. Donohue*, 367 U.S. 820, 879, 81 S.Ct. 1826, 1856, 6 L.Ed.2d 1191 (1961) (dissenting opinion).

were being forced by a union-shop agreement to pay full union dues. This time, however, the employees specifically complained that part of their dues was being used for political activities to which they were opposed. And this time the Court perceived that the constitutional questions were "of the utmost gravity." 367 U.S., at 749, 81 S.Ct., at 1785. In order to avoid having to decide those difficult questions, the Court read into the Act a restriction on a union's use of an employee's money for political activities: "[W]e hold . . . that § 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." *Id.*, at 768–769, 81 S.Ct., at 1800.

In so reading § 2 Eleventh to avoid unnecessary constitutional decisions," 367 U.S., at 749, 81 S.Ct., at 1789, *Street* suggests a rethinking of the First Amendment [1248] issues decided so summarily—indeed, almost viewed as inconsequential—in *Hanson*. To be sure, precisely because the decision in *Street* does not rest explicitly on the Constitution, the opinion for the Court supplies no more reasoned analysis of the constitutional issues than did the opinion in *Hanson*. But examination of the Court's strained construction of the Railway Labor Act in light of the various separate opinions in *Street* suggests that the Court sought to leave open three important constitutional questions by taking the course that it did.

First, the Court's reading of the Act made it unnecessary to decide whether the withholding of financial support from a union's political activities is a type of "speech" protected against governmental abridgment by the First Amendment. Mr. Justice Douglas, who wrote the opinion for the Court in *Hanson*, and provided the necessary fifth vote in *Street*, believed that "use of union funds for political purposes subordinates the individual's First Amendment rights to the views of the majority." 367 U.S., at 778, 81 S.Ct., at 1805. Mr. Justice Black expressed a similar view in dissent. *Id.*, at 790–91, 81 S.Ct., at 1810. But Mr. Justice Frankfurter, joined by Mr. Justice Harlan, strongly disagreed, *id.*, at 806, 81 S.Ct., at 1818, and the Court's reading of the statute made it unnecessary to resolve the dispute.

Second, the Court's approach made it possible to reserve judgment on whether, assuming protected First Amendment interest were implicated, Congress might go further in approving private arrangements that would interfere with those interests than it could in commanding such arrangements. Mr. Justice Douglas had no doubts that the constraints on Congress were the same in either case:

> "Since neither Congress nor the state legislatures can abridge [First Amendment] rights, they cannot grant the power to private groups to abridge them. As I read the First Amendment, it forbids any abridgment by government whether directly or indirectly." *Id.*, at 777, 81 S.Ct., at 1804.

But here, too, Mr. Justice Frankfurter disa- [1249] greed:

> "[W]e must consider the difference between . . . compulsion and the absence of compulsion when Congress acts as platonically as it did, in a wholly noncoercive way. Congress has not commanded that the railroads shall employ only those workers who are members of authorized unions. . . . When we speak of the Government 'acting' in permitting the union shop, the scope and force of what Congress has done must be heeded. There is not a trace of compulsion involved—no exercise of restriction by Congress on the freedom of the carriers and the unions. . . ." *Id.*, at 806–807, 81 S.Ct., at 1818.

And here, too, the Court's reading of the statute permitted it to avoid an unnecessary constitutional decision.[2]

Finally, by placing its decision on statutory grounds, the Court was able to leave

2. The Court today simply reads the separate opinion of Mr. Justice Douglas in *Street* as expressing the holding of the Court in *Hanson*. *Ante*, at 1795 n. 23; see *ante*, at 1793. While it may be possible to read *Hanson* this way, see n. 1, *supra*, it is certainly unnecessary to do so

open the question whether, assuming the Act intruded on protected First Amendment interests, the intrusion could be justified by the governmental interest asserted on its behalf. *Hanson* made it unnecessary to address this issue with respect to funds exacted solely for collective bargaining.[3] And by reading the Railway Labor Act to
1250 prohibit a union's use of exacted funds for political purposes, *Street* made it unnecessary to discuss whether authorizing such a use of union-shop funds might ever be justified.[4]

In my view, these cases can and should be read narrowly. The only constitutional principle for which they clearly stand is the narrow holding of *Hanson* that the Railway Labor Act's authorization of voluntary union-shop agreements in the private sector does not violate the First Amendment. They do not hold that the withholding of financial support from a union is protected speech; nor do they signify that the government could constitutionally compel employees, absent a private union-shop agreement, to pay full union dues to a union representative as a condition of employment; nor do they say anything about the kinds of governmental interest that could justify such compulsion, if indeed justification were required by the First Amendment.

B

The Court's extensive reliance on *Hanson* and *Street* requires it to rule that there is no constitutional distinction between what the government can require of its own employees and what it can permit private employers to do. To me the distinction is fundamental. Under the First Amendment the government may authorize private parties to enter into voluntary agreements whose terms it could not adopt as its own.

We stressed the importance of this distinction only recently in *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974). There a New York resident had brought suit against a private utility, claiming that she had been denied due process when the utility terminated her service without notice or a hearing and alleging that the utility's summary termination procedures had been "specifically authorized and approved" by the State. In sustaining dismissal of the complaint, we held that authorization and approval did not transform the procedures of the company into the procedures of the State:
1251

> "The nature of governmental regulation of private utilities is such that a utility may frequently be required by the state regulatory scheme to obtain approval for practices a business regulated in less detail would be free to institute without any approval from a regulatory body. Approval by a state utility commission of such a request from a regulated utility, where the commission has not put its own

in light of the issues actually presented and resolved in that case. The Court offers no explanation of why Justices Frankfurter and Harlan, who believed that "the scope and force of what Congress has done must be heeded," 367 U.S., at 807, 81 S.Ct., at 1819, would acquiesce in the finding of governmental action in *Hanson* if that finding represented a definitive ruling that governmental authorization of a private union-shop agreement subjects the agreement itself to the full constraints of the First Amendment.

3. Whether because no First Amendment interest were implicated, or because Congress had done nothing affirmatively to infringe such interest, or because any infringement of First Amendment interests was necessary to serve overriding governmental purposes, the Court was unanimous that the Railway Labor Act was constitutional insofar as it protected private agreements that would compel payment of sufficient fees to cover collective-bargaining costs. 367 U.S., at 771, 81 S.Ct., at 1801; 778, 81 S.Ct., at 1805 (Douglas, J., concurring); 779, 81 S.Ct., at 1805 (opinion of Whittaker, J.); 791, 81 S.Ct. at 1810 (Black, J., dissenting); 804, 81 S.Ct., at 1817 (Frankfurter, J., dissenting).

4. The Court explicitly reserved judgment on "the matter of expenditures for activities in the area between the costs which led directly to the complaint as to 'free riders,' and the expenditures to support union political activities." *Id.*, at 769-770, 81 S.Ct., at 1800.

weight on the side of the proposed practice by ordering it, does not transmute a practice initiated by the utility and approved by the commission into 'state action.'" *Id.*, at 357, 95 S.Ct., at 456.

