PUBLIC EMPLOYMENT RELATIONS (EXCERPT)
Act 336 of 1947

423.210 Prohibited conduct by public employer or officer or agent; prohibited conduct by labor organization; verification by independent examiner; declaration identifying local bargaining units; sharing of financial support of bargaining representative; effectiveness; appropriation.

Constitutionality: <Paragraph><P>In <Emph EmphType="underscore">Lehnert</Emph> v <Emph EmphType="underscore">Ferris Faculty Association</Emph>, 500 US 507; 111 S Ct 1950; 114 L Ed 2d 572 (1991), the United States Supreme Court held that a collective-bargaining unit constitutionally may compel its employees to subsidize only certain union activities. â€œ[I]n determining which activities a union constitutionally may charge to dissenting employees ... chargeable activities must (1) be 'germane' to collective-bargaining activity; (2) be justified by the government's vital policy interest in labor peace and avoiding 'free riders'; and (3) not significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop.â€</P></Paragraph><Paragraph><P>Ruling on the respondent union's disputed activities, the Court held:</P></Paragraph><Paragraph><P>(1) The respondent may not charge the funds of objecting employees for a program designed to secure funds for Michigan public education or for that portion of a union publication that reports on those activities. The Court found none of the activities â€œto be oriented toward the ratification or implementation of petitioner's collective-bargaining agreement.â€</P></Paragraph><Paragraph><P>(2) The respondent may bill dissenting employees for their share of general collective-bargaining costs of the state or national parent union. The district court had found these costs to be germane to collective bargaining and similar support services; the court agreed with the finding.</P></Paragraph><Paragraph><P>(3) The respondent may not charge for the expenses of litigation that does not concern the dissenting employees' bargaining unit or, by extension, union literature reporting on such activities. The Court found extra-unit litigation to be proscribed by the First Amendment of the United States Constitution because it is â€œmore akin to lobbying in both kind and effectâ€ and not germane to a union's activities as an exclusive bargaining agent.</P></Paragraph><Paragraph><P>(4) The respondent may not bill for certain public relations activities. The Court states: â€œ[T]he ... activities ... entailed speech of a political nature in a public forum. More important, public speech in support of the teaching profession generally is not sufficiently related to the union's collective-bargaining functions to justify compelling dissenting employees to support it. Expression of this kind extends beyond the negotiation and grievance-resolution contexts and imposes a substantially greater burden upon First Amendment rights ... .â€</P></Paragraph><Paragraph><P>(5) The respondent may charge for those portions of a union publication that concern teaching and education generally, professional development, unemployment, job opportunities, union award programs, and miscellaneous matters. The Court noted that such informational support services are neither political nor public in nature and that expenditures for them benefit all, without additional infringements upon the First Amendment.</P></Paragraph><Paragraph><P>(6) The respondent may bill for fees to send delegates to state and national affiliated conventions. The Court found that participation by local members in the formal activities of the parent is an important benefit of affiliation and an essential part of a union's discharge of its duties as a bargaining agent.</P></Paragraph><Paragraph><P>(7) The respondent may charge expenses incidental to preparation for a strike which, had it occurred, would have been illegal under Michigan law. The Court, noting that the Michigan Legislature had imposed no restriction, stated there was no First Amendment limitation on such charges. The Court added that such expenses are â€œsubstantively indistinguishable from those appurtenant to collective-bargaining negotiations ... enure to the direct benefit of members of the dissenters' unit ... and impose no additional burden upon First Amendment rights.â€</P></Paragraph>

Compiler's Notes: <Paragraph><P>Enacting section 1 of Act 349 of 2012 provides:</P></Paragraph><Paragraph><P>"Enacting section 1. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperative shall be severable from the remaining portions of this act."</P></Paragraph><Paragraph><P>Enacting section 1 of Act 414 of 2014 provides:</P></Paragraph><Paragraph><P>"Enacting section 1. If any part or parts of this act are found to be in conflict with the state constitution of 1963, the United States constitution, or federal law, this act shall be implemented to the maximum extent that the state constitution of 1963, the United States constitution, and federal law permit. Any provision held invalid or inoperable shall be severable from the remaining portions of this act."</P></Paragraph>

Popular Name: Public Employment Relations