STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

TECHNICAL PROFESSIONAL AND
OFFICEWORKERS ASSOCIATION
OF MICHIGAN,

Respondent-Appellant,

Supreme Court No. 162601
Court of Appeals No. 351991
MERC Case No. CU18 J-034

v

DANIEL LEE RENNER,
Charging Party-Appellee
_______________________________________/

BRIEF OF AMICUS CURIAE
MACKINAC CENTER FOR PUBLIC POLICY
ON ORAL ARGUMENT ON THE APPLICATION

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STATEMENT OF QUESTIONS INVOLVED

I. Did the Court of Appeals err in affirming the decision of the Michigan Employment Relations Commission that the Respondent-Appellant violated MCL 423.210(2)(a) by offering grievance representation to union members as a benefit of union membership and to nonunion members through a pay-for-services procedure?

Court of Appeals:	No
Appellant union:	Yes
Appellee charging party:	No
Amicus Mackinac Center	No

II. Did the Court of Appeals err in determining that MCL 423.211 did not provide a viable method for the Charging Party-Appellee to pursue grievances with the employer directly?

Court of Appeals:	No
Appellant union:	Yes
Appellee charging party:	No
Amicus Mackinac Center	No

III. Does the record support the Court of Appeals' conclusion that the Charging-Party Appellee properly exercised his right to a direct grievance?

Court of Appeals:	Yes
Appellant union:	No
Appellee charging party:	Yes
Amicus Mackinac Center	Does not answer

INTRODUCTION[1]

This case concerns whether charging nonmembers for representation during grievances violates Michigan's Public Employment Relations Act (PERA), MCL 423.201 *et. seq.* Should the union's position be accepted, nonmembers would be coerced in their right to choose whether to financially support an inherently political organization. Nonmembers facing discipline under a union-negotiated collective-bargaining agreement would be pressured: Either join or pay a union, or be unable to contest discipline issued by an employer.

As a means of addressing this Court's first question, this brief will examine the history of the duty of fair representation from its recognition in federal labor laws to its recognition under PERA. This Court's second question is also informed by the history of federal labor law and some National Labor Relations Board (NLRB) decisions. Amicus Mackinac Center is not addressing the third question.[2]

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[1] Pursuant to MCR 7.312(H)(4), Amicus Curiae Mackinac Center for Public Policy certifies that no counsel for a party authored this brief in whole or in part, nor made a monetary contribution to fund or prepare the submission of this brief. No party other than Amici Curiae, its members or its counsel, made a monetary contribution or contributed to this brief.

[2] Given amicus Mackinac Center's answer to this Court's second question (the Court of Appeals did not err in interpreting MCL 423.211), analysis of this Court's third question is unnecessary. The third question appears to be largely concerned with interpretation of county grievance policies and individualized facts from this case and not matters where amicus could provide valuable insight. It should be noted, however, that the Charging Party-Appellee is a custodian who was representing himself through the ALJ, MERC, and Court of Appeals, and who was faced with conflicting information from his employer and bargaining representative about the proper process he must follow to preserve his grievance.

STATEMENT OF FACTS

Charging Party-Appellee Daniel Lee Renner at all relevant times worked for the County of Saginaw and was covered under a collective-bargaining agreement between the county and Respondent-Appellant Technical, Professional and Officeworkers Association of Michigan (TPOAM).

Under PERA, Michigan has allowed mandatory public-sector bargaining for local employees since 1965. See 1965 PA 379.[3] From 1973, nonmembers had been clearly allowed to be charged agency fees. See generally, *Smigel v Southgate Cmty Sch Dist*, 388 Mich 531 (1972).[4]

These fees were banned when Michigan enacted a right-to-work law for public-sector workers in December 2012. 2012 PA 349.[5] The pertinent part, from § 9 of that act, stated:

> (1) Public employees may do any of the following:
>
> (a) Organize together or form, join, or assist in labor organizations; engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection; or negotiate or bargain collectively with their public employers through representatives of their own free choice.
>
> (b) Refrain from any or all of the activities identified in subdivision (a).

Id. (codified at MCL 423.209). The relevant portion, from § 10 of that act, stated:

> (2) A labor organization or its agents shall not do any of the following:
>
> (a) Restrain or coerce public employees in the exercise of the rights guaranteed in section 9. This subdivision does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

---

[3] Attachment 1.

[4] Both *Smigel* and the public act will be discussed below.

[5] Attachment 2.

. . .

> (3) Except as provided in subsection (4),[6] an individual shall not be required as a condition of obtaining or continuing public employment to do any of the following:
>
> . . .
>
> (c) Pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value to a labor organization or bargaining representative.
>
> . . .

Id. (codified at MCL 423.210(2)-(3)).

Sometime on or before March 1, 2017, Renner informed TPOAM that he was resigning his membership and would not be paying dues to the union. App. Doc. F.

On June 27, 2018, the United States Supreme Court decided *Janus v State, County, and Municipal Employees*, 585 U.S. ___, 138 S.Ct. 2448 (2018). In that case, the Supreme Court held under the First Amendment "States and public-sector unions may no longer extract agency fees from nonconsenting employees." *Id*. at 2486. In the course of reaching this holding, the Supreme Court considered various arguments for the status quo. One claim was that without agency fees, unions would be unwilling to act as a collective-bargaining agent. *Id*. at 2467. A second was that "it would be fundamentally unfair to require unions to provide fair representation for nonmembers if nonmembers were not required to pay." *Id*.

The first claim was rejected by noting that many states have mandatory collective bargaining and right to work for public sector employees. *Id*. The second claim was generally rejected: "Nor can such fees be justified on the ground that it would otherwise be unfair to require a union to bear the duty of fair representation." *Id.* at 2469. While grievance fees for

[6] This subsection indicated that the new law did not apply to police and fire employees.

nonmembers were not directly at issue in *Janus*, the Supreme Court did indicate that unions might be able to require nonmembers to pay such fees:

> What about the representation of nonmembers in grievance proceedings? Unions do not undertake this activity solely for the benefit of nonmembers—which is why Illinois law gives a public-sector union the right to send a representative to such proceedings even if the employee declines union representation. § 315/6(b). Representation of nonmembers furthers the union's interest in keeping control of the administration of the collective-bargaining agreement, since the resolution of one employee's grievance can affect others. And when a union controls the grievance process, it may, as a practical matter, effectively subordinate "the interests of [an] individual employee ... to the collective interests of all employees in the bargaining unit."
>
> In any event, whatever unwanted burden is imposed by the representation of nonmembers in disciplinary matters can be eliminated "through means significantly less restrictive of associational freedoms" than the imposition of agency fees. Individual nonmembers could be required to pay for that service or could be denied union representation altogether.[6] Thus, agency fees cannot be sustained on the ground that unions would otherwise be unwilling to represent nonmembers.
>
> ---
>
> [6] There is precedent for such arrangements. Some States have laws providing that, if an employee with a religious objection to paying an agency fee "requests the [union] to use the grievance procedure or arbitration procedure on the employee's behalf, the [union] is authorized to charge the employee for the reasonable cost of using such procedure." E.g., Cal. Govt.Code Ann. § 3546.3 (West 2010); cf. Ill. Comp. Stat., ch. 5, § 315/6(g) (2016). This more tailored alternative, if applied to other objectors, would prevent free ridership while imposing a lesser burden on First Amendment rights.

Janus, 138 SCt at 2468-69, n 6.

Relying upon that language from *Janus*, about a month later, TPOAM put forth a policy requiring nonmembers to pay for grievances. App. Doc. H.

An issue arose between Renner and a coworker regarding smoking at work. The employer sided with Renner's coworker and on September 9 issued a reprimand to Renner for making a false claim. App. at 71. This reprimand included a statement that "Any further incidents will lead to progressive disciplinary action, up to and including discharge." App. at 19. Renner contacted TPOAM about filing a grievance and a string of emails about whether or not

he could be charged a fee for this ensued. App. Doc. J. TPOAM estimated it would cost $1,290 to begin to process the grievance and sought this amount from Renner before it would begin. App. at 71. The collective-bargaining agreement made it clear that the union had the exclusive authority to pursue grievances and an employee could not do so individually. App. at 86.

On October 2, 2018, Renner filed an unfair-labor-practice charge. App. at 48. On November 18, 2018, a hearing took place before Administrative Law Judge Julia. C. Stern. App. Doc. L. Renner appeared pro se.

On April 25, 2019, Judge Stern issued her Decision and Recommended Order. App. pp. 19-36. Judge Stern noted that the grievance-charge discussion from *Janus* was not at issue. App. at 8-9. Further, she noted "The issues before me here, however, are not constitutional," (whether charging a nonmember for grievances would violate the First Amendment), "but statutory" (whether PERA allows a union to charge nonmembers for grievance representation). *Id*. at 9. The remainder of her analysis contrasted a state supreme court decision[7] allowing grievance fees with a string of NLRB decisions disallowing them. App. at 11-15. Reasoning that the National Labor Relations Act, 29 USC 151 *et seq* (NLRA), is generally guiding on interpretation of PERA, Judge Stern decided the matter in Renner's favor. *Id*. at 15-17.

TPOAM filed exceptions, and the matter proceeded to the Michigan Employment Relations Commission (MERC). Again, Renner appeared pro se. On Dec. 10, 2019, MERC unanimously affirmed. Among the arguments MERC specifically rejected were: (1) *Janus*' discussion of grievance fees meant that unions must be allowed to charge for them, App. at 6; (2) TPOAM or any other union has a heightened right not to association with nonmember employees covered by the collective-bargaining agreement as a consequence of *Janus*, App. at 7-8; (3) the

[7] *Cone v Nevada Serv Emp Union, SEIU Loc 1107*, 116 Nev 473 (2000).

NRLB grievance decisions were "archaic" and inapplicable, App. at 8-10; and (4) the new grievance-fee policy was an internal-union matter and therefore liability under PERA was improper. In rejecting the fourth argument, MERC stated:

> [W]e believe that grievance handling is fundamental to a union's duty as the exclusive bargaining agent to represent all members of the bargaining unit without discrimination. Because a union's decision not to represent a union member in a grievance or disciplinary matter has a clear impact on that unit member's terms or conditions of employment and the terms and conditions of other members of the bargaining unit, it is not merely an internal union matter. Moreover, by requiring nonmember payment for representation services, a union interferes with an employee's [MCL 423.209] right to refrain from union activities.

App. at 17-18.

TPOAM appealed. Renner was still pro se. On January 21, 2021, the Court of Appeals unanimously affirmed. *Tech, Pro and Officeworkers Ass'n of Michigan v Renner*, 335 Mich App 293 (2021).

The Court of Appeals indicated TPOAM violated MCL 423.210(2)(a), in that it restrained Renner in the exercise of his § 9 rights under PERA. *Tech, Pro and Officeworkers Ass'n*, 335 Mich App at 307. This made it unnecessary for the Court of Appeals to determine whether grievance fees were prohibited under MCL 423.210(3)(c). *Tech, Pro and Officeworkers Ass'n*, 335 Mich App at 306-07. MERC's reliance on NLRB decisions in holding that grievance fees could not be charged to nonmembers under PERA was affirmed by the Court of Appeals. *Id*. at 311-15.

The Court of Appeals further held MCL 423.211 did not prevent a holding that TPOAM violated the duty of fair representation. *Tech, Pro and Officeworkers Ass'n*, 335 Mich App at 310. In relevant part, that statutory provision states:

> [A]ny 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 bargaining representative has been given opportunity to be present at such adjustment.

MCL 423.211. The court's holding was based on the fact that TPOAM sought and received the sole ability to resolve grievance matters in its collective bargaining agreement. *Tech, Pro*, 335 Mich App at 310.

The Court of Appeals rejected TPOAM's contention that *Janus* in and of itself allowed unions to impose grievance fees. *Id*. at 315 ("The Supreme Court did not hold that a union could unilaterally fashion a policy or procedure imposing fees for services on nonunion members of a collective-bargaining unit."). It recognized that when the Supreme Court discussed grievance fees, it was within the context of legislative action specifically allowing for them. *Id*. at 316.

Finally, the Court of Appeals rejected the claim that *Janus* was creating a new First Amendment right for unions to not associate with their nonmembers. *Id*. at 318-22.

TPOAM filed leave to appeal with this Court. On November 5, 2021, this Court filed an order asking the parties to address three questions. The Mackinac Center for Public Policy was specifically invited to file an amicus brief.

ARGUMENT

I. The Court of Appeals Correctly Decided That PERA Prohibits Charging Nonunion Members Fees for Grievance Processing Under MCL 423.209 and MCL 423.210(2)(a)

A. Introduction

The ALJ, MERC, and the Court of Appeals all referenced the duty of fair representation in their decisions that grievances could not be charged to nonmembers under PERA. The duty of fair representation originated out of Railway-Labor-Act litigation at the United States Supreme Court. After those cases began, Congress enacted the Taft-Hartley Act amendments to the Wagner Act, and they set the basic parameters of the NLRA that have persisted to today. The duty of fair representation was held to apply to the NLRA a few years later. Then, in 1965, Michigan enacted PERA and based much of that statutory scheme on the NLRA. Michigan has repeatedly looked to NLRA decisions as persuasive authority in interpreting PERA. Eventually, Michigan held the duty of fair representation applied to PERA as well. It has long been the case under the NLRA that grievance fees cannot be charged to nonmembers. Nothing should lead this Court to diverge from the NLRA decisions.

B. Legal Development of the Duty of Fair Representation

1. Initial Recognition of the Duty of Fair Representation

The duty of fair representation was first recognized by the United States Supreme Court in *Steele v Louisville & Nashville Railroad Company*, 323 US 192 (1944). There, a predominately white railroad union attempted "to amend the existing collective bargaining agreement in such a manner as to exclude all Negro firemen from the service." *Id.* at 195. If this change had been implemented, it would have prevented any black members of the bargaining unit from being promoted. *Id.* Other provisions the union negotiated were also racially

discriminatory. *Id.* at 195-96. When layoffs occurred, the union replaced more-senior black firemen with less-senior white firemen. *Id.* at 196.

The United States Supreme Court determined that such racial discrimination in bargaining could give rise to constitutional issues, reasoning:

> [T]he representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy, or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty to protect those rights.

Id. at 198. The Court nevertheless concluded that the language of the Railway Labor Act, 45 USC 151 *et seq.*, ("RLA") contained adequate protections to avoid the need to address the potential constitutional issues. *Id.* at 198-99. It held that, under the Act, a "labor organization chosen to be the representative of the craft or class of employees is thus chosen to represent all of its members, regardless of their union affiliations or want of them." *Id.* at 200. The Court further found that a designated representative is "responsible under the law to act for all employees with the craft or class, [including] those who are not members of the represented organizations, as well as those who are members." *Id.* at 201 (citation omitted).

The Supreme Court held that violations of the duty of fair representation could be brought directly to court. *Id*. at 207. See also *Tunstall v Bhd of Locomotive Firemen and Enginemen*, 323 US 210 (1944) (a companion case to *Steele* decided on the same day).