Had the State itself adopted the procedures it approved for the utility, it would have been subject to the full constraints of the Constitution.[5]

[252] An analogy is often drawn between the collective-bargaining agreement in labor relations and a legislative code. This Court has said, for example, that the powers of a union under the Railway Labor Act are "comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents . . ." *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 202, 65 S.Ct. 226, 232, 89 L.Ed. 173 (1944). Some have argued that this analogy requires each provision of a private collective-bargaining agreement to meet the same limitations that the Constitution imposes on congressional enactments.[6] But this Court has wisely refrained from adopting this view and generally has measured the rights and duties embodied in a collective-bargaining agreement only against the limitations imposed by Congress. See *Emporium Capwell Co. v. Western Addition Community Org.*, 420 U.S. 50, 62–65, 95 S.Ct. 977, 984–86, 43 L.Ed.2d 12 (1975); *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180–181, 87 S.Ct. 2001, 2006–07, 18 L.Ed.2d 1123 (1967).[7]

Similar constitutional restraint would be wholly inappropriate in the public sector. The collective-bargaining agreement to which a public agency is a party is not merely analogous to legislation, it has all of the attributes of legislation for the subjects [253] with which it deals. Where a teachers' union for example, acting pursuant to a state statute authorizing collective bargaining in the public sector, obtains the agreement of the school board that teachers residing outside the school district will not be hired, the provision in the bargaining agreement to that effect has the same force as if the school board had adopted it by promulgating a regulation. Indeed, the rule in Michigan is that where a municipal collective-bargaining agreement conflicts with an otherwise valid municipal ordinance, the ordinance must yield to the agreement. *Detroit Police Officers Assn. v. Detroit*, 391 Mich. 44, 214 N.W.2d 803 (1974) (holding that a duly enacted residency requirement for police must yield to any contrary agreement reached by collective bargaining).

5. This is not to say, of course, that governmental authorization of private action is free from constitutional scrutiny under the Bill of Rights and the Fourteenth Amendment. The historical context of a facially permissive enactment may demonstrate that its purpose and effect are to bring about a result that the Constitution forbids the legislature to achieve by direct command. It is well established, for example, that a State cannot promote racial discrimination by laws designed to foster and encourage discriminatory practices in the private sector. See *Reitman v. Mulkey*, 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1967); cf. *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 176–177, 92 S.Ct. 1965, 1973, 32 L.Ed.2d 627 (1972). And the Court in *Street* would not have read the Railway Labor Act as restrictively as it did, had it not been concerned that a broader reading might result in the indirect curtailment of First Amendment rights by Congress. But I am not aware that the Court has ever before held, as it apparently has today, that the same constitutional constraints invariably apply when the government fosters or encourages a result in the private sector by permissive legislation as when it commands that result by the full force of law.

6. See Note, Individual Rights in Industrial Self-Government—A "State Action" Analysis, 63 Nw.U.L.Rev. 4 (1968); cf. Blumrosen, Group Interests in Labor Law, 13 Rutgers L.Rev. 432, 482–483 (1959).

7. If collective-bargaining agreements were subjected to the same constitutional constraints as federal rules and regulations, it would be difficult to find any stopping place in the constitutionalization of regulated private conduct. "Most private activity is infused with the governmental in much the way that the union shop is. . . . Enacted and decisional law everywhere conditions and shapes the nature of private arrangements in our society. This is true with the commercial contract—regulated as it is by comprehensive uniform statutes—no less than with the collective bargaining agreement . . . ." H. Wellington, Labor and the Legal Process 244–245 (1968).

The State in this case has not merely authorized union-shop agreements between willing parties; it has negotiated and adopted such an agreement itself. Acting through the Detroit Board of Education, the State has undertaken to compel employees to pay full fees equal in amount to dues to a union as a condition of employment. Accordingly, the Board's collective-bargaining agreement, like any other enactment of state law, is fully subject to the constraints that the Constitution imposes on coercive governmental regulation.[8]

1254 [1]Because neither *Hanson* nor *Street* confronted the kind of governmental participation in the agency shop that is involved here, those cases provide little or no guidance for the constitutional issues presented in this case.[9] With the understanding, therefore, that the Court writes on a clean constitutional slate in the field of public-sector collective bargaining, I turn to the merits.

II

The Court today holds that compelling an employee to finance a union's "ideological activities unrelated to collective bargaining" violates the First Amendment regardless of any asserted governmental justification. *Ante*, at 1800. But the Court also decides that compelling an employee to finance any union activity that may be "related" in some way to collective bargaining is permissible under the First Amendment because such compulsion is "relevant or appropriate" to asserted governmental interests. *Ante*, at 1793, 1794 n.20. And the Court places the burden of litigation on the individual. In order to vindicate his First Amendment rights in a union [1]shop, the 1255
individual employee apparently must declare his opposition to the union and initiate a proceeding to determine what part of the union's budget has been allocated to activities that are both "ideological" and "unrelated to collective bargaining." *Ante*, at 1800–1803.

I can agree neither with the Court's rigid two-tiered analysis under the First Amendment, nor with the burden it places on the individual. Under First Amendment principles that have become settled since *Hanson* and *Street* were decided, it is now clear; first, that *any* withholding of financial support for a public-sector union is within the protection of the First Amendment; and, second, that the State should bear the bur-

8. Cf. Summers, Public Sector Bargaining: Problems of Governmental Decisionmaking, 44 U.Cin.L.Rev. 669, 670 (1975):

"The uniqueness of public employment is not in the employees nor in the work performed; the uniqueness is in the special character of the employer. The employer is government; the ones who act on behalf of the employer are public officials; and the ones to whom those officials are answerable are citizens and voters. We have developed a whole structure of constitutional and statutory principles, and a whole culture of political practices and attitudes as to how government is to be conducted, what powers public officials are to exercise, and how they are to be made answerable for their actions. Collective bargaining by public employers must fit within the governmental structure and must function consistently with our governmental processes; the problems of the public employer accommodating is collective bargaining function to government structures and processes is what makes public sector bargaining unique."

9. The Court's reliance on *Hanson* and *Street* is ambivalent, to say the least. *Street* construed § 2 Eleventh of the Railway Labor Act "to deny the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes." 367 U.S., at 768–769, 81 S.Ct., at 1800. The opinion distinguishes not only between those union activities which are related to collective bargaining and those which are not, but "between the use of union funds for political purposes and their expenditure for nonpolitical purposes." *Id.*, at 769 n. 17, 81 S.Ct. at 1800. Yet the Court today repudiates the latter distinction, holding that nothing turns on whether union activity may be characterized as political. *Ante*, at 1797–1798. If it is true, as the Court believes, that *Hanson* and *Street* declare the limits of constitutional protection from a governmental union shop, *ante*, at 1793, the Court's abandonment of the political-nonpolitical distinction drawn by those cases can only be explained by a desire to avoid its full implications in the public sector, where the subjects of bargaining are inherently political. See *infra*, at 1793–1794.

den of proving that any union dues or fees that it requires of nonunion employees are needed to serve paramount governmental interests.

A

The initial question is whether a requirement of a school board that all of its employees contribute to a teachers' union as a condition of employment impinges upon the First Amendment interests of those who refuse to support the union, whether because they disapprove of unionization of public employees or because they object to certain union activities or positions. The Court answers this question in the affirmative: "The fact that [government employees] are compelled to make . . . contributions for political purposes works . . . an infringement of their constitutional rights," *ante*, at 1799, and *any* compelled support for a union "has an impact upon" and may be thought to "interfere in some way with" First Amendment interests. *Ante*, at 1793. I agree with the Court as far as it goes, but I would make it more explicit that compelling a government employee to give financial support to a union in the public sector—regardless of the uses to which the union puts the contribution—impinges seriously upon interests in free speech and association protected by the First Amendment.

In *Buckley* v. *Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), we considered
1256 the constitutional validity of the Federal Election Campaign Act of 1971, as amended in 1974, which in one of its provisions limited the amounts that individuals could contribute to federal election campaigns. We held that these limitations on political contributions "impinge on protected associational freedoms":

> "Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals. The Act's contribution ceilings thus limit one important means of associating with a candidate or committee . . . ." *Id.*, at 22, 96 S.Ct., at 636.

That *Buckley* dealt with a contribution limitation rather than a contribution requirement does not alter its importance for this case. An individual can no more be required to affiliate with a candidate by making a contribution than he can be prohibited from such affiliation. The only question after *Buckley* is whether a union in the public sector is sufficiently distinguishable from a political candidate or committee to remove the withholding of financial contributions from First Amendment protection. In my view no principled distinction exists.

The ultimate objective of a union in the public sector, like that of a political party, is to influence public decisionmaking in accordance with the views and perceived interests of its membership. Whether a teachers' union is concerned with salaries and fringe benefits, teacher qualifications and in-service training, pupil-teacher ratios, length of the school day, student discipline, or the content of the high school curriculum, its objective is to bring school board policy and decisions into harmony with its own views. Similarly, to the extent that school board expenditures and policy are guided by decisions made by the municipal, State, and Federal Governments the union's 1257
objective is to obtain favorable decisions—and to place persons in positions of power who will be receptive to the union's viewpoint. In these respects, the public-sector union is indistinguishable from the traditional political party in this country.[10]

What distinguishes the public-sector union from the political party—and the distinction is a limited one—is that most of its members are employees who share similar economic interests and who may have a

10. The leadership of the American Federation of Teachers, with which the local union involved in this case is affiliated, has apparently taken the position that collective bargaining should extend to every aspect of educational policy within the purview of the school board. See J. Weitzman, The Scope of Bargaining in Public Employment 85–88 (1975).

common professional perspective on some issues of public policy. Public school teachers, for example, have a common interest in fair teachers' salaries and reasonable pupil-teacher ratios. This suggests the possibility of a limited range of probable agreement among the class of individuals that a public-sector union is organized to represent. But I am unable to see why the likelihood of an area of consensus in the group should remove the protection of the First Amendment for the disagreements that inevitably will occur. Certainly, if individual teachers are ideologically opposed to public-sector unionism itself, as are the appellants in this case, *ante*, at 1787–1788, one would think that compelling them to affiliate with the union by contributing to it infringes their First Amendment rights to the same degree as compelling them to contribute to a political party. Under the First Amendment, the protection of speech does not turn on the likelihood or frequency of its occurrence.

Nor is there any basis here for distinguishing "collective-bargaining activities" from "political activities" so far as the interests protected by the First Amendment are concerned. Collective bargaining in the public sector is "political" in any meaningful sense of the word. This is most obvious
1258 when public-sector bargaining extends—as it may in Michigan[11]—to such matters of public policy as the educational philosophy that will inform the high school curriculum. But it is also true when public-sector bargaining focuses on such "bread and butter" issues as wages, hours, vacations, and pensions. Decisions on such issues will have a direct impact on the level of public services, priorities within state and municipal budgets, creation of bonded indebtedness, and tax rates. The cost of public education is normally the largest element of a county or municipal budget. Decisions reached through collective bargaining in the schools will affect not only the teachers and the quality of education, but also the taxpayers and the beneficiaries of other important public services. Under our democratic system of government, decisions on these critical issues of public policy have been entrusted to elected officials who ultimately are responsible to the voters.[12]

Disassociation with a public-sector union and the expression of disagreement with its positions and objectives therefore lie at "the core of those activities protected by the First Amendment." *Elrod v. Burns*, 427 U.S. 347, 356, 96 S.Ct. 2673, 2681, 49 L.Ed.2d 547 (1976) (plurality opinion).

"Although First Amendment protections are not confined to 'the exposition of 1259
ideas,' *Winters v. New York*, 333 U.S. 507, 510, 68 S.Ct. 665, 92 L.Ed. 840 (1948), 'there is practically universal agreement that a major purpose of th[e] Amendment was to protect the free discussion of governmental affairs . . . .' *Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 16 L.Ed.2d 484 (1966)." *Buckley, supra*, 424 U.S., at 14, 96 S.Ct., at 632.

At the public sector union shop unquestionably impinges upon the interests protected by the First Amendment, I turn to the justifications offered for it by the Detroit Board of Education.[13]

11. Michigan law requires public agencies to bargain with authorized unions on all "conditions of employment," Mich.Comp.Laws § 423.211 (1970), but does not limit the permissible scope of public-sector bargaining to such conditions.

12. See Summers, *supra*, n. 8, at 672:

"The major decisions made in bargaining with public employees are inescapably political decisions . . . . Directly at issue are political questions of the size and allocation of the budget, the tax rates, the level of public services, and the long term obligations of the government. These decisions . . . are to be made by the political branches of government—by elected officials who are politically responsible to the voters. . . ."

See also *Hortonville School Dist. v. Hortonville Ed. Assn.*, 426 U.S. 482, 495, 96 S.Ct. 2308, 2315, 49 L.Ed.2d 1 (1976); Wellington & Winter, Structuring Collective Bargaining in Public Employment, 79 Yale L.J. 805, 858–860 (1970).

13. Compelled support of a private association is fundamentally different from compelled support of government. Clearly, a local school board does not need to demonstrate a compelling state interest every time it spends a tax-

B

"Neither the right to associate nor the right to participate in political activities is absolute . . . ." *CSC v. Letter Carriers*, 413 U.S. 548, 567, 93 S.Ct. 2880, 2891, 37 L.Ed.2d 796 (1973). This is particularly true in the field of public employment, where "the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general." *Pickering v. Board of Education*, 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968). Nevertheless, even in public employment, "a significant impairment of First Amendment rights must survive exacting scrutiny." *Elrod v. Burns*, 427 U.S., at 362, 96 S.Ct., at 2684 (plurality opinion); accord, *id.*, at 381, 96 S.Ct., at 2693 (Powell, J., dissenting).

"The [governmental] interest advanced must be paramount, one of vital importance, and the burden is on the [260] government to show the existence of such an interest. . . . [C]are must be taken not to confuse the interest of partisan organizations with governmental interests. Only the latter will suffice. Moreover, . . . the government must 'employ[ ] means closely drawn to avoid unnecessary abridgment . . . .' *Buckley v. Valeo, supra*, 424 U.S. at 25, 96 S.Ct. 612." *Id.*, at 362–363, 96 S.Ct. at 2684 (plurality opinion).

The justifications offered by the Detroit Board of Education must be tested under this settled standard of review.[14]

As the Court points out, *ante*, at 1794–1795, the interests advanced for the compulsory agency shop that the Detroit Board of Education has entered into are much the same as those advanced for federal legislation permitting voluntary agency-shop agreements in the private sector. The agency shop is said to be a necessary adjunct to the principle of exclusive union representation; it is said to reduce the risk that nonunion employees will become "free riders" by fairly distributing the costs of exclusive representation; and it is said to promote the cause of labor peace in the public sector. *Ante*, at 1792. While these interests may well justify encouraging agency-shop arrangements in the private sector, there is far less reason to believe they justify the intrusion upon First Amendment rights that results from compelled support for a union as a condition [261] of government employment.

In *Madison School Dist. v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 176, 97 S.Ct. 421, 427, 50 L.Ed.2d 376 (1976), we expressly reserved judgment on the constitutional validity of the exclusivity principle in the public sector. The Court today decides this issue summarily:

"The confusion and conflict that could arise if rival teachers' unions, holding quite different views as to the proper class hours, class sizes, holidays, tenure provisions, and grievance procedures,

payer's money in ways the taxpayer finds abhorrent. But the reason for permitting the government to compel the payment of taxes and to spend money on controversial projects is that the government is representative of the people. The same cannot be said of a union, which is representative only of one segment of the population, with certain common interests. The withholding of financial support is fully protected as speech in this context.