2. Enactment of NLRA §§ 7 and 8 (29 USC §§ 157 and 158) Predating PERA

The current version of the NLRA generally has two sources: (1) the Wagner Act of 1935; and (2) the Taft-Hartley Act of 1947.[8] Understanding the NLRA is important since, as will be shown below, it served as the model for PERA.

a. Wagner Act

As enacted, § 7 of the Wagner Act (1935) stated: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through organizations of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid and protection."

Section 8 of the Wagner Act stated:

> It shall be an unfair labor practice for an **employer** – (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7. . . . (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

(emphasis added). Section 8(3) further allowed what were known as "closed shops," wherein unions were permitted to negotiate contracts under which employers could only hire "only persons who were already union members." *Commc'n Workers of Am v Beck*, 487 US 735, 747 (1988).

b. Taft-Hartley Act

The Taft-Hartley Act of 1947 added the following to the end of § 7: "and shall also have the right to refrain from any or all of such activities except to the extent that such right may be

[8] The as-enacted versions of both the 1935 Wagner Act and the 1947 Taft-Hartley Act are included with this brief as Attachments 3 and 4 respectively.

affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

The first sentence of Taft-Hartley § 8(a)(3) was the Wagner Act's former § 8(3) and stated: "It shall be an unfair labor practice for an employer – (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

The remainder of § 8(a)(3) of the Taft-Hartley Act allowed unions to negotiate what at the time appeared to be union-shop agreements. With a "union shop," the United States Supreme Court indicated, "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." *Abood v Detroit Bd of Educ*, 431 US 209, 217 n 10 (1977). In 1963, the United States Supreme Court decided *National Labor Relations Board v General Motors*, 373 US 734 (1963). There, the Supreme Court held that under the NLRA, membership is "whittled down to its financial core," which entails only "payment of fees and dues." *Id.*. at 742. The Supreme Court has indicated that stripping membership to its financial core has made a "union shop . . . the 'practical equivalent' of an agency shop" under federal law. *Abood*, 431 US at 217 n 10. Importantly, in § 14(b) of the Taft-Hartley Act, Congress indicated that States could be exempt from these mandatory-membership provisions (again really financial core membership fees or agency fees) if they had a right-to-work law.[9]

[9] Under the Railway Labor Act, there is no right-to-work provision and (as of this writing) nonmembers can be charged agency fees, though there is some question whether *Janus*' holding applies in the RLA context. Thus, the federal persuasive authority for prohibiting charging nonmember grievance fees comes from NLRA decisions, and the RLA is inapplicable aside of general duty-of-fair-representation matters.

Returning to the NLRA, the Taft-Hartley Act also added a new § 8(b), which stated in pertinent part:

> It shall be an unfair labor practice for **<u>a labor organization</u>** or its agents –
>
> (1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;
>
> (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

3. The United States Supreme Court Indicates a Duty of Fair Representation Applies Under the NLRA

The duty of fair representation was later extended to NLRA, which governs most private-sector collective bargaining:

> The National Labor Relations Act, as passed in 1935 and as amended in 1947, exemplifies the faith of Congress in free collective bargaining between employers and their employees when conducted by freely and fairly chosen representatives of appropriate units of employees. That the authority of bargaining representatives, however, is not absolute is recognized in *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 198—199, 65 S.Ct. 226, 230, 89 L.Ed. 173, in connection with comparable provisions of the Railway Labor Act. Their statutory obligation to represent all members of an appropriate unit requires them to make an honest effort to serve the interests of all of those members, without hostility to any.

Ford Motor Co v Huffman, 345 US 330, 337 (1953).

4. The United States Supreme Court Clarifies That the Duty of Fair Representation Includes Grievances

In another race-discrimination case under the RLA, *Conley v Gibson*, 355 US 41 (1957), the Supreme Court extended the duty of fair representation to the grievance proceedings and other post-agreement aspects of collective bargaining:

> The bargaining representative's duty not to draw 'irrelevant and invidious' distinctions among those it represents does not come to an abrupt end … with the making of an agreement between union and employer. Collective bargaining is a continuing process. Among other things, it involves day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by the contract. The bargaining representative can no more unfairly discriminate in carrying out these functions than it can in negotiating a collective agreement. A contract may be fair and impartial on its face yet administered in such a way, with the active or tacit consent of the union, as to be flagrantly discriminatory against some members of the bargaining unit.

Id. at 46 (footnotes omitted and emphasis added).

5. The Passage of PERA in 1965

PERA passed in 1965.[10] 1965 PA 379.[11] Section 9 stated:

> It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

Id. This Michigan provision was based on § 7 of the Wagner Act in that it did not contain a right to refrain from the protected activity.

The pertinent part of § 10 stated:

> It shall be unlawful for a public employer or an officer or agent of a public employer (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section 9; . . . (c) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization.

1965 PA 379 (emphasis added). Thus, like the Wagner Act's § 8, PERA did not prohibit unions from interfering with employees' organizational rights.

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[10] It should be noted that PERA was not created out of whole cloth, but was instead a major reconstruction of 1947's Hutchinson Act, which was enacted to prevent (and punish) public-employee strikes. See 1947 PA 336 (Attachment 5).

[11] Attachment 1.

As originally passed, PERA did not include explicit legislative permission for union security akin to the NLRA's § 8(a)(3) under either the Wagner Act or Taft-Hartley Act.

6. Post-PERA Federal Clarification of the Duty of Fair Representation

One of the seminal cases in the development of the duty of fair representation is *Vaca v Sipes*, 386 US 171 (1967), in which the United States Supreme Court evaluated a claim that a union violated the duty by failing to properly pursue a grievance. In *Vaca*, the Court established three distinct aspects of the duty of fair representation: "[T]he exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Id.* at 177. Later in the opinion, the Court noted that since *Steele*, "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." *Id.* at 182.

Since *Vaca*, federal courts have consistently construed these two portions of the NLRA to require unions to process grievances of nonmembers in a non-discriminatory manner. See, e.g., *Smith v Local No 25, Sheet Metal Workers Int'l Ass'n*, 500 F2d 741, 749 (5th Cir 1974) (noting a union's authority as bargaining agent it compels it to represent the interests of members and nonmembers alike); *Richardson v Commc'n Workers of Am*, 443 F2d 974, 980-981 (8th Cir 1974) (same); *Peterson v Lehigh Valley Dist Council, United Bd of Carpenters and Joiners*, 676 F2d 81 (3d Cir 1982); *Journeymen Pipe Fitters Loc 392 v NLRB*, 712 F2d 225, 228 (6th Cir 1983) (same); *Nat'l Treasury Emp Union v FLRA*, 721 F2d 1402, 1046-7 (DC Cir 1983) (same).

7. The Michigan Supreme Court Holds Agency Fees are Illegal Under PERA

In 1972's *Smigel*, this Court considered whether agency fees were permitted under PERA. The case generated five opinions from the then seven-member court. But, a clear holding was that nonmember fees needed clear legislative authorization.

The importance of labor history and the NLRA's incorporation into PERA was discussed in Chief Justice T.M. Kavanagh's three-member opinion:[12]

> It should be emphasized at the outset that this case involves public employees and is therefore controlled by the so-called Public Employment Relations Act. The historical backdrop against which we must view this statute is most significant. The original act [The Hutchinson Act – 1947 PA 336] had as its stated purposes the prohibition of strikes by certain public employees and the provision for mediation of grievances. It was not until its amendment in 1965 that the statute granted public employees the right to organize and bargain collectively. 1965 P.A. 379 not only authorized the formation of public employees' unions, but also incorporated the policy of the National Labor Relations Act – that an employer must assume a posture of complete neutrality regarding union membership. He must do nothing to either advance or retard union organizing. Likewise must he refrain from practices which either encourage or discourage membership in labor organizations.

Smigel, 388 Mich at 539 (plurality opinion). PERA's lack of a specific provision allowing for agency fees meant that such fees were prohibited by MCL 423.210. *Smigel*, 388 Mich at 540 ("The legislature accomplished this result by not including in [PERA] the right . . . to enter into agreements containing union security clauses.") It was noted that unlike the version of MCL 423.14 then in force permitting an all-union agreement,[13] there was no specific authorization of agency fees. *Smigel*, 388 Mich at 540. The plurality continued: "The traditional 'agency shop' provision is a well known type of union security clause. Its terms are often such as to render it

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[12] He was joined by Justice T. G. Kavanagh and Justice Adams.

[13] The all-union-agreement language of MCL 423.14 was stricken and replaced as part of 2012 PA 348.

the practical equivalent of a union shop and as such it by definition contravenes the policy and purposes of the Public Employment Relations Act." *Id*. at 541. The plurality summarized:

> Following this reasoning we are compelled to conclude that the 'agency shop' provision in the instant contract is repugnant on its face to the provisions of our Public Employment Relations Act.
>
> We hold that any such clause as this which makes no effort to relate the nonmembers' economic obligations to actual collective bargaining expenses is clearly prohibited by section 10 of the Public Employment Relations Act, as of necessity either encouraging or discouraging membership in a labor organization.

Id. at 543.

Justice Williams concurred that the lack of a specific legislative authorization for agency fees meant that such fees could not be charged to a nonmember: "On the question whether PERA § 10 permits an 'agency shop,' I agree . . . that it does not. This is because PERA fails to include a savings clause for union security such as [the then-in-force version of MCL 423.14] in private employment." *Id*. at 544 (Williams, J., concurring).

Justice Brennan also concurred. He too contrasted the express authorization of an all-union agreement under MCL 423.14 with the absence under PERA of an explicit authorization of agency fees. *Id*. at 545. (Brennan, J., concurring). The unions had argued that PERA only prevented either closed or union shops, but Justice Brennan rejected this: "423.210 does not address itself merely to all-union or close shop agreements. In the present context, <u>it prohibits terms and conditions of employment which are designed to encourage membership in a labor organization.</u>" *Smigel*, 388 Mich. at 546 (emphasis added). He concluded that "423.209(c) is in effect a 'right to work' law, limited to public employment." *Id*.

Thus, there were five votes for the holding that without specific legislative authorization, agency fees could not be charged to nonmembers under PERA.

8. The Michigan Supreme Court Applies *Vaca* in Deciding an NLRA case

In light of the *Vaca* decision, it became clear that duty-of-fair-representation claims under the NLRA could be heard in either state or federal courts. *Vaca*, 386 US at 186-87. The Michigan Supreme Court heard one such challenge in *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123 (1973). In examining the duty-of-fair representation, this Court stated:

> When the general good conflicts with the needs or desires of an individual member, the discretion of the union to choose the former is paramount.
>
> When the general good conflicts with the legal or civil rights of an individual member, the courts will recognize those rights and enforce them as against the will of the majority of the union membership.

Id at 145. This Court ultimately concluded that "a union owes a greater duty to its members than merely to refrain from persecuting them." *Id.* at 148.

9. The Michigan Legislature Specifically Authorizes Agency Fees Through an Amendment to PERA.

Within a year of this Court's decision in *Smigel*, the Michigan Legislature acted to explicitly allow agency fees by amending MCL 423.210. Using the Michigan Legislature's strike-and-replace system, the following changes occurred:

> Sec. 10 **(1)** It shall be unlawful for a public employer or an officer or agent of a public employer (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section 9; (b) to initiate, create, dominate, contribute to**,** or interfere with the formation or administration of any labor organization: Provided, That a public employer shall not be prohibited from permitting employees to confer with it during working hours without loss of time or pay; (c) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization**: PROVIDED FURTHER, THAT NOTHING 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; (d) to discriminate against a public employee because he has given testimony or instituted proceedings under this act; or (e) to refuse to bargain collectively with the representatives of its public employees, subject to the provisions of Section 11.

(2) IT IS THE PURPOSE OF THIS AMENDATORY ACT TO REAFFIRM THE CONTINUING PUBLIC POLICY OF THIS STATE THAT THE STABILITY AND EFFECTIVENESS OF LABOR RELATIONS IN THE PUBLIC SECTOR REQUIRE, IF SUCH REQUIREMENT IS NEGOTIATED WITH THE PUBLIC EMPLOYER, THAT ALL EMPLOYEES IN THE BARGAINING UNIT SHALL SHARE FAIRLY IN THE FINANCIAL SUPPORT OF THEIR EXCLUSIVE BARGAINING REPRESENTATIVE BY PAYING TO THE EXCLUSIVE BARGAINING REPRESENTATIVE A SERVICE FEE WHICH MAY BE EQUIVALENT TO THE AMOUNT OF DUES UNIFORMLY REQUIRED OF MEMBERS OF THE EXCLUSIVE BARGAINING REPRESENTATIVE.

(3) IT SHALL BE UNLAWFUL FOR A LABOR ORGANIZATION OR ITS AGENTS (A) TO RESTRAIN OR COERCE: (i) PUBLIC EMPLOYEES IN THE EXERCISE OF THE RIGHTS GUARANTEED IN SECTION 9: PROVIDED, THAT THIS SUBDIVISON SHALL NOT IMPAIR THE RIGHT OF A LABOR ORGANIZATION TO PRESCRIBE ITS OWN RULES WITH RESPECT TO THE ACQUISITION OR RETENTION OF MEMBERSHIP THEREIN; . . .

1973 PA 25.

Thus, the Legislature showed its clear intent to allow agency fees. It also created a duty for labor organizations not to interfere with § 9 rights of public employees.

10. The Michigan Supreme Court Recognizes a Duty of Fair Representation Under PERA

In *Goolsby v Detroit*, 419 Mich 651 (1984), this Court held that the duty of fair representation also applies to cases filed under PERA. After citing the United States Supreme Court's *Humphrey* decision and its own *Lowe* decision with approval, this Court drew from *Vaca* three responsibilities related to the duty of fair representation. *Id.* at 664. After reviewing additional caselaw, this Court then summarized its holding:

> In conclusion, we hold that: (1) PERA impliedly imposes on labor organizations representing public sector employees a duty of fair representation; (2) bad-faith conduct is not always required to make out a breach of that duty; (3) the conduct prohibited by the duty of fair representation includes (a) impulsive, irrational, or unreasoned conduct, (b) inept conduct undertaken with little care or with indifference to the interests of those affected, (c) the failure to exercise discretion, and (d) extreme recklessness or gross negligence; (4) <u>absent a reasoned, good-faith, nondiscriminatory decision not to process a grievance, the failure of a labor organization to comply with collectively bargaining grievance procedure time limits constitutes a breach of the duty of fair representation</u>; and (5) in this case, the union's inexplicable failure to comply with the grievance procedure time limits indicates inept conduct undertaken with little care or with indifference to the interests of plaintiffs, which could have reasonably been expected to foreclose plaintiffs from pursuing their grievance further.

Id. at 681-82 (emphasis added).

The next relevant Michigan case occurred in 1989, when the Court of Appeals decided *Hunter v Wayne-Westland Community School District*, 174 Mich App 330 (1989). This case arose when two school districts merged, with the union representing the larger school system now becoming the bargaining agent for the newly merged one. A member of the bargaining unit from the smaller school, which had previously been represented by a different union, refused to become a member of the union representing the merged school. As a result, the successor union refused to give this member the seniority she had earned under the prior collective bargaining agreement. In reviewing the matter, the Court of Appeals explained that discrimination based on the lack of fealty to the union was not a proper basis for denying seniority:

> A union may not neglect the interests of a membership minority solely to advantage a membership majority; members are to be accorded equal rights, not arbitrarily subject to the desires of a stronger, more politically favored group. "These tenets strike home when a union attempts to prefer workers based solely on how long they have been loyal to the guild." The only factor distinguishing [the employee] from other former Cherry Hill employees who received retroactive seniority was her lack of union membership while at Cherry Hill. The WWEA owed her a duty of fair representation and breached that duty.

Id. at 337.

11. Passage of 2012 PA 53

In 2012, the Michigan Legislature amended PERA § 10 by banning public-school employers from collecting dues and fees on the unions' behalf, by creating a reporting requirement for expenditures related to union representational activities, and by making a number of grammatical changes. 2012 PA 53.[14]

12. Passage of 2012 PA 349, Michigan's Right-to-Work Law

Shortly after the adoption of 2012 PA 53, the Legislature again amended PERA. This amendment, which transformed Michigan into a public-sector right-to-work state, amended MCL 243.209(1) as follows:

> Sec. 9. (1) ~~It shall be lawful for public employees to organize~~ **PUBLIC EMPLOYEES MAY DO ANY OF THE FOLLOWING:**
>
> (A) **ORGANIZE** together or ~~to~~ form, join**,** or assist in labor organizations**;** ~~, to~~ engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection**;** ~~,~~ or ~~to~~ negotiate or bargain collectively with their public employers through representatives of their own free choice.
>
> (B) **REFRAIN FROM ANY OR ALL OF THE ACTIVITIES IDENTIFIED IN SUBDIVISION (A).**

2012 PA 349.[15]

Section 10 was also amended in the following relevant ways:

> Sec. 10. (1) A public employer or an officer or agent of a public employer shall not do any of the following:
>
> (a) Interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed in section 9.
>
> . . .

[14] Attachment 6.

[15] The public act also added new subsections 9(2) and 9(3), but neither is relevant here.

(c) Discriminate in regard to hire, terms, or other conditions of employment to encourage or discourage membership in a labor organization. ~~However, this act or any other law of this state does not preclude a public employer from making an agreement with an exclusive bargaining representative as described 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.~~

. . .

~~(2) It is the purpose of 1973 PA 25 to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if the requirement is negotiated with the public employer, that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee that may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.~~

(2) ~~(3)~~ A labor organization or its agents shall not do any of the following:

(a) Restrain or coerce public employees in the exercise of the rights guaranteed in section 9. This subdivision does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

. . .

(3) EXCEPT AS PROVIDED IN SUBSECTION (4),[16] AN INDIVIDUAL SHALL NOT BE REQUIRED AS A CONDITION OF OBTAINING OR CONTINUING PUBLIC EMPLOYMENT TO DO ANY OF THE FOLLOWING:

. . .

(C) PAY ANY DUES, FEES, ASSESSMENTS, OR OTHER CHARGES OR EXPENSES OF ANY KIND OR AMOUNT, OR PROVIDE ANYTHING OF VALUE TO A LABOR ORGANIZATION OR BARGAINING REPRESENTATIVE.

. . .

(5) AN AGREEMENT, CONTRACT, UNDERSTANDING, OR PRACTICE BETWEEN OR INVOLVING A PUBLIC EMPLOYER, LABOR ORGANIZATION, OR BARGAINING REPRESENTATIVE THAT VIOLATES SUBSECTION (3) IS UNLAWFUL AND UNENFORCEABLE. . . .

[16] Again, the subsection exempted police and fire employees.

2012 PA 349.

With of the passage of Michigan's public sector right-to-work law, agency fees were banned. After 2012 PA 349 became effective, the key statutory elements related to this grievance-fee question were in place. The relevant portions of PERA and the NLRA provisions they were based on have been set forth. The general parameters of the duty of fair representation are known. The final element is this Court's *Smigel* holding about the proper means of analyzing MCL 423.210 in the absence of an express legislative authorization of fees to nonmembers.

It is against this backdrop, that this Court's first question must be considered.

C. Analysis of Grievance Fees Under PERA

1. Michigan Courts Generally Rely on NLRA Case Law When Interpreting PERA

Undoubtedly, this Court remains the ultimate authority on Michigan law, and can determine that the Michigan cases relying on the federal judiciary's or the NRLB's interpretation of the NLRA need to be reconsidered due to the language of the *Janus* case, or for any other legal reason. Yet, Michigan has historically relied on federal interpretation of the NLRA as highly persuasive authority when considering cases under PERA where PERA and the NLRA are analogous.

This Court addressed this issue in *Demings v City of Ecorse*, 423 Mich 49 (1985), stating:

> Similarly, our labor mediation act, MCL §423.1 *et seq.*, and public employment relations act, MCL § 423.201 *et seq.*, are patterned after the NLRA. Thus this court has stated that in construing our state labor statutes we look for guidance to the construction placed on the analogous provisions of the NLRA by the [National Labor Relations Board] and the Federal courts. *Rockwell v Crestwood School Dist Bd of Ed*, 393 Mich 616, 636 (1975)…. Consequently, since the rights and responsibilities imposed on labor organizations representing public sector employees by PERA … are similar to those imposed on labor organizations representing private sector employees by the NLRA, it must be concluded that PERA impliedly imposes on labor organizations representing public sector employees a duty of fair representation which is similar to the duty imposed by the NLRA….

> It is not suggested that the Legislature has, in defining the origin and nature of the substantive right of fair representation, departed from the federal model. The PERA provisions that give rise to the right of fair representation are replicas of the federal provisions. The nature of the right of fair representation, as developed by the Michigan and federal courts, also appears to be substantially the same.

Id. at 56-57, quoting *Goolsby v Detroit*, 419 Mich at 660-61, n 5 (cleaned up) (errors original).[17]

Section 7 of the NRLA (29 USC 157) and § 9 of PERA (MCL 423.209) are for all practical purposes identical. Both statutes outline the labor rights of public employees, which include the right to "form, join, or assist" a labor organization, to collectively bargain, to engage in concerted activities, or to refrain from any of those activities. In both instances, it is clear that employees have the right to participate or refrain from participating in union activities.

The NLRA and PERA also have parallel sections that protect these rights. Both § 8 of the NLRA (29 USC 158) and § 10 of PERA (MCL 423.210) forbid a labor organization from restraining or coercing public employees in exercising the rights outlined in §§ 7 and 9, respectively. Similarly, both laws explicitly exempt union rules regarding the "acquisition or retention of membership" from being considered coercive or a restraint of employee rights. Compare 29 USC 158(b)(1) with MCL 423.210(2)(a). In short, the protections of employees' rights contained in these statutes are largely identical. Based on the similarity of the language and requirements of these sections of the NLRA and PERA, this Court should look to federal decisions as guidance in this matter. Those decisions have consistently held that failing to process the grievance of a nonmember absent a fee is an unfair labor practice.

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[17] Subsequent cases demonstrate that the need to adhere to NLRA precedent strong where there is the possibility of "disturbing consequence[s] of departing from the federal model that result[s] in public employees being treated differently under the PERA from private employees under the NLRA." *AFSCME v Highland Park Sch Dist Bd of Educ*, 457 Mich 74, 88 fn 2 (1998) (citing *Demings*, 423 Mich 49 at 57). This is particularly true when identical statutory provisions are at issue. *Highland Park*, 457 Mich at 88, n 2.

2. NLRA Decisions Ban Charging Nonmembers Grievance Fees

a. Relevant NLRB and MERC Decisions Definitively State that Requiring a Fee for Grievance Processing Violates the Duty of Fair Representation and is Coercive

Starting in 1953, the NLRB has never deviated from holding that charging nonmembers grievances violates the duty of fair representation under the NLRA.

The NLRB addressed the impact of pay-for-services provisions shortly after the passage of Taft-Hartley when deciding *Hughes Tool Company and Independent Metal Workers Union, Locals 1 and 2*, 104 NLRB 318 (1953). In this case, the union attempted to require a fee for grievance adjustment in a right-to-work state. *Id.* at 329. After acknowledging that the grievance process "frequently involves the interpretation and application of the terms of a contract, or otherwise affects the terms and conditions of employment not covered by a contract," the NLRB concluded that the union owed a duty to process those grievances in a non-discriminatory manner. *Id.* at 326. It stated:

> The question thus finally becomes whether or not the grievance and arbitration fees charged herein are in conflict with that duty to represent employees in grievance proceedings without discrimination. We find the answer to be in the affirmative. As we have noted above, <u>all</u> employees in an appropriate unit are entitled, upon their request, to the impartial assistance of the certified representative in the filing and adjustment of grievances. The duty of the certified representative to render such impartial assistance is clearly evaded where some employees are forced to pay a price for such help <u>or to forego it entirely</u>. The latter result is precisely what occurs under the fee schedule set up by the [union].

Id. at 327 (emphasis original).

The NLRB further recognized that an opposite holding could have significant deleterious effects on employees who would be forced to pay:

> There are obvious reasons why the assistance of the certified labor organization is of great value to an employee with a legitimate grievance. The established procedures and experienced personnel which the union has at hand;

> the background of preceding cases and knowledge of the contract stemming from participation in its negotiation; and the very prestige and authority of the union itself are all factors which may well mean the difference between the success and failure of the grievance. Where a certified bargaining representative exists, it has been held that the employees are not entitled to be represented in grievance proceedings by any labor organization other than the certificate holder. The defense of the [union]—that it does not 'refuse' such assistance as certified representative, but merely requires payment for it—begs the question. It is the employee's option alone as to whether the services of the representative are to be used in his behalf. By demanding the payment of a $15 or $400 fee by nonmembers as a prerequisite to their obtaining the assistance they are entitled to as employees in the unit and refusing the representation if not paid, the [union] has abused the privileged status it occupies as certified representative by using that status as a license to grant or deny representation according to its own arbitrary standards.

Id. at 327-28 (emphasis added). The NLRB, after rejecting additional "free-rider" arguments made by the union, proceed to hold that pay-for-services provisions are impermissible.

This opinion is not an outlier, and the position that nonmembers cannot be forced to pay a fee for grievances has been reaffirmed over and over for decades. In *International Association of Machinist and Aerospace Workers, Local Union Number 697, AFL-CIO (The HO Canfield Rubber Company of Virginia, Inc and Ronnie G Carroll,* 223 NLRB 832 (1976), the NLRB found that "[t]o discriminate against nonmembers by charging them for what is due them by right restrains them in an exercise of their statutory rights," and rejected an attempt to charge nonmembers in grievance proceedings. *Id.* at 970. It reached a similar holding the following year when deciding *Electrical Workers Local 396 (Central Telephone Co)*, 229 NLRB 469 (1977), finding pay-for-services provisions to be inherently coercive:

> [I]t is axiomatic that, in the absence of a valid union-security clause, threats to employees that they will lose their jobs or otherwise be discriminated against in employment because of nonpayment of dues violate Section 8(b)(1)(A). The violation exists even though [the union] could not require the Company to discharge [the employee]. The Board has held that the threat is coercive "because it was a threat of loss of employment reasonably calculated to have an effect on the listener without regard to the question of the Union's ability to carry out the threat."

Id. at 470 (footnote omitted).

In the decades that followed, the NLRB continued to reject similar arguments, determining that charging nonmembers a service fee for grievance processing was a per se violation of the NLRA.[18] Indeed, the NLRB rejected claims similar to those made by TPOAM as recently as 2015, when it decided *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1192 AFL-CIO, CLC (Buckeye Florida Corporation, A Subsidiary of Buckeye Technologies, Inc and Georgia Pacific, LLC) and Jimmy Ray Williams*, 362 NLRB 1649 (2015). The NLRB stated:

> The Union contends its policy Applicable Board law is well settled and unambiguous in this case. This matter arose in the State of Florida, a "right to work" state, and the collective-bargaining agreement between the Union and the employer contains no union-security clause. The Union, via its Fair Share Policy charges nonmember employees covered by the collective-bargaining agreement a fee for processing a grievance. Under these circumstances and current Board precedent, this Fair Share Policy violates Section 8(b)(1)(A) of the Act.
>
> Moreover, the Union's defenses are without merit. The Union contends its policy does not coerce employees in the exercise of their Section 7 rights because it does not make payment of the fee a condition of employment. <u>However, in none of the cases in which the Board has addressed this issue did the policy make payment of the grievance processing fee a condition of employment.</u> Rather the Board looked to whether the policy coerced the employee in his or her right to refrain from joining the union. <u>In each and every case, the Board held that such policies do so.</u>

Id. at 1652 (emphasis added). The NLRB further rejected other arguments identical to those raised by TPOAM:

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[18] See, e.g., *Columbus Area Local, Am Postal Workers Union, AFL-CIO (US Postal Serv and Jesse F Williams)*, 277 NLRB 541 (Nov 19, 1985) (applying *Hughes* in similar circumstances and reaching the same conclusion), *Furniture Workers Div, Loc 282, Int'l Union of Elec, Elec, Salaried, Mach and Furniture Workers, AFL-CIO (the Davis Co) and Everlena C Yarbrough*, 291 NLRB 182 (1988) (same).

> The Union appears to attach significance to its contention an employee can pursue a grievance without the assistance of the Union. However, there is no evidence of this practice occurring during any relevant time period. Furthermore, the Union concedes even if an employee could proceed without the Union through some steps, a grievance cannot be successfully pursued beyond the third step without the consent of the International. Therefore . . . this contention lacks merit.
>
> The Union also relies on a decision by the Supreme Court of the State of Nevada finding valid a similar policy promulgated by a union representing certain State Government employees citing [*Cone*]. . . . [The *Cone* court] considered the [NLRB] precedent cited herein interpreting these similar provisions and rejected it, disagreeing with the [NLRB]'s holding because it leads to, in the court's opinion, an "inequitable" result. The [NLRB] was well aware of these equitable concerns when, interpreting the Act, it reached its contrary conclusion. Therefore, . . . the Union's reliance on the Nevada Supreme Court's holding in *Cone* misplaced.

Id. at 1653 (citations omitted).

In short, the arguments being advanced by TPOAM are not novel. Rather, the same or similar arguments have been presented to and rejected by the NLRB for at least sixty-nine years. This Court should not now disregard that precedent absent a legislative change.

Thus, the Court of Appeals, MERC, and the Administrative Law Judge all correctly recognized that grievance fees to nonmembers are banned under PERA.

D. TPOAM's Arguments in Favor of Holding Fees for Nonmembers are Currently Permitted by PERA are Unpersuasive

TPOAM makes three arguments in favor of imposing grievance fees on nonmembers: (1) *Janus* specifically endorsed such arrangements and that should supersede any NLRA decisions to the contrary; (2) *Janus* give unions a First Amendment right not to associate with nonmembers; and (3) under MCL 423.210(2)(a) grievances are an internal matter and therefore otherwise exempt from PERA. These arguments will be addressed in turn.