14. The Court's failure to apply the established First Amendment standards articulated in *Elrod v. Burns* and *Buckley v. Valeo* is difficult to explain in light of its concession that disassociation with a union's activities is entitled to full First Amendment protection regardless of whether those activities may be characterized as political. *Ante*, at 1797–1798, and n. 28. One may only surmise that those in the majority today who joined the plurality opinion in *Elrod* hold the unarticulated belief that compelled support of a public-sector union makes better public policy than compelled support of a political party. I am at a loss to understand why the State's decision to adopt the agency shop in the public sector should be worthy of greater deference, when challenged on First Amendment grounds, than its decision to adhere to the tradition of political patronage. See *Elrod*, 427 U.S., at 376–380, 382–387, 96 S.Ct., at 2691–2693, 94–96 (Powell, J., dissenting).

each sought to obtain the employer's agreement, are no different in kind from the evils that the exclusivity rule in the Railway Labor Act was designed to avoid." *Ante*, at 1794.

I would have thought the "conflict" in ideas about the way in which government should operate was among the most fundamental values protected by the First Amendment. See *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 720, 11 L.Ed.2d 686 (1964). That the "Constitution does not require all public acts to be done in town meeting or an assembly of the whole," *Bi-Metallic Investment Co. v. State Bd. of Equalization*, 239 U.S. 441, 445, 36 S.Ct. 141, 142, 60 L.Ed. 372 (1915), does not mean that a State or municipality may agree to set public policy on an unlimited range of issues in closed negotiations with "one category of interested individuals." *Madison School Dist., supra*, 429 U.S. at 175, 97 S.Ct. at 426. Such a commitment by a governmental body to exclude minority viewpoints from the councils of government would violate directly the principle that "government must afford all points of view an equal opportunity to be heard." *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96, 92 S.Ct. 2286, 2290, 33 L.Ed.2d 212 (1972).[15]

[262] The Court points out that the minority employee is not barred by the exclusivity principle from expressing his viewpoint, see *ante*, at 1796–1797. In a limited sense, this may be true. The minority employee is excluded in theory only from engaging in a meaningful dialogue with his employer on the subjects of collective bargaining, a dialogue that is reserved to the union. It is possible that paramount governmental interests may be found—at least with respect to certain narrowly defined subjects of bargaining—that would support this restriction on First Amendment interests. But "the burden is on the government to show the existence of such an interest." *Elrod v. Burns, supra*, 427 U.S., at 362, 96 S.Ct., at 2684 (plurality opinion). Because this appeal reaches this Court on a motion to dismiss, the record is barren of any demonstration by the State, that excluding minority views from the processes by which governmental policy is made is necessary to serve overriding governmental objectives. For the Court to sustain the exclusivity principle in the public sector in the absence of a carefully documented record is to ignore, rather than respect, "the importance of avoiding unnecessary decision of constitutional questions." *Ante*, at 1800.

The same may be said of the asserted interests in eliminating the "free rider" effect and in preserving labor peace. It may be that the Board of Education is in a position to demonstrate that these interests [263] are of paramount importance and that requiring public employees to pay certain union fees and dues as a condition of employment is necessary to serve those interests under an exclusive bargaining scheme. On the present record there is no assurance whatever that this is the case.[16]

15. By stressing the Union's duty of fair representation, *ante*, at 1793, the Court may be suggesting that the State has provided an adequate means for minority viewpoints to be heard *within* the Union. But even if Michigan law could read to impose a broad obligation on the union to listen to and represent the viewpoints of all employees on such issues as curriculum reform, imposition of such an obligation on the Union could not relieve the school board of *its* responsibilities—at least, it could not do so unless the Union were declared to be a public agency to which the State had delegated some part of the school board's power. Yet such a delegation of state power, covering an unlimited range of the school board's responsibility to set school policy, see nn. 10 and 11, *supra*, would itself raise grave constitutional issues. If power to determine school policy were shifted in part from officials elected by the population of the school district to officials elected by the school board's employees, the voters of the district could complain with force and reason that their voting power and influence on the decisionmaking process had been unconstitutionally diluted. See *Kramer v. Union School Dist.*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969); *Hadley v. Junior College Dist.*, 397 U.S. 50, 90 S.Ct. 791, 25 L.Ed.2d 45 (1970).

16. Unions in the public sector may be expected to spend money in a broad variety of ways, some of which are more closely related to collective bargaining than others, and some of which are more likely to stimulate "ideological" opposition than others. With respect to

Before today it had been well established that when state law intrudes upon protected speech, the State itself must shoulder the burden of proving that its action is justified by overriding state interests. See *Elrod v. Burns, supra*, 427 U.S. at 363, 96 S.Ct. at 2685; *Healy v. James*, 408 U.S. 169, 184, 92 S.Ct. 2338, 2347, 33 L.Ed.2d 266 (1972); *Speiser v. Randall*, 357 U.S. 513, 525–526, 78 S.Ct. 1332, 1341–42, 2 L.Ed.2d 1460 (1958). The Court, for the first time in a First Amendment case, simply reverses this principle. Under today's decision, a nonunion
1264 employee who would vindicate his First Amendment rights apparently must initiate a proceeding to prove that the union has allocated some portion of its budget to "ideological activities unrelated to collective bargaining." *Ante*, at 1800–1803. I would adhere to established First Amendment principles and require the State to come forward and demonstrate, as to each union expenditure for which it would exact support from minority employees, that the compelled contribution is necessary to serve overriding governmental objectives. This placement of the burden of litigation, not the Court's, gives appropriate protection to First Amendment rights without sacrificing ends of government that may be deemed important.

many of these expenditures, arriving at the appropriate reconciliation of the employees' First Amendment interests with the asserted governmental interests will be difficult.

I should think that on some narrowly defined economic issues—teachers' salaries and pension benefits, for example—the case for requiring the teachers to speak through a single representative would be quite strong, while the concomitant limitation of First Amendment rights would be relatively insignificant. On such issues the case for requiring all teachers to contribute to the clearly identified costs of collective bargaining also would be strong, while the interest of the minority teacher, who is benefited directly, in withholding support would be comparatively weak. On other issues—including such questions as how best to educate the young—the strong First Amendment interests of dissenting employees might be expected to prevail.

The same may be said of union activities other than bargaining. The processing of individual grievances may be an important union service for which a fee could be exacted with minimal intrusion on First Amendment interests. But other union actions—such as a strike against a public agency—may be so controversial and of such general public concern that compelled financial support by all employees should not be permitted under the Constitution.

431 U.S. 181, 52 L.Ed.2d 238

UNITED STATES, Petitioner,

v.

Gregory V. WASHINGTON.

No. 74–1106.

Argued Dec. 6, 1976.

Decided May 23, 1977.

In a prosecution for grand larceny and receiving stolen property, the Superior Court for the District of Columbia suppressed testimony given by defendant before a grand jury and dismissed the indictment, holding that before the Government could use defendant's grand jury testimony at trial, it had first to demonstrate that defendant had knowingly waived his privilege against compelled self-incrimination. After affirmance of the suppression order by the District of Columbia Court of Appeals, 328 A.2d 98, the United States sought certiorari. The United States Supreme Court, Mr. Chief Justice Burger, held that testimony given by a grand jury witness suspected of wrongdoing may be used against him in a latter prosecution for a substantive criminal offense even though defendant is not informed in advance of his testimony that he is a potential defendant in danger of indictment.

Reversed and remanded.

Mr. Justice Brennan dissented and filed opinion in which Mr. Justice Marshall, joined.