1. The Relevant Language of *Janus* Demonstrates that Pay-for-Services Provisions in State Statutes may be Constitutionally Permissible, not that such Provisions are Constitutionally Required

The union's first claim related to *Janus* rests largely on a single portion of that case, which suggests that payment for grievance processing could be constitutionally permissible in certain circumstances. *Janus* specifically discussed this pay-for-grievance arrangement as being one less-burdensome approach on an employee's First Amendment associational freedoms as compared to agency fees. *Janus*, 138 SCt at 2468-69. The Supreme Court then proceeded to highlight a specific California statute which required nonmembers who were religious objectors to pay for grievance representation as an example of this approach in action. *Id.* at 2469 n 6. Thus, this portion of *Janus* appears to acknowledge that a statute like California's would be constitutionally permissible, while nevertheless finding that the First Amendment did not permit the compulsory payment of agency fees by nonmembers.

Again, in *Smigel*, this Court made it clear that positive legislative authorization is required before fees can be charged to nonmembers. This is in line with what the Supreme Court was discussing in *Janus* when it cited the California statute. The Michigan Legislature's treatment of PERA, however, suggests it has chosen not to exercise this discretion.

PERA has been amended several times following the passage of right-to-work. Amending acts include 2014 PA 322 (amending § 15b), 2014 PA 323 (amending § 15), 2014 PA 414 (amending §§ 1, 9, 10, and 15) and 2016 PA 194. None of the provisions amended by these acts are directly germane to the questions presented in this case. But, they reflect the fact that the Legislature had multiple opportunities to amend the relevant portions of §§ 9 and 10 of PERA following the adoption of right to work, but chose not to. Thus, unlike in 1973 PA 25, the

Legislature has repeatedly failed to adopt express language permitting pay-for-services provisions, so as to reach the same result as in Nevada.

Here, as noted above, the pay-for services provision at issue was adopted solely by the union's executive board. App pp 40-44. No legislation has been passed in Michigan which would alter PERA to allow for pay-for-services provisions. Unless the Michigan Legislature adopts a statute authorizing unions to charge nonmembers for representation in grievance proceedings, no such charges may be permitted.

TPOAM disagrees and cites MCL 423.120(c)(3) as positive legislative authorization. In its application, TPOAM states: "Section 10(c)(3) of PERA allows charging of fees for services requested, provided it is not 'required as a condition of obtaining or continuing public employment.'" Application for Leave at 7; see also *id*. at 7-12; and TPOAM Supplemental Brief at 25-27.

The union's basic argument is that as long as a fee request is not a condition of obtaining or continuing public employment, it can be made. TPOAM therefore seeks to use this statutory provision to allow it to charge for grievances, which it contends is not related to obtaining or continuing employment.

This is wrong for two reasons. First, TPOAM only discusses grievance fees in its analysis, but MCL 423.210(3)(c) came about in December 2012 and took effect in March of 2013 – a touch over five years before *Janus*. If TPOAM is correct, then during that approximately five-year time period, public-sector unions (not exempted by MCL 423.210(4)) would have been able to charge agency fees to any nonmember as long as they did not have a

termination clause for nonpayment in their respective collective-bargaining agreements.[19] Thus, employees could have been civilly liable for any costs the public-sector unions sought to impose for providing collective-bargaining services; they just could not have been fired for refusing to pay them. That is not what occurred, nor was it the Legislature's intent. Remember, 2012 PA 349 struck the positive authorizations for agency fees that had been located in 1973 PA 25's §§ 10(c) and 10(2). The Legislature was not merely trying to prevent people from being fired for not paying agency fees – it was attempting to end agency fees altogether.[20]

This leads to TPOAM's second error. While this Court has exclusively asked the parties about § 10(2)(a), § 10(3)(c) can also support a holding in Renner's favor. This case is about the grievance process, and the disciplinary process in this case (and perhaps in almost every case) could eventually lead to employee dismissal. That makes the entire grievance and disciplinary process within the meaning "continuing public employment" and therefore not something for which fees can be charged.

Thus, TPOAM is mistaken – § 10(c)(3) is not a positive grant that can justify fees for grievances. Michigan has not specifically authorized grievance fees, and under *Smigel* and *Janus* such fees are inappropriate unless and until it does.

2. The United States Supreme Court has Already Determined That Requiring a Union to Process Grievances on Behalf of Non-paying Nonmembers does

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[19] As noted above, as a matter of constitutional law, *Janus* prohibited charging agency fees to any public sector employees (including police and fire in Michigan despite MCL 423.210(4)) as of June 27, 2018.

[20] Michigan would not have made international and national news and the Lansing Capitol would not have been the site of vociferous protests had the Legislature merely been changing the enforcement mechanism of agency fees. It was the ending of these agency fees that made this legislation so significant.

not Violate a Union's First Amendment Right to Freedom of Association

Citing *Janus*, TPOAM attempts to relitigate arguments about the First Amendment and forced association that were rejected decades ago by the United States Supreme Court.[21] The core of TPOAM's argument relies on its First Amendment right to "eschew association for expressive purposes." TPOAM's Application for Leave to Appeal, p. 39. quoting *Janus*, 138 SCt 2463. These arguments must fail, as they have been expressly addressed and rejected by the United States Supreme Court.

TPOAM makes arguments substantially similar to those advanced by labor unions in challenging right-to-work laws shortly after the adoption of Taft Hartley in 1947. Parallel challenges arose to right-to-work laws in *American Federation of Labor v American Sash Co*, 335 US 538 (1949) and *Lincoln Federal Labor Union v Northwestern Iron and Metal Company et al*, 335 US 525 (1949). In *Lincoln Federal*, both North Carolina and Nebraska had adopted laws which provided that no person was to be denied an opportunity to obtain or retain employment based on union membership. *Lincoln Federal*, 335 US at 527-28. The unions challenged these laws on the grounds they violated their First Amendment rights to freedom of speech, assembly, and petition.

In evaluating the matter, the Supreme Court rejected the contention that a union's desire that nonmembers and members not be forced to work alongside each other was "indispensable to

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[21] Further, TPOAM recasts as a First Amendment claim previously rejected union arguments that providing service to nonmembers without charging fees is "tantamount…to involuntary servitude." TPOAM's Application for Leave to Appeal, p. 39. These prior arguments cited the Thirteenth Amendment rather than the First Amendment and were rejected by the courts that had considered them. See, e.g., *Zoeller v Sweeney*, 19 NE 3d 749 (Ind 2014) (challenging Indiana's right-to-work law on the grounds it required services be provided without payment); and *Sweeney v Daniels*, No 2:12-CV-81, 2012 WL 13054830 (US Dist Ct N Dist Ind) (2012) (challenging same under the Thirteenth Amendment).

the right of self-organization and the association of workers into unions." *Id*. (internal quotations omitted). The Court stated:

> Justification for such an expansive construction of the right to speak, assemble and petition is then rested in part on appellants' assertion 'that the right to work as a non-unionist is in no way equivalent to or the parallel of the right to work as a union member; that there exists no constitutional right to work as a non-unionist on the one hand while the right to maintain employment free from discrimination because of union membership is constitutionally protected.' Cf. *Wallace Corporation v. National Labor Relations Board*, 323 U.S. 248.
>
> We deem it unnecessary to elaborate the numerous reasons for our rejection of this contention of appellants. Nor need we appraise or analyze with particularity the rather startling ideas suggested to support some of the premises on which appellants' conclusions rest. <u>There cannot be wrung from a constitutional right of workers to assemble to discuss improvement of their own working standards, a further constitutional right to drive from remunerative employment all other persons who will not or can not, participate in union assemblies.</u>

Id. at 530-31 (errors original) (cleaned up) (emphasis added).

The *Lincoln Federal* Court concluded by explicitly rejecting the idea that constitutional requirements could prevent a state from adopting legislation designed to protect nonmembers, stating: "Just as we have held that the due process clause erects no obstacle to block legislative protection of union members, we now hold that legislative protection can be afforded non-union workers." *Id.* at 537.

The Court reached a similar conclusion in *American Sash*, when considering Arizona's right-to-work constitutional amendment. *American Sash*, 335 US 538 (1949). The Arizona amendment differed from the laws at issue in *Lincoln Federal* in that it provided protections against discrimination for nonmembers, but not for members of a union. *Id.* at 540. The Court nevertheless upheld it, recognizing a legislative prerogative with respect to public-sector labor law:

> In *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, this Court considered a challenge to the National Labor Relations Act on

> the ground that it applied restraints against employers but did not apply similar restraints against wrongful conduct by employees. We there pointed out, 301 U.S. at page 46, the general rule that 'legislative authority, exerted within its proper field, need not embrace all the evils within its reach.' And concerning state laws we have said that the existence of evils against which the law should afford protection and the relative need of different groups for that protection 'is a matter for the legislative judgment.' *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 400. We cannot say that the Arizona amendment has denied appellants equal protection of the laws.

Id. at 541-42 (cleaned up). In short, in both *Lincoln Federal* and *American Sash*, the Supreme Court recognized that state laws which provide right-to-work protections for nonmembers did not run afoul of a union's First Amendment rights.

The Supreme Court has consistently recognized that a union's exercise of First Amendment rights on behalf of its members can be restricted by states' public-sector bargaining statutes. In *Smith v Arkansas State Highway Employees*, *Local 1315*, 441 US 463 (1979), a union challenged a state law requiring employees to submit a written complaint directly to an employer. *Id.* at 463. The union alleged this requirement violated its First Amendment rights by preventing it from submitting grievances on its members behalf. *Id.* The Court rejected this argument, noting that even if this requirement impaired the union's First Amendment rights, it was nevertheless constitutional:

> In the case before us, there is no claim that the Highway Commission has prohibited its employees from joining together in a union, or from persuading others to do so, or from advocating any particular ideas. There is, in short, no claim of retaliation or discrimination proscribed by the First Amendment. Rather, the complaint of the union and its members is simply that the Commission refuses to consider or act upon grievances when filed by the union rather than by the employee directly.
>
> Were public employers such as the Commission subject to the same labor laws applicable to private employers, this refusal might well constitute an unfair labor practice. We may assume that it would and, further, that it tends to impair or undermine—if only slightly—the effectiveness of the union in representing the economic interests of its members.
>
> But this type of "impairment" is not one that the Constitution prohibits. Far from taking steps to prohibit or discourage union membership or association,

> all that the Commission has done in its challenged conduct is simply to ignore the union. That it is free to do.

Id. at 464-66 (internal citation omitted).

More recently, the Supreme Court addressed the interaction between the First Amendment and public-sector collective bargaining in *Davenport v Washington Education Association* 551 US 177 (2007). In that case, a union challenged a state law requiring a nonmember's authorization before any portion of his or her dues could be used for election-related purposes. *Id.* Nonmembers brought suit against the union, claiming that their dues had been used for this purpose without proper authorization. *Id.* In analyzing the state law at issue, the Supreme Court noted that the state had considerably more discretion to restrict the use of agency fees than it had exercised:

> As applied to agency-shop agreements with public-sector unions like respondent, § 760 is simply a condition on the union's exercise of this extraordinary power, prohibiting expenditure of a nonmember's agency fees for election-related purposes unless the nonmember affirmatively consents. The notion that this modest limitation upon an extraordinary benefit violates the First Amendment is, to say the least, counterintuitive. Respondent concedes that Washington could have gone much further, restricting public-sector agency fees to the portion of union dues devoted to collective bargaining. See Brief for Respondent 46–47. Indeed, it is uncontested that it would be constitutional for Washington to eliminate agency fees entirely. See id., at 46 (citing *Lincoln Fed. Labor Union v. Northwestern Iron & Metal Co.*, 335 U.S. 525 (1949)). For the reasons that follow, we conclude that the far less restrictive limitation the voters of Washington placed on respondent's authorization to exact money from government employees is of no greater constitutional concern.

Id. at 184 (emphasis added) (cleaned up). The Court noted that "unions have no constitutional entitlement to the fees of nonmember-employees," concluding that the state restriction on spending did not violate the Constitution, given state's broad discretion to regulate public-sector labor law. *Id.* at 185, 191-92.

Even if TPOAM could demonstrate an infringement of it First Amendment rights to associate, such an infringement has been recognized as constitutionally permissible as noted in cases like *Lincoln Federal* and *American Sash*. There, as here, the unions claimed it was improper for the state to force them to associate with nonmembers who did not provide financial support the union. For seventy-five years it has been clear that this associational argument was insufficient to defeat right-to-work laws, it fairs no better in seeking to constitutionalize grievance-fee payments from nonmembers.

3. Grievance Fees to Nonmembers are not Internal Union Matters Otherwise Outside the Ambit of PERA's § 10(2)(a)

While PERA does allow a union "to prescribe its own rules with respect to the acquisition or retention of membership" both a plain language reading of PERA and longstanding precedent demonstrate that pay-for-services provisions are well beyond the scope of this protection.

As a primary matter, the nonmember grievance fees are charged to nonmembers. To the extent that such fees are meant to incentivize nonmembers to become members, TPOAM would violate the no-coercion language of PERA's § 10(2)(a).

Both the NLRA and PERA contain carve outs for internal matters related to membership. Both statutes provide that a union rules relating to the "acquisition or retention of membership" do not constitute illegal restraint or coercion of employee rights. Compare MCL 423.210(2)(a) with 29 USC 158(b)(1)(A). The language of both statutes is nearly identical. Thus, the meaning of the words "acquisition or retention" are key.

As stated above, Michigan courts generally rely on federal interpretations of the NLRA for guidance when the language of PERA and the NLRA is analogous. The Supreme Court has

addressed the meaning of "acquisition or retention" under the NLRA in *Pattern Makers' League of North America v National Labor Relations Board*, 473 US 95, 109 (1985), stating:

> Petitioners first argue that the proviso to § 8(b)(1)(A) [of the NLRA] expressly allows unions to place restrictions on the right to resign…Petitioners contend that because [an internal union rule] places restrictions on the right to withdraw from the union, it is a "rul[e] with respect to the … retention of membership within the meaning of the proviso."
>
> Neither the Board nor this Court has ever interpreted the proviso as allowing unions to make rules restricting the right to resign. Rather, the Court has assumed that "rules with respect to the retention of membership" are those that provide for the expulsion of employees from the union.

Id. (emphasis original). Such an understanding is consistent with dictionary definitions of the relevant terms. Cambridge Dictionary defines "acquisition" as "the process of getting something" or "the act of obtaining or beginning to have something, or something obtained."[22] It defines "retention" as "the ability to keep or continue having something" or "the continued use, existence, or possession of something or someone." *Id.*[23] Taken together, the terms "acquisition and retention" clearly relate to the unions process for admitting or terminating memberships of those who they represent.