Exhibit 3
HB 387
2/7/85
Submitted by: Rep. Addy

49th Legislature LC 754

STATEMENT OF INTENT

House BILL NO. 387

Title 18, chapter 2, part 4, MCA, requires that a standard prevailing wage be paid for labor on all public works contracts and that Montana labor receive a preference for employment on all public contracts. The commissioner is given the duty to determine the prevailing wage by locality and to otherwise administer part 4. In early 1983, Judge Bennett found in Townsend Electric, Inc. v. Hunter, et al., First Judicial District of Montana (No. 47160), that the commissioner's determinations as to prevailing wage did not have the force of law because the legislature had never granted the commissioner express rulemaking authority to implement part 4. This bill is introduced to remedy this situation.

Exhibit 4
HB 437
2/7/85
Sub. by: Rep. Addy

1983 and 1984 APPROVED CITY WATER and SEWER INCREASES

CITY OR TOWN	WATER INCREASE	SEWER INCREASE
BILLINGS	1983 6.6% decrease 1984 0% increase	1983 12% increase 1984 0% increase
GREAT FALLS *(PSC)	1983 33% increase* 1984 0% increase	1983 0% increase 1984 0% increase
HELENA 1982-83 73% EPA Improvement	1983 0% increase 1984 0% increase	1983 0% increase 1984 5% increase
HAVRE *(EPA Improvement)	1983 12% increase 1984 12% increase	1983 12% increase 1984 50% increase*
GLENDIVE	1983 0% increase 1984 10% increase	1983 0% increase 1984 10% increase
LEWISTOWN	1983 0% increase 1984 0% increase	1983 0% increase 1984 0% increase
MILES CITY *(MDU Pumping increase)	1983 12% increase* 1984 12% increase*	1983 0% increase 1984 0% increase
SHELBY (12% increase for 1985 because of bonding requirements)	1983 0% increase 1984 0% increase	1983 0% increase 1984 0% increase
KALISPELL (Increases were result of needed replacements)	1983 12% increase 1984 12% increase	1983 12% increase 1984 12% increase
BOZEMAN (1985-Possible 40-90% will go to PSC)	1984 0% increase	1984 0% increase

IN THE 36 INSTANCES LISTED ABOVE, WHERE MUNICIPAL UTILITIES HAD THE AUTHORITY TO INCREASE RATES BY 12%, THE AVERAGE ADJUSTMENT WAS ONLY 4.2%. CITIES AND TOWNS HAVE JUDICOUSLY APPLIED THIS REGULATORY POWER AND HAVE INCREASED RATES ONLY AS REQUIRED BY FINANCIAL CIRCUMSTANCES.

Exhibit 5
HB 437
2/7/85
Sub. by:
Rep. Addy

12% in any one year or rate increases for mandated federal and state capital improvements for which the increase exceeds amounts necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements, it must make application for such increases to the public service commission.

(2) If the public service commission issues a rate order approving such an increase, the municipality may not increase any rates and charges under this chapter within 12 months of the commission's order unless an increase is necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share for mandated federal and state capital improvements.

History: En. Sec. 5, Ch. 607, L. 1981; amd. Secs. 4, 9, Ch. 588, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (2); and made section permanent.

69-7-103 through 69-7-110 reserved.

69-7-111. Municipal rate hearing required — notice. (1) If the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel.

History: En. Sec. 2, Ch. 607, L. 1981; amd. Secs. 4, 10, Ch. 588, L. 1983.

Compiler's Comments

1983 Amendment: In (3)(b), in second sentence after "The notice" deleted "shall accompany the bill for services of that utility and"; and in third sentence after "average" deleted "monthly"; and made section permanent.

69-7-112. Conduct of municipal rate hearing. (1) At the hearing, all persons, associations, corporations or companies affected or interested, including the Montana consumer counsel, may be present and represented by counsel. The hearing may be continued from time to time by the governing body of the municipality. At the conclusion of the hearing, all interested parties shall be allowed to make such arguments as they may consider proper.

(2) Within 30 days after the hearing, the governing body of the municipality shall issue its decision. The decision is final 10 days after being filed with the municipal clerk. A copy of each revised rate schedule shall be filed with the public service commission upon final decision.

History: En. Sec. 3, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Compiler's Comments

1983 Amendment: Made section permanent.

69-7-113. Appeals. (1) A party to a municipal rate hearing may appeal the decision of the municipality to the district court in whose jurisdiction the municipality lies.

(2) A person may appeal the adoption or application of municipal utility rules to the district court in whose jurisdiction the municipality lies.

History: En. Sec. 7, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Compiler's Comments

1983 Amendment: Made section permanent.

69-7-114 through 69-7-120 reserved.

69-7-121. Annual report to public service commission. A municipality regulating its utility services must make an annual report to the public service commission and furnish a copy thereof to the Montana consumer counsel. The report shall set forth the rates and number of users of each service and classification, all rate increases, and the total income and expenditures of the utility as provided in 69-3-203.

History: En. Sec. 4, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Compiler's Comments

1983 Amendment: Made section permanent.

Part 2

Operation of Utilities

69-7-201. Rules for operation of municipal utility. Each municipal utility shall adopt, with the concurrence of the municipal governing body, rules for the operation of the utility. The rules shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of a utility. They shall define or provide for use of meter or flat rate user charges, the classification of users, applications for service, and uses of the service. The rules shall outline the utility's procedure for discontinuance of service and reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries. The rule shall provide that rate increases for comparable classifications and zones outside the municipal boundaries may not exceed those set within the municipal limits under the provisions of this chapter.

History: En. Sec. 6, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Compiler's Comments

1983 Amendment: Made section permanent.

Exhibit 6
HB 437
2/7/85
Submitted by: Russ Brown

Testimony in support of HB 437
Before Business & ~~Industry~~ LABOR 2-7-85

Mr. Chairman and members of the Business and ~~Industry~~ LABOR Committee. For the record, my name is Russ Brown, and I'm here on behalf of the Northern Plains Resource Council. We are here to urge your passage of HB 437.

This seems to be a fair and reasonable bill, which should not prove to be burdensome to either municipalities or the Public Service Commission.

We thank you for the opportunity to appear in support of HB 437, and urge you to give it a do pass recommendation.

Russ Brown
NPRC Staff

Exhibit 7
HB 437
2/7/85
Submitted by: Nathan Tubergen

Al Johnson, City Manager

February 5, 1985

Nathan Tubergen, Finance Director

House Bill 437

Based on the information that I have been able to dig up, in order to go to the PSC for a rate increase you must have an updated Master Plan. Our last Master Plan cost us $66,000.

The second requirement is the Rate Study. Our Rate Study, based on the last increase, was $27,000 for the Engineering Fees. The cost for a legal opinion from the Attorney was $4,218.00.

The concern we have with the third area is the time elements. We are looking at approximately eight to nine months to get an increase through from the Master Plan to approval from the PSC. This would have a negative effect in regard to the budget process for any city and town. For instance, in Great Falls, we start our budget process in the middle of February and receive the requests from the departments at the end of March or the first of April. It is at this point that we would determine whether or not a rate increase for operation and maintenance would be needed. Over the past three years we had an average increase in operation and maintenance for water and sewer of 8.67%. This does not take into account any construction or replacement that is needed during that fiscal year. As you can see, it is very possible that a local unit of government can be looking at a 12% increase in any given year.

NT/kjo

Exhibit 8
HB 437
2/7/85
Submitted by: Douglas E. Daniels

CITY OF BELGRADE

STATE OF MONTANA

88 N. BROADWAY
BELGRADE, MONTANA 59714
P.O. BOX 268
PHONE: (406) 388-6722

February 6, 1985

RE: HB 437

The City of Belgrade wishes to go on record as being opposed to H.B. 437.

The reasons for opposing this bill are:

1. The City has the capability to evaluate the need for increases in water and sewer rates and to make such increases within the existing legislation.

2. The City Council has displayed in past consideration of increases in water and sewer rates that they are responsive to consumers concerns, while being responsible in maintaining adequate consumer rates to fund the on-going costs of providing water and sewer service.