Here, however, the relevant union rule is not related to either of these aims. Instead, that rule attempts to redefine the scope of the union's legal obligations to represent nonmembers by creating two artificial and extra-legal categories of representation: collective representation and direct representation. App pp 40-44, see also Application for Leave at 1, n 2. The union further reads "membership" in 10(2)(a) of PERA to mean having *any* relationship to the union itself. This reading of PERA is not just well-beyond the text of PERA itself, but it is contrary to all Michigan precedent speaking to the issue.

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[22]Available at: https://dictionary.cambridge.org/us/dictionary/english/acquisition.

[23]Available at: https://dictionary.cambridge.org/us/dictionary/english/retention.

MERC opinions have held that matters even more directly related to the acquisition and retention of membership then grievance fees or agency fees are outside the protections of MCL 423.210(2)(a). MERC has repeatedly determined that internal union rules requiring employees to resign membership solely within a "window"[24] improperly restrains employees in their right to refuse to associate with a union. See, e.g., *Saginaw Ed Ass'n and Eady-Miskiewicz*, 319 Mich App 422, 459 (2017). MERC reached a similar conclusion in *West Branch-Rose City Education Association and Frank Dame*, 17 MPER 25 (2005), where MERC held that even the collection of agency fees was not a purely internal union matter. In each of these decisions, a union's ability to regulate its membership, either through the terms of when a member could resign, or through the collection of then-mandatory fees, was found to be beyond a merely internal rule. To hold that the grievance process, a matter directly relating to the entirety of the collective-bargaining agreement, is somehow a purely internal union matter, would constitute a significant divergence from past NLRA and PERA decisions.

4. As to the First Question Presented by this Court, None of the Union's Arguments are Persuasive

As noted above, Michigan's Legislature must affirmatively allow fees to be charged to nonmembers and has not done so. Nothing in *Janus* created a new forced associational right. Just as public-sector unions have had to tolerate and work with nonmembers in right-to-work states for decades preceding *Janus*, they now have to continue doing so even where nonmembers do not pay grievance fees. *Janus* changed nothing in regard to this First Amendment forced-association claim. Finally, the union's attempt to inoculate its illegal grievance fees as a purely internal matter fails.

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[24] For example, a window could be limiting resignations to one month a year or perhaps a particular ten-day period within that year.

II. On this Court's Second Question, the Court of Appeals Properly held MCL 423.211 did not allow Renner to Pursue an Individual Grievance

An individual's right to pursue a grievance under MCL 423.211 does not relieve TPOAM of its obligation to represent nonmembers who do not pay for grievance services.

1. Enactment of NLRA § 9 (29 USC § 159) predating PERA

a. Wagner Act

This language related to pursuit of individual grievances originated in § 9(a) of the Wagner Act. This section originally stated:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the 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: *Provided*, That any individual employee or group of employees shall have the right at any time to present grievances to their employer.

This language was later changed in light of the NLRB's decision in *Hughes Tool Company and United Steelworkers of America Locals Numbers 1742 and 2457, CIO*, 56 NLRB 981 (1944), in which the NLRB determined the presence of the union was necessary for the adjustment of any grievance.[25] This included any grievance brought by an individual employee under § 9(a), even absent an established grievance procedure requiring the union's presence. *Id.*

1. <u>Taft-Hartley</u>

Section 9(a) was later amended by the Taft-Hartley Act, which added the following to the end of that section:

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[25] This holding was later modified to only require the union's presence when resolving the grievance would involve collective bargaining or the interpretation of existing collective bargaining provisions. See *Hughes Tool Co v NLRB*, 147 F2d 69, 72-73 (5th Cir 1945). Nevertheless, both the NLRB and Circuit Court decisions appear to have been the catalyst for the amendments to § 9(a) within Taft-Hartley.

> and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

29 USC 159(a). Thus, Taft-Hartley amended § 9(a) of the NLRA to make explicit that an individual-grievance adjustment must be consistent with the terms of the relevant collective-bargaining agreement, and that the union is permitted to be present at any individual-grievance hearing.

2. Passage of PERA in 1965 Creates MCL 423.211

MCL 423.211 was enacted as part of 1965 PA 379 and has not been amended since. It is nearly identical in language to 29 USC 159, and there is no substantive legal distinction between them.[26] As previously discussed, where the language of PERA and the NLRA is analogous, PERA is to be interpreted consistently with federal law. See Section I(c)(1) *supra*.

The issue of whether the NLRA permits a union to charge nonmembers fees for grievance processing has been settled law for sixty-nine years. This question was squarely addressed in *Hughes Tool Company and Independent Metal Workers Union, Locals 1 and 2*, 104

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[26] MCL 423.211 reads:

> 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 bargaining representative has been given opportunity to be present at such adjustment.

NLRB 318 (1953), in which the NLRB determined levying charges for nonmember grievances was impermissible. In addressing the issue, the NLRB stated:

> Despite the fact that the statute, by force of these provisos in Section 9 (a), grants the certified representative less than an exclusive position in the handling of grievances, we do not consider that the certified union's responsibility <u>concerning those grievances on which its aid is requested</u> has been lessened. It is clear that Congress, in amending the section, was concerned with the dual problem of an individual employee's right to choose to process a grievance without interference by the representative and the representative's interest in preserving intact the terms and conditions of its contract and its right to bargain about such terms. This is a distinctly different matter from that of the representative's responsibility insofar as those grievances which are tendered it by the voluntary act of the employee. We, accordingly, find that the amended Section 9 (a) still gives rise to a duty by labor organizations, as the exclusive representative in grievance proceedings (other than those processed through preference by the individual himself), impartially and without discrimination to accept and process all grievances placed in its hands by the employees it represents.
>
> The question thus finally becomes whether or not the grievance and arbitration fees charged herein are in conflict with that duty to represent employees in grievance proceedings without discrimination. We find the answer to be in the affirmative.

Id. at 327 (footnote omitted emphasis in original).

Subsequent challenges at the federal level to nonmember grievance fees have transitioned away from analyzing § 9 of the NLRA, instead reaching the conclusion that charging non-members fees for grievances violates §§ 7 and 8. See generally, Section I(c)(2), *supra*.

Neither Michigan courts nor MERC appears to have squarely addressed the application of PERA's analogous language in § 11. But, the most authoritative statement of Michigan law on this issue is that the right for an employee to pursue an individual grievance is a limited one. In *Mellon v Board of Education of Fitzgerald Public Schools*, 22 Mich App 218, 221-22 (1970), the Court of Appeals held that while an employee's § 11 rights under PERA permitted him to submit a grievance without union involvement, nothing compelled his employer to process that grievance. *Id.* Instead, it was the employer's prerogative to choose whether to deal with the

employee, or to apply the procedures that had been negotiated in the collective-bargaining agreement. *Id.*[27]

Subsequent MERC decisions are consistent with this position. See *Shelby Twp, Pub Emp and Police Officers Ass'n of Michigan and Matthew Stachowicz*, 28 MPER 77 (2015). This presents a unique problem, however, as it largely prevents employees from being able to challenge grievance determinations. *Lowe*, 389 Mich at 148-49, makes clear that exhausting the collectively bargained grievance process is a prerequisite to an employee's ability to bring an action against his employer. Here, TPOAM has the exclusive right to process grievances under the terms of the collective-bargaining agreement. App at p 86. The county processed Renner's grievance, even though it believed it had been filed under the improper policy. *Id*. at 116. Renner thus is left with no recourse; either he is forced to abandon his grievance or pay whatever grievance processing fee TPOAM sees fit to charge so that he can go through the collectively bargained process and thereby preserve his right to bring suit.

This Court has already seen the practical pitfalls in this approach when deciding *Demings*. In that case, this Court recognized that while § 11 of PERA provides for the possibility of individualized grievances, that protection is largely illusory, stating: "Nevertheless, unions typically assert in collective bargaining agreements the exclusive power in the grievance realm. Thus, the argument continues, this power of the unions to control the grievance procedure derives not from any statute, but from the collective agreement." *Id.* at 85. Thus, even to the extent that this Court finds MCL 423.211 could provide an employee with an individual

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[27] In so doing, the Court of Appeals recognized that this standard was equally applicable at federal law. *Mellon*, 22 Mich App at 222 (citing *Broniman v Great Atl & Pac Tea Co*, 353 F2d 559 (6th Cir 1965 (additional citations omitted)).

grievance remedy, such a remedy would be inapplicable whenever the terms of a collective-bargaining agreement give a union with control over the grievance process.

This Court should recognize, as have the federal courts analyzing the issue in the context of the NLRA, that such an arrangement is inherently coercive, and violates an employee's § 9 rights under PERA. Given the nearly identical language of MCL 231.111 and 29 USC 159(a), such a holding would promote the continued harmony between Michigan and federal labor law, while simultaneously protecting the rights of employees who are bound by the terms of a collective bargaining agreement negotiated by a union with which they do not wish to associate.

RELIEF REQUESTED

For the reasons stated above, this Court should deny further leave to appeal in the matter. If this Court were to decide the issue in lieu of argument, it should affirm the decision of the Court of Appeals.

Respectfully Submitted,

_/s/ Patrick J. Wright
Patrick J. Wright (P54052)
Stephen A. Delie (P80209)
Attorney for Amicus Curiae
Mackinac Center for Public Policy

April 5, 2022

Attachment 1: 1965 PA 379

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A roll call of its members on any question shall be entered on the journal at the request of any member. It shall provide the manner of nominating the candidates for the first elective officers provided in the proposed charter. It shall fix the date of the first city election, and do and provide all other things necessary for making such nominations and holding such election. Such election may be held at a special election or on the same date as a general election. It shall publish such proposed charter in 1 or more newspapers published in said proposed city, at least once, not less than 2 weeks and not more than 4 weeks preceding said election, together with a notice of said election, and that on the date fixed therefor the question of adopting such proposed charter will be voted on, and that the elective officers provided for therein will be elected on the same date. Notice of such election shall also be posted in at least 10 public places within the proposed city not less than 10 days prior to such election. Said commission shall provide for 1 or more polling places for said election, and give like notice of their location, and shall appoint the inspectors of said election, and a canvassing board of 3 electors to canvass the votes at such election.

This act is ordered to take immediate effect.

Approved July 23, 1965.

[No. 379.]

AN ACT to amend the title and sections 1, 3, 6 and 7 of Act No. 336 of the Public Acts of 1947, entitled "An act to prohibit strikes by certain public employees; to provide certain disciplinary action with respect thereto; to provide for the mediation of grievances; and to prescribe penalties for the violation of the provisions of this act," being sections 423.201, 423.203, 423.206 and 423.207 of the Compiled Laws of 1948; and to add 8 new sections to stand as sections 9 to 16; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Title and sections amended and added.

Section 1. The title and sections 1, 3, 6 and 7 of Act No. 336 of the Public Acts of 1947, being sections 423.201, 423.203, 423.206 and 423.207 of the Compiled Laws of 1948, are hereby amended and 8 new sections are added to stand as sections 9 to 16, the amended title and amended and added sections to read as follows:

TITLE

An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; and to prescribe means of enforcement and penalties for the violation of the provisions of this act.

423.201 Strike defined; rights of public employees. [M.S.A. 17.455(1)]

Sec. 1. As used in this act the word "strike" shall mean the concerted failure to report for duty, the wilful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, or compensation, or the rights, privileges or obligations of employment. Nothing contained in this act shall be construed to limit, impair or affect the right of any public employee to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment.

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423.203 Public employee; persons in authority approving or consenting to strike prohibited; participating in submittal of grievance. [M.S.A. 17.455(3)]

Sec. 3. No person exercising any authority, supervision or direction over any public employee shall have the power to authorize, approve or consent to a strike by public employees, and such person shall not authorize, approve or consent to such strike, nor shall any such person discharge or cause any public employee to be discharged or separated from his or her employment because of participation in the submission of a grievance in accordance with the provisions of section 7.

423.206 Public employee; conduct deemed strike; proceeding to determine violation of act; time; decision, review. [M.S.A. 17.455(6)]

Sec. 6. Notwithstanding the provisions of any other law, any person holding such a position who, by concerted action with others, and without the lawful approval of his superior, wilfully absents himself from his position, or abstains in whole or in part from the full, faithful and proper performance of his duties for the purpose of inducing, influencing or coercing a change in the conditions or compensation, or the rights, privileges or obligations of employment shall be deemed to be on strike but the person, upon request, shall be entitled to a determination as to whether he did violate the provisions of this act. The request shall be filed in writing, with the officer or body having power to remove or discipline such employee, within 10 days after regular compensation of such employee has ceased or other discipline has been imposed. In the event of such request the officer or body shall within 10 days commence a proceeding for the determination of whether the provisions of this act have been violated by the public employee, in accordance with the law and regulations appropriate to a proceeding to remove the public employee. The proceedings shall be undertaken without unnecessary delay. The decision of the proceeding shall be made within 10 days. If the employee involved is held to have violated this law and his employment terminated or other discipline imposed, he shall have the right of review to the circuit court having jurisdiction of the parties, within 30 days from such decision, for determination whether such decision is supported by competent, material and substantial evidence on the whole record.

423.207 Mediation of grievances; petition, signing, filing; labor mediation board, powers and duties. [M.S.A. 17.455(7)]

Sec. 7. Upon the request of the collective bargaining representative defined in section 11, or if no representative has been designated or selected, upon the request of a majority of any given group of public employees evidenced by a petition signed by said majority and delivered to the labor mediation board, or upon request of any public employer of such employees, it shall be the duty of the labor mediation board to forthwith mediate the grievances set forth in said petition or notice, and for the purposes of mediating such grievances, the labor mediation board shall exercise the powers and authority conferred upon said board by sections 10 and 11 of Act No. 176 of the Public Acts of 1939.

423.209 Public employees forming or joining labor organizations; collective bargaining. [M.S.A. 17.455(9)]

Sec. 9. It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

423.210 Interference, coercion or discrimination by employer; refusal to bargain collectively. [M.S.A. 17.455(10)]

Sec. 10. It shall be unlawful for a public employer or an officer or agent of a public employer (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section 9; (b) to initiate, create, dominate, contribute to or interfere with the formation or administration of any labor organization: Provided, That a public employer shall not be prohibited from permitting employees to confer with it during work-

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ing hours without loss of time or pay; (c) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization; (d) to discriminate against a public employee because he has given testimony or instituted proceedings under this act; or (e) to refuse to bargain collectively with the representatives of its public employees, subject to the provisions of section 11.

423.211 Public employees; designation of bargaining representatives; grievances of individual employees. [M.S.A. 17.455(11)]

Sec. 11. 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 bargaining representative has been given opportunity to be present at such adjustment.

423.212 Petition; claim for recognition as collective bargaining agent; investigation; hearing; election; stipulation for consent election. [M.S.A. 17.455(12)]

Sec. 12. Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the board:

(a) By a public employee or group of public employees, or an individual or labor organization acting in their behalf, alleging that 30% or more of the public employees within a unit claimed to be appropriate for such purpose wish to be represented for collective bargaining and that their public employer declines to recognize their representative as the representative defined in section 11, or assert that the individual or labor organization, which has been certified or is being currently recognized by their public employer as the bargaining representative, is no longer a representative as defined in section 11; or

(b) By a public employer or his representative alleging that 1 or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 11;

The board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, shall provide an appropriate hearing after due notice. If the board finds upon the record of the hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules and regulations of the board.

423.213 Decision as to bargaining unit; fire-fighting personnel. [M.S.A. 17.455(13)]

Sec. 13. The board shall decide in each case, in order to insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining as provided in section 9e of Act No. 176 of the Public Acts of 1939: Provided, That in any fire department, or any department in whole or part engaged in, or having the responsibility of, fire fighting, no person subordinate to a fire commission, fire commissioner, safety director, or other similar administrative agency or administrator, shall be deemed to be a supervisor.

423.214 Elections; time of holding; eligibility and rules; effect of valid, existing collective bargaining unit. [M.S.A. 17.455(14)]

Sec. 14. An election shall not be directed in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid election has been held. The board shall determine who is eligible to vote in the election and shall establish rules govern-

ing the election. In an election involving more than 2 choices, where none of the choices on the ballot receives a majority vote, a runoff election shall be conducted between the 2 choices receiving the 2 largest numbers of valid votes cast in the election. No election shall be directed in any bargaining unit or subdivision thereof where there is in force and effect a valid collective bargaining agreement which was not prematurely extended and which is of fixed duration: Provided, however, No collective bargaining agreement shall bar an election upon the petition of persons not parties thereto where more than 3 years have elapsed since the agreement's execution or last timely renewal, whichever was later.

423.215 Collective bargaining; duties of employer and employees' representative; subjects and limitations. [M.S.A. 17.455(15)]

Sec. 15. A public employer shall bargain collectively with the representatives of its employees as defined in section 11 and is authorized to make and enter into collective bargaining agreements with such representatives. For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract, ordinance or resolution 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.

423.216 Unfair labor practices; remedies and procedure. [M.S.A. 17.455(16)]

Sec. 16. Violations of the provisions of section 10 shall be deemed to be unfair labor practices remediable by the labor mediation board in the following manner:

(a) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent designated by the board for such purposes, may issue and cause to be served upon the person a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agent, at a place therein fixed, not less than 5 days after the serving of the complaint. No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6 month period shall be computed from the day of his discharge. Any complaint may be amended by the member or agent conducting the hearing or the board, at any time prior to the issuance of an order based thereon. The person upon whom the complaint is served may file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member or agent conducting the hearing or the board, any other person may be allowed to intervene in the proceeding and to present testimony. Any proceeding shall be conducted in accordance with the provisions of section 5 of Act No. 197 of the Public Acts of 1952, as amended, being section 24.105 of the Compiled Laws of 1948.

(b) The testimony taken by the member, agent or the board shall be reduced to writing and filed with the board. Thereafter the board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the board is of the opinion that any person named in the complaint has engaged in or is engaging in the unfair labor practice, then it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. If upon the preponderance of the testimony taken the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint. No order of the board shall require the reinstatement of

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any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if the individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before examiners thereof, the member, or examiners shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board and become effective as prescribed in the order.

(c) Until the record in a case has been filed in a court, the board at any time, upon reasonable notice and in such manner as it deems proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

(d) The board may petition for the enforcement of the order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction of the proceeding and shall grant such temporary or permanent relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been urged before the board, its member or agent, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive. If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, its member or agent, the court may order the additional evidence to be taken before the board, its member or agent, and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the modifying or new findings, which findings with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the supreme court in accordance with the general court rules.

(e) Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeals by filing in the court a complaint praying that the order of the board be modified or set aside, with copy of the complaint filed on the board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the board. Upon the filing of the complaint, the court shall proceed in the same manner as in the case of an application by the board under subsection (e), and shall grant to the board such temporary relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the board. The findings of the board with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive.

(f) The commencement of proceedings under subsections (e) or (f) shall not, unless specifically ordered by the court, operate as a stay of the board's order.

(g) Complaints filed under this act shall be heard expeditiously by the court to which presented, and for good cause shown shall take precedence over all other civil matters except earlier matters of the same character.

(h) The board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any circuit court within any circuit where the unfair labor practice in question is alleged to have occurred or where such person resides or exercises or may exercise its governmental authority, for appropriate temporary relief or restraining order

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in accordance with the general court rules, and the court shall have jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

(i) For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it under this section, the provisions of section 11 shall be applicable, except that subpoenas may issue as provided in section 11 without regard to whether mediation shall have been undertaken.

(j) The labor relations and mediation functions of this act shall be separately administered by the board.

Repeals.

Section 2. Sections 4, 5 and 8 of Act No. 336 of the Public Acts of 1947, being sections 423.204, 423.205 and 423.208 of the Compiled Laws of 1948, are repealed.

This act is ordered to take immediate effect.
Approved July 23, 1965.

[No. 380.]

AN ACT to organize the executive and administrative agencies of state government; to establish principal departments and department heads; to define the powers and duties of the principal departments and their governing agents; to allocate executive and administrative powers, duties, functions, and services among the principal departments; to provide for a method for the gradual implementation of the provisions of this act and for the transfer of existing funds and appropriations of the principal departments herein created and established.

The People of the State of Michigan enact:

CHAPTER 1.

16.101 Executive organization act of 1965; short title. [M.S.A. 3.29(1)]

Sec. 1. This act shall be known and may be cited as the "Executive organization act of 1965."

16.102 Head of department; defined. [M.S.A. 3.29(2)]

Sec. 2. Whenever the term "head of the department" is used it shall mean the head of one of the principal departments created by this act.

16.103 Types of transfers; agencies not enumerated; continuation. [M.S.A. 3.29(3)]

Sec. 3. (a) Under this act, a type I transfer means the transferring intact of an existing department, board, commission or agency to a principal department established by this act. When any board, commission, or other agency is transferred to a principal department under a type I transfer, that board, commission or agency shall be administered under the supervision of that principal department. Any board, commission or other agency granted a type I transfer shall exercise its prescribed statutory powers, duties and functions of rule-making, licensing and registration including the prescription of rules, rates, regulations and standards, and adjudication independently of the head of the department. Under a type I transfer all budgeting, procurement and related management functions of any transferred board, agency or commission shall be performed under the direction and supervision of the head of the principal department.

(b) Under this act, a type II transfer means transferring of an existing department, board, commission or agency to a principal department established by this act. Any department, board, commission or agency assigned to a type II transfer under this act shall have all its statutory authority, powers, duties and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement, transferred to that principal department.

Attachment 2: 2012 PA 349

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SENATE SUBSTITUTE FOR

HOUSE BILL NO. 4003

A bill to amend 1947 PA 336, entitled

"An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; to require certain provisions in collective bargaining agreements; to prescribe means of enforcement and penalties for the violation of the provisions of this act; and to make appropriations,"

by amending sections 1, 9, 10, 14, and 15 (MCL 423.201, 423.209, 423.210, 423.214, and 423.215), sections 1 and 14 as amended by 2012 PA 76, section 10 as amended by 2012 PA 53, and section 15 as amended by 2012 PA 45.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) As used in this act:

2 (a) "Bargaining representative" means a labor organization

3 recognized by an employer or certified by the commission as the

4 sole and exclusive bargaining representative of certain employees

5 of the employer.

1 (b) "Commission" means the employment relations commission
2 created in section 3 of 1939 PA 176, MCL 423.3.
3 (c) "Intermediate school district" means that term as defined
4 in section 4 of the revised school code, 1976 PA 451, MCL 380.4.
5 (d) "Lockout" means the temporary withholding of work from a
6 group of employees by ~~means of~~ shutting down the operation of the
7 employer ~~in order~~ to bring pressure upon the affected employees or
8 the bargaining representative, or both, to accept the employer's
9 terms of settlement of a labor dispute.
10 (e) "Public employee" means a person holding a position by
11 appointment or employment in the government of this state, in the
12 government of 1 or more of the political subdivisions of this
13 state, in the public school service, in a public or special
14 district, in the service of an authority, commission, or board, or
15 in any other branch of the public service, subject to the following
16 exceptions:
17 (*i*) A person employed by a private organization or entity who
18 provides services under a time-limited contract with this state or
19 a political subdivision of this state or who receives a direct or
20 indirect government subsidy in his or her private employment is not
21 an employee of this state or that political subdivision, and is not
22 a public employee. This provision shall not be superseded by any
23 interlocal agreement, memorandum of understanding, memorandum of
24 commitment, or other document similar to these.
25 (*ii*) If, by April 9, 2000, a public school employer that is the
26 chief executive officer serving in a school district of the first
27 class under part 5A of the revised school code, 1976 PA 451, MCL

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1 380.371 to 380.376, issues an order determining that it is in the
2 best interests of the school district, then a public school
3 administrator employed by that school district is not a public
4 employee for purposes of this act. The exception under this
5 subparagraph applies to public school administrators employed by
6 that school district after the date of the order described in this
7 subparagraph whether or not the chief executive officer remains in
8 place in the school district. This exception does not prohibit the
9 chief executive officer or board of a school district of the first
10 class or its designee from having informal meetings with public
11 school administrators to discuss wages and working conditions.
12 (*iii*) An individual serving as a graduate student research
13 assistant or in an equivalent position and any individual whose
14 position does not have sufficient indicia of an employer-employee
15 relationship using the 20-factor test announced by the internal
16 revenue service of the United States department of treasury in
17 revenue ruling 87-41, 1987-1 C.B. 296 is not a public employee
18 entitled to representation or collective bargaining rights under
19 this act.
20 (f) "Public school academy" means a public school academy or
21 strict discipline academy organized under the revised school code,
22 1976 PA 451, MCL 380.1 to 380.1852.
23 (g) "Public school administrator" means a superintendent,
24 assistant superintendent, chief business official, principal, or
25 assistant principal employed by a school district, intermediate
26 school district, or public school academy.
27 (h) "Public school employer" means a public employer that is

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1 the board of a school district, intermediate school district, or
2 public school academy; is the chief executive officer of a school
3 district in which a school reform board is in place under part 5A
4 of the revised school code, 1976 PA 451, MCL 380.371 to 380.376; or
5 is the governing board of a joint endeavor or consortium consisting
6 of any combination of school districts, intermediate school
7 districts, or public school academies.

8 (i) "School district" means that term as defined in section 6
9 of the revised school code, 1976 PA 451, MCL 380.6, or a local act
10 school district as defined in section 5 of the revised school code,
11 1976 PA 451, MCL 380.5.

12 (j) "Strike" means the concerted failure to report for duty,
13 the willful absence from one's position, the stoppage of work, or
14 the abstinence in whole or in part from the full, faithful, and
15 proper performance of the duties of employment for the purpose of
16 inducing, influencing, or coercing a change in employment
17 conditions, compensation, or the rights, privileges, or obligations
18 of employment. For employees of a public school employer, strike
19 also includes an action described in this subdivision that is taken
20 for the purpose of protesting or responding to an act alleged or
21 determined to be an unfair labor practice committed by the public
22 school employer.

23 (2) This act does not limit, impair, or affect the right of a
24 public employee to the expression or communication of a view,
25 grievance, complaint, or opinion on any matter related to the
26 conditions or compensation of public employment or their betterment
27 as long as the expression or communication does not interfere with

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1 the full, faithful, and proper performance of the duties of
2 employment.
3 Sec. 9. (1) ~~It shall be lawful for public employees to~~
4 ~~organize~~ **PUBLIC EMPLOYEES MAY DO ANY OF THE FOLLOWING:**
5 **(A) ORGANIZE** together or ~~to~~ form, join, or assist in labor
6 organizations; ~~, to~~ engage in lawful concerted activities for the
7 purpose of collective negotiation or bargaining or other mutual aid
8 and protection; ~~,~~ or ~~to~~ negotiate or bargain collectively with
9 their public employers through representatives of their own free
10 choice.
11 **(B) REFRAIN FROM ANY OR ALL OF THE ACTIVITIES IDENTIFIED IN**
12 **SUBDIVISION (A).**
13 **(2) NO PERSON SHALL BY FORCE, INTIMIDATION, OR UNLAWFUL**
14 **THREATS COMPEL OR ATTEMPT TO COMPEL ANY PUBLIC EMPLOYEE TO DO ANY**
15 **OF THE FOLLOWING:**
16 **(A) BECOME OR REMAIN A MEMBER OF A LABOR ORGANIZATION OR**
17 **BARGAINING REPRESENTATIVE OR OTHERWISE AFFILIATE WITH OR**
18 **FINANCIALLY SUPPORT A LABOR ORGANIZATION OR BARGAINING**
19 **REPRESENTATIVE.**
20 **(B) REFRAIN FROM ENGAGING IN EMPLOYMENT OR REFRAIN FROM**
21 **JOINING A LABOR ORGANIZATION OR BARGAINING REPRESENTATIVE OR**
22 **OTHERWISE AFFILIATING WITH OR FINANCIALLY SUPPORTING A LABOR**
23 **ORGANIZATION OR BARGAINING REPRESENTATIVE.**
24 **(C) PAY TO ANY CHARITABLE ORGANIZATION OR THIRD PARTY AN**
25 **AMOUNT THAT IS IN LIEU OF, EQUIVALENT TO, OR ANY PORTION OF DUES,**
26 **FEES, ASSESSMENTS, OR OTHER CHARGES OR EXPENSES REQUIRED OF MEMBERS**
27 **OF OR PUBLIC EMPLOYEES REPRESENTED BY A LABOR ORGANIZATION OR**

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1 **BARGAINING REPRESENTATIVE.**

2 **(3) A PERSON WHO VIOLATES SUBSECTION (2) IS LIABLE FOR A CIVIL**
3 **FINE OF NOT MORE THAN $500.00. A CIVIL FINE RECOVERED UNDER THIS**
4 **SECTION SHALL BE SUBMITTED TO THE STATE TREASURER FOR DEPOSIT IN**
5 **THE GENERAL FUND OF THIS STATE.**

6 Sec. 10. (1) A public employer or an officer or agent of a
7 public employer shall not do any of the following:

8 (a) Interfere with, restrain, or coerce public employees in
9 the exercise of their rights guaranteed in section 9.

10 (b) Initiate, create, dominate, contribute to, or interfere
11 with the formation or administration of any labor organization. A
12 public school employer's use of public school resources to assist a
13 labor organization in collecting dues or service fees from wages of
14 public school employees is a prohibited contribution to the
15 administration of a labor organization. However, a public school
16 employer's collection of dues or service fees pursuant to a
17 collective bargaining agreement that is in effect on ~~the effective~~
18 ~~date of the amendatory act that added this sentence~~ **MARCH 16, 2012**
19 is not prohibited until the agreement expires or is terminated,
20 extended, or renewed. A public employer may permit employees to
21 confer with a labor organization during working hours without loss
22 of time or pay.