3. The cost in both time and dollars required to prepare studies, advertise, conduct, and appear at hearings to comply with PSC procedures is so costly that it is impractical for a City to increase rates on a reasonable frequency to keep up with increases in costs to provide service. Reducing the legal increase in rates to 8% will virtually require that the City operate at a loss for months at a time, or automatically apply to PSC annually to assure that water and sewer utilities can continue to operate.

   The cost of preparing for and attending a PSC hearing is estimated at $5000 to $7000.00. These costs must ultimately be charged to the consumer. The costs are considered to be an unnecessary burden to the consumer. The time schedule to prepare a request for rate increase, obtain a hearing date, conduct the hearing, and obtain an order from PSC has been at least six months on recent applications.

4. Consumers tend to be intimidated when they have the opportunity to appear at a formal PSC meeting to voice their concerns regarding proposed rate changes. This does not usually occur when hearings are held at the local level. In this respect, the PSC hearing is actually counter productive in obtaining potentially good input from the consumers. As a result, the PSC process is less responsive to the needs of the consumer than if the hearings were conducted by the local government, and decisions were made at the local level.

5. An 8% increase in a water or sewer rate will often not cover the cost of complying with the procedure required to obtain PSC approval on the rate increase. Many communities have total income of less than $50,000 on their water and sewer utilities. Even a 12% increase could be "eaten up" by the expense necessary to obtain PSC approval. This cost combined with the delay that is involved in the process of obtaining an order from PSC could mean that the City would have to operate in the red for 1-1/2 years just to break even on obtaining PSC approval.

   In comparison, the City could conduct a study and hold a hearing at the local level in 2 to 3 months time for a cost of $500 to $1000; and most likely implement an equitable rate that was more responsive to consumers opinions than one that was prepared for PSC approval.

6. Increases required in water and sewer rates are not necessarily related to inflation rates as reflected by many indexes such as the Consumer Price Index. Costs of operation and maintenance are substantially influenced by factors over which Cities have little control. Items such as power costs, postage, telephone and insurance can constitute a major portion of the O & M costs for City utilities. These costs have been increasing at substantially larger percentages than other consumer products.

For the reasons given above, the City of Belgrade opposes H.B. 437.

Sincerely,

Douglas E. Daniels

DOUGLAS E. DANIELS, P.E.
City of Belgrade Engineer

DED:kes

Exhibit 9
HB 602
2/7/85
Sub. by: Rep. Frit

Amendments to House Bill 602, Introduced Bill

1) Page 2, line 4
Following: "lithograph,"
Insert: "signed limited edition"

2) Page 2, line 5
Following: "print,"
Strike: "textiles,"

3) Page 2, line 6
Following: "calligraphy,"
Insert: "photographs, original works in ceramics, wood, metals, glass, plastic, wax, stone, or leather,"

4) Page 3, line 3
Following: "Montana."
Insert: "This relationship must be defined in writing and renewed at least every 3 years by the art dealer and the artist. It is the responsibility of the artist to identify clearly the work of art by securely attaching identifying marking to or clearly signing the work of art."

5) Page 3, line 8
Following: "art"
Insert: "while in the possession of or on the premises of the consignee"

6) Page 4, line 7
Following: "provide"
Insert: ",upon request from the artist in writing upon consignment of the work,"

7) Page 4, line 8
Following: "art"
Insert: "with purchase price of $200 or more"

- end -

Exhibit 10
HB 284
2/7/85
Sub. by: Dave Wanzenried

Amend House Bill 284, Introduced Copy, as follows:

1. ~~Amend~~ Page 6, line 20

Strike: " (.0270) — (.0260) (.0245) (.0225) "
Insert: " (.0260) — (.0245) (.0225) (.0200) "

2. Page 8, line 18

Strike: " (.0200) (.0170) (.0135) (.0095) "
Insert: " (.0170) (.0135) (.0095) (.0075) "

FEB. 5, 1985

SCHEDULE OF
UNEMPLOYMENT INSURANCE CONTRIBUTION RATES

	SCHED. I	SCHED. II	SCHED. III	SCHED. IV	SCHED. V	SCHED. VI	SCHED. VII	SCHED. VIII	SCHED. IX	SCHED. X
Minimum Ratio Fund to Total	(.0260)	(.0245)	(.0225)	(.0200)	(.0170)	(.0135)	(.0095)	(.0075)	(.005)	(.....)
Average Tax Rate	1.4	1.6	1.8	2	2.2	2.4	2.6	2.8	3	3.2
Rate Class	CONTRIBUTION RATES FOR ELIGIBLE EMPLOYERS									
1	0	.1	.3	.5	.7	.9	1.1	1.3	1.5	1.7
2	.1	.3	.5	.7	.9	1.1	1.3	1.5	1.7	1.9
3	.3	.5	.7	.9	1.1	1.3	1.5	1.7	1.9	2.1
4	.5	.7	.9	1.1	1.3	1.5	1.7	1.9	2.1	2.3
5	.7	.9	1.1	1.3	1.5	1.7	1.9	2.1	2.3	2.5
6	.9	1.1	1.3	1.5	1.7	1.9	2.1	2.3	2.5	2.7
7	1.1	1.3	1.5	1.7	1.9	2.1	2.3	2.5	2.7	2.9
8	1.3	1.5	1.7	1.9	2.1	2.3	2.5	2.7	2.9	3.1
9	1.5	1.7	1.9	2.1	2.3	2.5	2.7	2.9	3.1	3.3
10	1.7	1.9	2.1	2.3	2.5	2.7	2.9	3.1	3.3	3.5
Rates for Unrated Employers	2	2.2	2.4	2.6	2.8	3	3.2	3.4	3.6	3.8
	CONTRIBUTION RATES FOR DEFICIT EMPLOYERS									
1	3.2	3.4	3.6	3.8	4	4.2	4.4	4.6	4.8	5
2	3.4	3.6	3.8	4	4.2	4.4	4.6	4.8	5	5.2
3	3.6	3.8	4	4.2	4.4	4.6	4.8	5	5.2	5.4
4	3.8	4	4.2	4.4	4.6	4.8	5	5.2	5.4	5.6
5	4	4.2	4.4	4.6	4.8	5	5.2	5.4	5.6	5.8
6	4.2	4.4	4.6	4.8	5	5.2	5.4	5.6	5.8	6
7	4.4	4.6	4.8	5	5.2	5.4	5.6	5.8	6	6.2
8	4.6	4.8	5	5.2	5.4	5.6	5.8	6	6.2	6.4
9	4.8	5	5.2	5.4	5.6	5.8	6	6.2	6.4	6.4
10	6.4	6.4	6.4	6.4	6.4	6.4	6.4	6.4	6.4	6.4

TRUST FUND MINIMUM BALANCE
REQUIRED TO BE IN SCHEDULE
(IN MILLIONS):

PROPOSED HB 284 WITH AMENDMT
REQUIRING $30M. IN MEDIAN
SCHEDULE VII:

FOR CY 85	$ 75.40	$ 71.05	$ 65.25	$ 58.00	$ 49.30	$ 39.15	$ 27.55	$ 21.75	$ 14.50 (...)
FOR CY 86	$ 85.80	$ 80.85	$ 74.25	$ 66.00	$ 56.10	$ 44.55	$ 31.35	$ 24.75	$ 16.50 (...)
FOR CY 87	$ 93.60	$ 88.20	$ 81.00	$ 72.00	$ 61.20	$ 48.60	$ 34.20	$ 27.00	$ 18.00 (...)

PROPOSED HB 284 WITH AMENDMENT TO $30M. ON VII:	SCHED. I	SCHED. II	SCHED. III	SCHED. IV	SCHED. V	SCHED. VI	SCHED. VII	SCHED. VIII	SCHED. IX	SCHED. X
	.026	.0245	.0225	.02	.017	.0135	.0095	.0075	.005	
	(.0260)	(.0245)	(.0225)	(.0200)	(.0170)	(.0135)	(.0095)	(.0075)	(.005)	(.....)
	1.4	1.6	1.8	2	2.2	2.4	2.6	2.8	3	3.2
TRUST FUND MINIMUM BALANCE REQUIRED TO BE IN SCHEDULE (IN MILLIONS):										
FOR CY 84 (Using FFY 83 Wges - $2.88)	$ 72.80	$ 68.60	$ 63.00	$ 56.00	$ 47.60	$ 37.80	$ 26.60	$ 21.00	$ 14.00	(.....)
FOR CY 85 (Using FFY 84 Wges - $2.98)	$ 75.40	$ 71.05	$ 65.25	$ 58.00	$ 49.30	$ 39.15	$ 27.55	$ 21.75	$ 14.50	(.....)
FOR CY 86 (Using FFY 85 Wges - $3.38)	$ 85.80	$ 80.85	$ 74.25	$ 66.00	$ 56.10	$ 44.55	$ 31.35	$ 24.75	$ 16.50	(.....)
FOR CY 87 (Using FFY 86 Wges - $3.68)	$ 93.60	$ 88.20	$ 81.00	$ 72.00	$ 61.20	$ 48.60	$ 34.20	$ 27.00	$ 18.00	(.....)

The amendment substitutes a reserve ratio value which would create a $30 M balance at the median schedule, Schedule VII.

This causes smaller differences in trust fund balances to trigger from Schedule IX to Schedule VIII to Schedule VII, the median.

Larger differences in trust fund balances are still required (as in original HB 284) to trigger from Schedule X to Schedule IX in keeping with the Advisory Council's concern that the trust fund be safely out of solvency danger before reduced rates are triggered.

A larger difference is also still required (as in original HB 284) before the trust fund schedule triggers off the median to lower "trust fund reducing" schedules: again in answer to the Advisory Council's concern that trust fund reducing schedules only be triggered on when there is no doubt that the trust fund balance has grown too large and needs to be trimmed.

MONTANA SELF-INSURERS ASSOCIATION

GEORGE WOOD, Executive Secretary

HOUSE BILL 453

Mr. Chairman, Members of the Committee, my name is George Wood, Executive Secretary of the Montana Self-Insurers Association.

I arise in opposition to House Bill 453. The bill does two things:

1. it changes the definition of Temporary Total Disability

AND

2. it provides for the non-discretionary payment of indemnity benefits while the injured worker is receiving bi-weekly compensation benefits for Total Disability

1. The change in definition is unneeded. As written in the present statue, the definition is a medical determination. The proposed change would make the determination a medical-legal-rehabilitation determination and only complicate the interpretation of the basic compensation classification. It is unneeded since compensation is presently paid during rehabilitation under the classification of Permanent Total Disability by judicial interpretation of the Workers' Compensation statutes.

2. The proposed change in Section 2, Page 6 of the Bill provides that indemnity benefits must be paid concurrently with Total Disability benefits.

Some explanation of benefits must be made. Temporary Total Disability is paid during the period of Total loss of wage after the injury and during the "healing period." Permanent Partial Disability is paid after the end of the "healing period" for loss of earning capacity if the injured worker is unable to earn wages equal or pre-injury earnings.

OR

indemnity benefits if the worker choses to elect benefits for loss of physical function. Indemnity benefits are based on impairment rated by a doctor on a percentage of loss of function.

Under court rulings, indemnity benefits are paid even if the injured worker returns to work at wages the same or greater than those made at the date of injury.

Indemnity benefits are a payment for damages.

This is a far cry from the original philosophy of the Workers' Compensation Act; that compensation benefits were to be paid bi-weekly in lieu of wages lost because of the injury. The act is a no-fault social insurance program. The employer is required to pay the benefits even if the injured workers' negligence caused the accident that produced the injuries. The cost of Workers' Compensation is fully paid by the employer.

P.O. Box 2899 • Missoula, Montana 59806 • Phone (406) 543-7195

The amendment would require payment of two classes of benefits over the same period of time, that is, Total Disability and indemnity benefits. The term "Total Disability" covers both Temporary Total and Permanent Total Disability benefits and could conceivably require payment of indemnity benefits to a worker who will remain Permanently Totally Disabled and receive life time benefits.

The requirement that a person undergoing vocational rehabilitation must be paid Total Disability until certified raises problems which compound those inherent in vocational rehabilitation; the basic disagreement as to the need for, length of and appropriateness of a vocational retraining program. Should it be to return the injured worker to gainful employment at the earliest possible date or should the injured worker be entitled to receive re-training and benefits for a prolonged period while he seeks professional degrees?

The part of the Workers' Compensation Act that this bill addresses works, it doesn't need fixing.

I respectfully request that this Committee report this bill DO NOT PASS.

Thank you.

GEORGE WOOD
Executive Secretary
Montana Self-Insurers Association

WITNESS STATEMENT

Name Riley Johnson Committee On

Address Helena Date 2/7/85

Representing Montana Homebuilders Assn Support X

Bill No. HB437 Oppose

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Public use fees are included in 8% total increase.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

WITNESS STATEMENT

Name Bill Verwolf Committee On

Address Helena Date

Representing City of Helena Support

Bill No. HB 457 Oppose X

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Due to the requirements of EPA and the nature of public water and sewer systems, the inflation rate for the costs of operating these systems do not follow the national CPI.
2. During this past year, while the CPI was running below 4% per year, the costs of electricity, a major component of our water system costs, were increased by over 20%.
3. City's do not do a rate increase every year. The process of increasing rates under this section takes about 3 months and the local governing bodies are well aware of the local public opinion relating to increases in many fees.
4. The process of applying to the PSC for a rate increase takes as much as 9 months, after all the work has been done to prepare the application.
5. The rate making process under the 12% limitation includes the same basic documentation and information, as a PSC presentation, however it does not require the same level of presentation sophistication as a case prepared for the PSC, and therefore costs much less to prepare.
6. The protections of notice to all customers of the utility, notice to the consumer counsel, notice to customers of the availability of the consumer counsel, and a public hearing process give ratepayers appropriate protection of their rights.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

7. The local elected governing body is directly responsible to the ratepayers of these utilities and are the most responsible and accountable group to make decisions on local government owned water and sewer systems.

FORM CS-34
1-83

WITNESS STATEMENT

Name Alan Towlerton

Address PO Box 30958 - 59111

Representing City of Billings

Bill No. HB 437

Committee On House Business

Date 2/7/85

Support

Oppose X

Amend

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. City of Billings has adjusted rates during the last 4 years averaging 3.9% for water and 8.8% for wastewater.
2. Rates were adjusted only after detailed rate studies and only after public notices and hearings were held.
3. Operation and maintenance costs have continued to increase. The need for replacement of existing facilities adds significantly to financial needs.
4. The present 12% authority has not been abused particularly by the City of Billings. The City opposes HB 437.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

FORM CS-34
1-83

STATEMENT OF ALAN TOWLERTON,
UTILITIES ENGINEER, IN BEHALF
OF THE CITY OF BILLINGS,
IN OPPOSITION TO HB437
LIMITING MUNICIPAL UTILITY
RATE ADJUSTMENTS TO 8 PERCENT
WITHOUT PSC APPROVAL

TO: HOUSE BUSINESS COMMITTEE

The City of Billings opposes the passage of House Bill 437.