23 (c) Discriminate in regard to hire, terms, or other conditions
24 of employment to encourage or discourage membership in a labor
25 organization. ~~However, this act or any other law of this state does~~
26 ~~not preclude a public employer from making an agreement with an~~
27 ~~exclusive bargaining representative as described in section 11 to~~

1 ~~require as a condition of employment that all employees in the~~
2 ~~bargaining unit pay to the exclusive bargaining representative a~~
3 ~~service fee equivalent to the amount of dues uniformly required of~~
4 ~~members of the exclusive bargaining representative.~~
5 (d) Discriminate against a public employee because he or she
6 has given testimony or instituted proceedings under this act.
7 (e) Refuse to bargain collectively with the representatives of
8 its public employees, subject to the provisions of section 11.
9 ~~(2) It is the purpose of 1973 PA 25 to reaffirm the continuing~~
10 ~~public policy of this state that the stability and effectiveness of~~
11 ~~labor relations in the public sector require, if the requirement is~~
12 ~~negotiated with the public employer, that all employees in the~~
13 ~~bargaining unit shall share fairly in the financial support of~~
14 ~~their exclusive bargaining representative by paying to the~~
15 ~~exclusive bargaining representative a service fee that may be~~
16 ~~equivalent to the amount of dues uniformly required of members of~~
17 ~~the exclusive bargaining representative.~~
18 (2) ~~(3)~~ A labor organization or its agents shall not do any of
19 the following:
20 (a) Restrain or coerce public employees in the exercise of the
21 rights guaranteed in section 9. This subdivision does not impair
22 the right of a labor organization to prescribe its own rules with
23 respect to the acquisition or retention of membership.
24 (b) Restrain or coerce a public employer in the selection of
25 its representatives for the purposes of collective bargaining or
26 the adjustment of grievances.
27 (c) Cause or attempt to cause a public employer to

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1 discriminate against a public employee in violation of subsection
2 (1)(c).
3 (d) Refuse to bargain collectively with a public employer,
4 provided it is the representative of the public employer's
5 employees subject to section 11.
6 **(3) EXCEPT AS PROVIDED IN SUBSECTION (4), AN INDIVIDUAL SHALL**
7 **NOT BE REQUIRED AS A CONDITION OF OBTAINING OR CONTINUING PUBLIC**
8 **EMPLOYMENT TO DO ANY OF THE FOLLOWING:**
9 **(A) REFRAIN OR RESIGN FROM MEMBERSHIP IN, VOLUNTARY**
10 **AFFILIATION WITH, OR VOLUNTARY FINANCIAL SUPPORT OF A LABOR**
11 **ORGANIZATION OR BARGAINING REPRESENTATIVE.**
12 **(B) BECOME OR REMAIN A MEMBER OF A LABOR ORGANIZATION OR**
13 **BARGAINING REPRESENTATIVE.**
14 **(C) PAY ANY DUES, FEES, ASSESSMENTS, OR OTHER CHARGES OR**
15 **EXPENSES OF ANY KIND OR AMOUNT, OR PROVIDE ANYTHING OF VALUE TO A**
16 **LABOR ORGANIZATION OR BARGAINING REPRESENTATIVE.**
17 **(D) PAY TO ANY CHARITABLE ORGANIZATION OR THIRD PARTY ANY**
18 **AMOUNT THAT IS IN LIEU OF, EQUIVALENT TO, OR ANY PORTION OF DUES,**
19 **FEES, ASSESSMENTS, OR OTHER CHARGES OR EXPENSES REQUIRED OF MEMBERS**
20 **OF OR PUBLIC EMPLOYEES REPRESENTED BY A LABOR ORGANIZATION OR**
21 **BARGAINING REPRESENTATIVE.**
22 **(4) THE APPLICATION OF SUBSECTION (3) IS SUBJECT TO THE**
23 **FOLLOWING:**
24 **(A) SUBSECTION (3) DOES NOT APPLY TO ANY OF THE FOLLOWING:**
25 **(*i*) A PUBLIC POLICE OR FIRE DEPARTMENT EMPLOYEE OR ANY PERSON**
26 **WHO SEEKS TO BECOME EMPLOYED AS A PUBLIC POLICE OR FIRE DEPARTMENT**
27 **EMPLOYEE AS THAT TERM IS DEFINED UNDER SECTION 2 OF 1969 PA 312,**

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1 MCL 423.232.

2 (*ii*) A STATE POLICE TROOPER OR SERGEANT WHO IS GRANTED RIGHTS
3 UNDER SECTION 5 OF ARTICLE XI OF THE STATE CONSTITUTION OF 1963 OR
4 ANY INDIVIDUAL WHO SEEKS TO BECOME EMPLOYED AS A STATE POLICE
5 TROOPER OR SERGEANT.

6 (B) ANY PERSON DESCRIBED IN SUBDIVISION (A), OR A LABOR
7 ORGANIZATION OR BARGAINING REPRESENTATIVE REPRESENTING PERSONS
8 DESCRIBED IN SUBDIVISION (A) AND A PUBLIC EMPLOYER OR THIS STATE
9 MAY AGREE THAT ALL EMPLOYEES IN THE BARGAINING UNIT SHALL SHARE
10 FAIRLY IN THE FINANCIAL SUPPORT OF THE LABOR ORGANIZATION OR THEIR
11 EXCLUSIVE BARGAINING REPRESENTATIVE BY PAYING A FEE TO THE LABOR
12 ORGANIZATION OR EXCLUSIVE BARGAINING REPRESENTATIVE THAT MAY BE
13 EQUIVALENT TO THE AMOUNT OF DUES UNIFORMLY REQUIRED OF MEMBERS OF
14 THE LABOR ORGANIZATION OR EXCLUSIVE BARGAINING REPRESENTATIVE.
15 SECTION 9(2) SHALL NOT BE CONSTRUED TO INTERFERE WITH THE RIGHT OF
16 A PUBLIC EMPLOYER OR THIS STATE AND A LABOR ORGANIZATION OR
17 BARGAINING REPRESENTATIVE TO ENTER INTO OR LAWFULLY ADMINISTER SUCH
18 AN AGREEMENT AS IT RELATES TO THE EMPLOYEES OR PERSONS DESCRIBED IN
19 SUBDIVISION (A).

20 (C) IF ANY OF THE EXCLUSIONS IN SUBDIVISION (A)(*i*) OR (*ii*) ARE
21 FOUND TO BE INVALID BY A COURT, THE FOLLOWING APPLY:

22 (*i*) THE INDIVIDUALS DESCRIBED IN THE EXCLUSION FOUND TO BE
23 INVALID SHALL NO LONGER BE EXCEPTED FROM THE APPLICATION OF
24 SUBSECTION (3).

25 (*ii*) SUBDIVISION (B) DOES NOT APPLY TO INDIVIDUALS DESCRIBED IN
26 THE INVALID EXCLUSION.

27 (5) AN AGREEMENT, CONTRACT, UNDERSTANDING, OR PRACTICE BETWEEN

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1 OR INVOLVING A PUBLIC EMPLOYER, LABOR ORGANIZATION, OR BARGAINING
2 REPRESENTATIVE THAT VIOLATES SUBSECTION (3) IS UNLAWFUL AND
3 UNENFORCEABLE. THIS SUBSECTION APPLIES ONLY TO AN AGREEMENT,
4 CONTRACT, UNDERSTANDING, OR PRACTICE THAT TAKES EFFECT OR IS
5 EXTENDED OR RENEWED AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
6 THAT ADDED THIS SUBSECTION.
7 (6) THE COURT OF APPEALS HAS EXCLUSIVE ORIGINAL JURISDICTION
8 OVER ANY ACTION CHALLENGING THE VALIDITY OF SUBSECTION (3), (4), OR
9 (5). THE COURT OF APPEALS SHALL HEAR THE ACTION IN AN EXPEDITED
10 MANNER.
11 (7) FOR FISCAL YEAR 2012-2013, $1,000,000.00 IS APPROPRIATED
12 TO THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS TO BE
13 EXPENDED TO DO ALL OF THE FOLLOWING REGARDING THE AMENDATORY ACT
14 THAT ADDED THIS SUBSECTION:
15 (A) RESPOND TO PUBLIC INQUIRIES REGARDING THE AMENDATORY ACT.
16 (B) PROVIDE THE COMMISSION WITH SUFFICIENT STAFF AND OTHER
17 RESOURCES TO IMPLEMENT THE AMENDATORY ACT.
18 (C) INFORM PUBLIC EMPLOYERS, PUBLIC EMPLOYEES, AND LABOR
19 ORGANIZATIONS CONCERNING THEIR RIGHTS AND RESPONSIBILITIES UNDER
20 THE AMENDATORY ACT.
21 (D) ANY OTHER PURPOSES THAT THE DIRECTOR OF THE DEPARTMENT OF
22 LICENSING AND REGULATORY AFFAIRS DETERMINES IN HIS OR HER
23 DISCRETION ARE NECESSARY TO IMPLEMENT THE AMENDATORY ACT.
24 (8) A PERSON, PUBLIC EMPLOYER, OR LABOR ORGANIZATION THAT
25 VIOLATES SUBSECTION (3) IS LIABLE FOR A CIVIL FINE OF NOT MORE THAN
26 $500.00. A CIVIL FINE RECOVERED UNDER THIS SECTION SHALL BE
27 SUBMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE GENERAL FUND OF

1 **THIS STATE.**

2 (9) ~~(4)~~ By March 1 of each year, each exclusive bargaining

3 representative that represents public employees in this state shall

4 file with the commission an independent audit of all expenditures

5 attributed to the costs of collective bargaining, contract

6 administration, and grievance adjustment during the prior calendar

7 year. The commission shall make the audits available to the public

8 on the commission's website. For fiscal year 2011-2012, $100,000.00

9 is appropriated to the commission for the costs of implementing

10 this subsection.

11 **(10) EXCEPT FOR ACTIONS REQUIRED TO BE BROUGHT UNDER**

12 **SUBSECTION (6), A PERSON WHO SUFFERS AN INJURY AS A RESULT OF A**

13 **VIOLATION OR THREATENED VIOLATION OF SUBSECTION (3) MAY BRING A**

14 **CIVIL ACTION FOR DAMAGES, INJUNCTIVE RELIEF, OR BOTH. IN ADDITION,**

15 **A COURT SHALL AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO A**

16 **PLAINTIFF WHO PREVAILS IN AN ACTION BROUGHT UNDER THIS SUBSECTION.**

17 **REMEDIES PROVIDED IN THIS SUBSECTION ARE INDEPENDENT OF AND IN**

18 **ADDITION TO OTHER PENALTIES AND REMEDIES PRESCRIBED BY THIS ACT.**

19 Sec. 14. (1) An election shall not be directed in any

20 bargaining unit or any subdivision within which, in the preceding

21 12-month period, a valid election was held. The commission shall

22 determine who is eligible to vote in the election and shall

23 promulgate rules governing the election. In an election involving

24 more than 2 choices, if none of the choices on the ballot receives

25 a majority vote, a runoff election shall be conducted between the 2

26 choices receiving the 2 largest numbers of valid votes cast in the

27 election. An election shall not be directed in any bargaining unit

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1 or subdivision ~~thereof where~~ **OF ANY BARGAINING UNIT IF** there is in
2 force and effect a valid collective bargaining agreement that was
3 not prematurely extended and that is of fixed duration. A
4 collective bargaining agreement does not bar an election upon the
5 petition of persons not parties ~~thereto~~ **TO THE COLLECTIVE**
6 **BARGAINING AGREEMENT** if more than 3 years have elapsed since the
7 agreement's execution or last timely renewal, whichever was later.
8 (2) An election shall not be directed for, and the commission
9 or a public employer shall not recognize, a bargaining unit of a
10 public employer consisting of individuals who are not public
11 employees. A bargaining unit that is formed or recognized in
12 violation of this subsection is invalid and void.
13 Sec. 15. (1) A public employer shall bargain collectively with
14 the representatives of its employees as described in section 11 and
15 may make and enter into collective bargaining agreements with those
16 representatives. Except as otherwise provided in this section, for
17 the purposes of this section, to bargain collectively is to perform
18 the mutual obligation of the employer and the representative of the
19 employees to meet at reasonable times and confer in good faith with
20 respect to wages, hours, and other terms and conditions of
21 employment, or to negotiate an agreement, or any question arising
22 under the agreement, and to execute a written contract, ordinance,
23 or resolution incorporating any agreement reached if requested by
24 either party, but this obligation does not compel either party to
25 agree to a proposal or make a concession.
26 (2) A public school employer has the responsibility,
27 authority, and right to manage and direct on behalf of the public

1 the operations and activities of the public schools under its
2 control.
3 (3) Collective bargaining between a public school employer and
4 a bargaining representative of its employees shall not include any
5 of the following subjects:
6 (a) Who is or will be the policyholder of an employee group
7 insurance benefit. This subdivision does not affect the duty to
8 bargain with respect to types and levels of benefits and coverages
9 for employee group insurance. A change or proposed change in a type
10 or to a level of benefit, policy specification, or coverage for
11 employee group insurance shall be bargained by the public school
12 employer and the bargaining representative before the change may
13 take effect.
14 (b) Establishment of the starting day for the school year and
15 of the amount of pupil contact time required to receive full state
16 school aid under section 1284 of the revised school code, 1976 PA
17 451, MCL 380.1284, and under section 101 of the state school aid
18 act of 1979, 1979 PA 94, MCL 388.1701.
19 (c) The composition of school improvement committees
20 established under section 1277 of the revised school code, 1976 PA
21 451, MCL 380.1277.
22 (d) The decision of whether or not to provide or allow
23 interdistrict or intradistrict open enrollment opportunity in a
24 school district or the selection of grade levels or schools in
25 which to allow an open enrollment opportunity.
26 (e) The decision of whether or not to act as an authorizing
27 body to grant a contract to organize and operate 1 or more public

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1 school academies under the revised school code, 1976 PA 451, MCL
2 380.1 to 380.1852.
3 (f) The decision of whether or not to contract with a third
4 party for 1 or more noninstructional support services; or the
5 procedures for obtaining the contract for noninstructional support
6 services other than bidding described in this subdivision; or the
7 identity of the third party; or the impact of the contract for
8 noninstructional support services on individual employees or the
9 bargaining unit. However, this subdivision applies only if the
10 bargaining unit that is providing the noninstructional support
11 services is given an opportunity to bid on the contract for the
12 noninstructional support services on an equal basis as other
13 bidders.
14 (g) The use of volunteers in providing services at its
15 schools.
16 (h) Decisions concerning use and staffing of experimental or
17 pilot programs and decisions concerning use of technology to
18 deliver educational programs and services and staffing to provide
19 that technology, or the impact of those decisions on individual
20 employees or the bargaining unit.
21 (i) Any compensation or additional work assignment intended to
22 reimburse an employee for or allow an employee to recover any
23 monetary penalty imposed under this act.
24 (j) Any decision made by the public school employer regarding
25 teacher placement, or the impact of that decision on an individual
26 employee or the bargaining unit.
27 (k) Decisions about the development, content, standards,