Since being granted the authority to adjust utility rates by the 1981 Legislature, the City Council adopted the following municipal water and wastewater utility rate adjustments:

WATER		WASTEWATER	
02/02/82	+ 10%	10/01/81	+ 11%
03/01/83	+ 12%	11/01/82	+ 12%
07/01/83	- 6.6%	12/01/83	+ 12%
84	0.0%	84	0.0%
4-year Total:	+15.4%	4-year Total:	+35.0%
4-year Average:	+ 3.9%	4-year Average:	+ 8.8%

Prior to adoption of the above utility rate adjustments, detailed rate studies were performed to justify and support their adoption by the City Council, and public hearings were held by the City Council to afford all interested persons notice and opportunity to participate in those proceedings. The City Council then adopted the above utility rate adjustments only after diligently and carefully assuring themselves that such adjustments were reasonable and just.

It should be noted that some municipal utility costs, such as those for energy and chemicals, have increased the last several years at a faster rate than the Consumer Price Index. In addition, the need to replace worn out water and wastewater facilities has significantly added to the costs of operating the municipal utilities.

In summary, the City Council has not abused its authority to adjust municipal utility rates since it was granted such authority by the legislature. Furthermore, in order to operate, repair, replace and expand its municipal utility facilities in an orderly, timely, and cost effective manner, the City of Billings believes that the 12 percent limitation should not be reduced to 8 percent as proposed under HB437.

Respectfully submitted in behalf of the City of Billings,

Alan Towlerton

Alan Towlerton, Utilities Engineer
City of Billings, Montana

City of Three Forks

Phone 285-3431
Box 187 • 206 Main
THREE FORKS, MONTANA 59752

February 7, 1985

RE: HB 437

The City of Three Forks wishes to go on record as being opposed to H.B. 437.

The reasons for opposing this bill are:

1. The City has the capability to evaluate the need for increases in water and sewer rates and to make such increases within the existing legislation.

2. The City Council has displayed in past consideration of increases in water and sewer rates that they are responsive to consumers concerns, while being responsible in maintaining adequate consumer rates to fund the on-going costs of providing water and sewer service.

3. The cost in both time and dollars required to prepare studies, advertise, conduct, and appear at hearings to comply with PSC procedures is so costly that it is impractical for a City to increase rates on a reasonable frequency to keep up with increases in costs to provide service. Reducing the legal increase in rates to 8% will virtually require that the City operate at a loss for months at a time, or automatically apply to PSC annually to assure that water and sewer facilities can continue to operate.

   The cost of preparing for and attending a PSC hearing is estimated at $5000 to $7000.00. These costs must ultimately be charged to the consumer. The costs are considered to be an unnecessary burden to the consumers. The time schedule to prepare a request for rate increase, obtain a hearing date, conduct the hearing, and obtain an order from PSC has been at least six months on recent applications.

4. Consumers tend to be intimidated when they have the opportunity to appear at a formal PSC meeting to voice their concerns regarding proposed rate changes. This does not usually occur when hearings are held at the local level. In this respect, the PSC hearing is actually counter-productive in obtaining potentially good input from the consumers. As a result, the PSC process is less responsive to the needs of the consumer than if the hearings were conducted by the local government, and decisions were made at the local level.

5. An 8% increase in a water or sewer rate will often not cover the cost of complying with the procedure required to obtain PSC approval on the rate increase. Many communities have total income of less than $50,000 on their water and sewer utilities. Even a 12% increase could be "eaten up" by the expense necessary to obtain PSC approval. This cost combined with the delay that is involved in the process of obtaining an order from PSC could mean that the City would have to operate in the red for 1-1/2 years just to break even on obtaining PSC approval.

   In comparison, the City could conduct a study and hold a hearing at the local level in 2 to 3 months time for a cost of $500 to $1000; and most likely implement an equitable rate that was more responsive to consumers opinions than one that was prepared for PSC approval.

6. Increases required in water and sewer rates are not necessarily related to inflation rates as reflected by many indexes such as the Consumer Price Index. Costs of operation and maintenance are substantially influenced by factors over which Cities have little control. Items such as power costs, postage, telephone and insurance can constitute a major portion of the O & M costs for City utilities. These costs have been increasing at substantially larger percentages than other consumer products.

For the reasons given above, the City of Three Forks opposes H.B. 437.

Sincerely,

Douglas E. Daniels

DOUGLAS E. DANIELS, P.E.
City of Three Forks Engineer

DED:kes

TOWN OF MANHATTAN
MANHATTAN, MONTANA 59741

February 7, 1985

RE: HB 437

The Town of Manhattan wishes to go on record as being opposed to H.B. 437.

The reasons for opposing this bill are:

1. The Town has the capability to evaluate the need for increases in water and sewer rates and to make such increases within the existing legislation.

2. The Town Council has displayed in past consideration of increases in water and sewer rates that they are responsive to consumers concerns, while being responsible in maintaining adequate consumer rates to fund the on-going costs of providing water and sewer service.

3. The cost in both time and dollars required to prepare studies, advertise, conduct, and appear at hearings to comply with PSC procedures is so costly that it is impractical for a Town to increase rates on a reasonable frequency to keep up with increases in costs to provide service. Reducing the legal increase in rates to 8% will virtually require that the Town operate at a loss for months at a time, or automatically apply to PSC annually to assure that water and sewer utilities can continue to operate.

   The cost of preparing for and attending a PSC hearing is estimated at $5000 to $7000.00. These costs must ultimately be charged to the consumer. The costs are considered to be an unnecessary burden to the consumer. The time schedule to prepare a request for rate increase, obtain a hearing date, conduct the hearing, and obtain an order from PSC has been at least six months on recent applications.

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For the reasons given above, the Town of Manhattan opposes H.B. 437.

Sincerely,

Douglas E. Daniels

DOUGLAS E. DANIELS, P.E.
Town of Manhattan Engineer

DED:kes

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 453 DATE February 7, 1985

SPONSOR Representative Bradley

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Monte D Beck	self	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 648 DATE February 7, 1985

SPONSOR Representative Kadas

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Bob Durkee	MT TAVERN Ass'N		X
Rick Day	Dept of Revenue.		
JERRY METCALF	SELF	X	
[illegible]	self	✓	
[illegible]	Self	✓	
[illegible]	[illegible]	✓	
Susan Cottingham	self	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 391 DATE February 7, 1985

SPONSOR Representative Harper

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Phil Campbell	MEA	X	
Madelon Lenon	AFSCME	X	
F.H. Boles	MONTCHAMBER		X
Bill Verwolf	City of Helena		X
Mona Hartman	MEA	X	
Tom Schneider	MFPEA	✓	
Mike Waller	MSC-PFE	X	
Alan Solum	Flathead County Central Trades & Labor Council	X	
Ed Power	MT University System	propose amendm	
Tom Hudak	MT Hosp Ed Fund		

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CS-33

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 387 DATE February 7, 1985

SPONSOR Representative Addy

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
James S. Van Riper	Div. of Workers' Comp.		
Monte Beck			

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CS-33

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill 437 DATE February 7, 1985

SPONSOR Representative Addy

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Alan Towlerton	City of Billings		X
Russ Brown	NPRC Billings	✓	
OPAL Winebrenner	Public Service Com.	✓	
James Paine	Mt. Consumer Counsel	✓	
Greg Jackson	Urban Coalition		X
Douglas Daniells	City of Belgrade Town of Manhattan City of Three Forks		X
Henry D. Hathaway	City of Belgrade		X
Bill Verwolf	City of Helena		X
Greg Johnson	Montana Homebuilders	X with amend	
[illegible] Engeland	Montana	X	
Tom Hudak	Mt. Assn of Counties	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.