1 procedures, adoption, and implementation of the public school
2 employer's policies regarding personnel decisions when conducting a
3 staffing or program reduction or any other personnel determination
4 resulting in the elimination of a position, when conducting a
5 recall from a staffing or program reduction or any other personnel
6 determination resulting in the elimination of a position, or in
7 hiring after a staffing or program reduction or any other personnel
8 determination resulting in the elimination of a position, as
9 provided under section 1248 of the revised school code, 1976 PA
10 451, MCL 380.1248, any decision made by the public school employer
11 pursuant to those policies, or the impact of those decisions on an
12 individual employee or the bargaining unit.
13 (*l*) Decisions about the development, content, standards,
14 procedures, adoption, and implementation of a public school
15 employer's performance evaluation system adopted under section 1249
16 of the revised school code, 1976 PA 451, MCL 380.1249, or under
17 1937 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions concerning the
18 content of a performance evaluation of an employee under those
19 provisions of law, or the impact of those decisions on an
20 individual employee or the bargaining unit.
21 (m) For public employees whose employment is regulated by 1937
22 (Ex Sess) PA 4, MCL 38.71 to 38.191, decisions about the
23 development, content, standards, procedures, adoption, and
24 implementation of a policy regarding discharge or discipline of an
25 employee, decisions concerning the discharge or discipline of an
26 individual employee, or the impact of those decisions on an
27 individual employee or the bargaining unit. For public employees

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1 whose employment is regulated by 1937 (Ex Sess) PA 4, MCL 38.71 to
2 38.191, a public school employer shall not adopt, implement, or
3 maintain a policy for discharge or discipline of an employee that
4 includes a standard for discharge or discipline that is different
5 than the arbitrary and capricious standard provided under section 1
6 of article IV of 1937 (Ex Sess) PA 4, MCL 38.101.
7 (n) Decisions about the format, timing, or number of classroom
8 observations conducted for the purposes of section 3a of article II
9 of 1937 (Ex Sess) PA 4, MCL 38.83a, decisions concerning the
10 classroom observation of an individual employee, or the impact of
11 those decisions on an individual employee or the bargaining unit.
12 (o) Decisions about the development, content, standards,
13 procedures, adoption, and implementation of the method of
14 compensation required under section 1250 of the revised school
15 code, 1976 PA 451, MCL 380.1250, decisions about how an employee
16 performance evaluation is used to determine performance-based
17 compensation under section 1250 of the revised school code, 1976 PA
18 451, MCL 380.1250, decisions concerning the performance-based
19 compensation of an individual employee, or the impact of those
20 decisions on an individual employee or the bargaining unit.
21 (p) Decisions about the development, format, content, and
22 procedures of the notification to parents and legal guardians
23 required under section 1249a of the revised school code, 1976 PA
24 451, MCL 380.1249a.
25 **(Q) ANY REQUIREMENT THAT WOULD VIOLATE SECTION 10(3).**
26 (4) Except as otherwise provided in subsection (3)(f), the
27 matters described in subsection (3) are prohibited subjects of

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1 bargaining between a public school employer and a bargaining
2 representative of its employees, and, for the purposes of this act,
3 are within the sole authority of the public school employer to
4 decide.
5 (5) If a public school is placed in the state school
6 reform/redesign school district or is placed under a chief
7 executive officer under section 1280c of the revised school code,
8 1976 PA 451, MCL 380.1280c, then, for the purposes of collective
9 bargaining under this act, the state school reform/redesign officer
10 or the chief executive officer, as applicable, is the public school
11 employer of the public school employees of that public school for
12 as long as the public school is part of the state school
13 reform/redesign school district or operated by the chief executive
14 officer.
15 (6) A public school employer's collective bargaining duty
16 under this act and a collective bargaining agreement entered into
17 by a public school employer under this act are subject to all of
18 the following:
19 (a) Any effect on collective bargaining and any modification
20 of a collective bargaining agreement occurring under section 1280c
21 of the revised school code, 1976 PA 451, MCL 380.1280c.
22 (b) For a public school in which the superintendent of public
23 instruction implements 1 of the 4 school intervention models
24 described in section 1280c of the revised school code, 1976 PA 451,
25 MCL 380.1280c, if the school intervention model that is implemented
26 affects collective bargaining or requires modification of a
27 collective bargaining agreement, any effect on collective

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1 bargaining and any modification of a collective bargaining
2 agreement under that school intervention model.
3 (7) Each collective bargaining agreement entered into between
4 a public employer and public employees under this act after March
5 16, 2011 shall include a provision that allows an emergency manager
6 appointed under the local government and school district fiscal
7 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, to reject,
8 modify, or terminate the collective bargaining agreement as
9 provided in the local government and school district fiscal
10 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531. Provisions
11 required by this subsection are prohibited subjects of bargaining
12 under this act.
13 (8) Collective bargaining agreements under this act may be
14 rejected, modified, or terminated pursuant to the local government
15 and school district fiscal accountability act, 2011 PA 4, MCL
16 141.1501 to 141.1531. This act does not confer a right to bargain
17 that would infringe on the exercise of powers under the local
18 government and school district fiscal accountability act, 2011 PA
19 4, MCL 141.1501 to 141.1531.
20 (9) A unit of local government that enters into a consent
21 agreement under the local government and school district fiscal
22 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531, is not
23 subject to subsection (1) for the term of the consent agreement, as
24 provided in the local government and school district fiscal
25 accountability act, 2011 PA 4, MCL 141.1501 to 141.1531.
26 (10) If the charter of a city, village, or township with a
27 population of 500,000 or more requires and specifies the method of

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1 selection of a retirant member of the municipality's fire
2 department, police department, or fire and police department
3 pension or retirement board, the inclusion of the retirant member
4 on the board and the method of selection of that retirant member
5 are prohibited subjects of collective bargaining, and any provision
6 in a collective bargaining agreement that purports to modify that
7 charter requirement is void and of no effect.

8 (11) The following are prohibited subjects of bargaining and
9 are at the sole discretion of the public employer:

10 (a) A decision as to whether or not the public employer will
11 enter into an intergovernmental agreement to consolidate 1 or more
12 functions or services, to jointly perform 1 or more functions or
13 services, or to otherwise collaborate regarding 1 or more functions
14 or services.

15 (b) The procedures for obtaining a contract for the transfer
16 of functions or responsibilities under an agreement described in
17 subdivision (a).

18 (c) The identities of any other parties to an agreement
19 described in subdivision (a).

20 (12) Nothing in subsection (11) relieves a public employer of
21 any duty established by law to collectively bargain with its
22 employees as to the effect of a contract described in subsection
23 (11)(a) on its employees.

24 Enacting section 1. If any part or parts of this act are found
25 to be in conflict with the state constitution of 1963, the United
26 States constitution, or federal law, this act shall be implemented
27 to the maximum extent that the state constitution of 1963, the

1 United States constitution, and federal law permit. Any provision
2 held invalid or inoperative shall be severable from the remaining
3 portions of this act.

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Attachment 3: Wagner Act (1935)

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of the United States of Mexico. In the event that such lands are so determined to be lands subject to the jurisdiction of the United States of Mexico and that as a result of such determination the owners or their assignees lose their title thereto and the lease is canceled, the United States shall pay to the owners or their assignees the fair value of the building at the completion of its construction (but not in excess of the actual cost of construction), less an amount equal to one-third of 1 per centum of such cost or value for each month that the lease was in effect prior to such determination.

Payment to owners.

Deduction.

SEC. 2. There is authorized to be appropriated such amounts as may be necessary to pay the installments of rent provided for in such lease."

Appropriation authorized.

Approved, July 3, 1935.

[CHAPTER 372.]

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

July 5, 1935.
[S. 1958.]
[Public, No. 198.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

National Labor Relations Act.
Findings and policy.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers

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of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Definitions.

DEFINITIONS

SEC. 2. When used in this Act—

"Person."

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

"Employer."

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

"Employee."

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

"Representatives."

(4) The term "representatives" includes any individual or labor organization.

"Labor organization."

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"Commerce."

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"Affecting commerce."

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

"Unfair labor practice."

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

"Labor dispute."

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

"National Labor Relations Board."

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

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(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133[1] approved June 14, 1935.

"Old Board."
Executive Order 6763.
Vol. 48, p. 1183.
Executive Order 7074.
Vol. 48, p. 195.
Ante, p. 375.

NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board.

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

Composition; appointment.
Post, p. 1177.
Terms of office.
Chairman.
Removals.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

Quorum, seal, etc.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

Annual report.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

Salaries.
Post, p. 1112.
Appointment of personnel.
Vol. 46, p. 1003; U. S. C., p. 85.
Attorneys, regional directors, etc.
Agencies available.
Appointment of mediators; restriction.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease

Old Board abolished.

[1] So in original.

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Transfer of employees, records, etc.

to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

Expense allowances.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

Principal office.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

Prosecution of inquiries.

Administrative rules.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

Rights of employees specified.

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Unfair labor practices.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

Vol. 48, p. 195; *Ante*, p. 375.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

Representatives and elections.

Majority rule principle in collective bargaining, etc.

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the 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: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

Proviso.
Individual right to present grievances.

Standards for appropriate bargaining, etc.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

Representatives of employees.
Method for selecting, etc.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertin[1] such representatives.

Hearings.

Board orders based on foregoing results.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

Enforcement or review.

PREVENTION OF UNFAIR LABOR PRACTICES

Prevention of unfair labor practices, affecting commerce.
Authority of Board.

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

Complaints; filing.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing

Service of charges.

Notice of hearing.

Amendment of complaint.

[1] So in original.

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or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

Appearance and answer of accused.

Prevailing rules of evidence; effect of.

Preservation of testimony.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

Cease and desist orders.

Reports of compliance; requirement.

Dismissal of complaint.

Modification, etc., of order.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

Enforcement.

Board authorized to petition any circuit court of appeals.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such addi-

Temporary restraining order provided.

Papers to be filed.

Notice; jurisdiction and powers of court.

Objections; consideration of.

Findings conclusive of facts.

Additional evidence.

tional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

Modification by Board.

Jurisdiction of court. Decree final; review allowed.

U. S. C., p. 1271.

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

Application to set aside orders.

Procedure, etc.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

Board's order not stayed by commencement of proceedings.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

Jurisdiction of equity courts not impaired.

Vol. 47, p. 70. U. S. C., p. 1326.

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

Expeditious hearings.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

Investigatory powers.

Ante, p. 453.

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated

Examinations, securing evidence, etc.

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or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

Subpena powers.

Administration of oaths, etc.

Witnesses, etc.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

Contumacy or refusal to obey subpena. Punishment for.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Privilege of witnesses.

Personal immunity.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Service of orders, etc.

Witness fees, etc.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

Venue provisions.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

Government agencies to assist.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or

Protection of Board members, etc.

agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

Limitations.

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

Right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

Conflicts with other Acts.
National Recovery Act.
Vol. 48, p. 198; U. S. C., p. 584.
Ante, p. 375.
Bankruptcy Act, amendments.
Vol. 48, p. 922.
National industrial labor boards.
Vol. 48, p. 1183.
Proviso.
Validity provision.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Separability clause.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Title.

Approved, July 5, 1935.

[CHAPTER 373.]

AN ACT

To incorporate The American National Theater and Academy.

July 5, 1935.
[S. 2842.]
[Public, No. 199.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Leopold Stokowski, of Philadelphia, Pennsylvania; Evelyn Price (Mrs. Eli Kirk Price), of Philadelphia, Pennsylvania; George W. Norris, of Philadelphia, Pennsylvania; Samuel S. Fleischer, of Philadelphia, Pennsylvania; Amory Hare Hutchinson, of Philadelphia, Pennsylvania; Ellen D. Cleveland (Mrs. Richard F. Cleveland), of Baltimore, Maryland; Otto T. Mallory, of Philadelphia, Pennsylvania; Roland S. Morris, of Philadelphia, Pennsylvania; Mrs. George H. Lorimer, of Philadelphia, Pennsylvania; Hugh Hampton Young, of Baltimore, Maryland; Richard F. Cleveland, of Baltimore, Maryland; J. Howard Reber, of Philadelphia, Pennsylvania; Mary Stewart French, of Philadelphia, Pennsylvania; Clara R. Mason, of Philadelphia, Pennsylvania; Katharine Dexter McCormick (Mrs. Stanley McCormick), of Chicago, Illinois; Evangeline Stokowski (Mrs. Leopold Stokowski), of New York, New York; Elsie Jenkins Symington (Mrs. Donald Symington), of Baltimore, Maryland; B. Howell Griswold, of Baltimore, Maryland; Ann Morgan, of New York, New York; John Hay Whitney, of New York, New York; Otto H. Kahn, of New York, New York; Harriet Barnes Pratt (Mrs. Harold I. Pratt), of New York, New York; Mrs. W. Murray Crane, of New York, New York; A. Conger Goodyear, of New York, New York; Alice Garrett (Mrs. John W. Garrett), of Baltimore, Maryland; John W. Garrett, of Baltimore, Maryland;

The American National Theater and Academy.
Incorporators.

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Attachment 4: Taft-Hartley Act (1947)

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[CHAPTER 114]

June 21, 1947
[H. R. 1874]
[Public Law 100]

AN ACT

To amend the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes", approved July 11, 1916, as amended and supplemented, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (d) of section 4 of the Federal-Aid Highway Act of 1944, Public Law 521, Seventy-eighth Congress, approved December 20, 1944, is hereby amended by striking out the term "one year" where it appears in said paragraph and inserting in lieu thereof the term "two years".

58 Stat. 840.

Approved June 21, 1947.

[CHAPTER 120]

June 23, 1947
[H. R. 3020]
[Public Law 101]

AN ACT

To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND DECLARATION OF POLICY

SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947".

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

49 Stat. 449.
29 U. S. C. §§ 151-166.

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

"FINDINGS AND POLICIES

"SECTION 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the

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current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

Policy of the United States.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

"DEFINITIONS

Post, p. 161.

"SEC. 2. When used in this Act—

"(1) The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

"(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

44 Stat. 577.
45 U. S. C. §§ 151-163, 181-188.

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not

obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

44 Stat. 577. 45 U. S. C. §§ 151-163, 181-188.

"(4) The term 'representatives' includes any individual or labor organization.

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

"(8) The term 'unfair labor practice' means any unfair labor practice listed in section 8.

Post, p. 140.

"(9) The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

"(10) The term 'National Labor Relations Board' means the National Labor Relations Board provided for in section 3 of this Act.

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly 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.

"(12) The term 'professional employee' means—

"(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

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"(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

"(13) In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

"NATIONAL LABOR RELATIONS BOARD

Continuance.

"SEC. 3. (a) The National Labor Relations Board (hereinafter called the 'Board') created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

Removal of Board member.

Delegation of powers, etc.

"(b) The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

Seal.

Report to Congress and to President.

"(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

General Counsel.

"(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

Post, p. 146.

Salaries.

"SEC. 4. (a) Each member of the Board and the General Counsel of the Board shall receive a salary of $12,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment

Employees.

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as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No trial examiner's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no trial examiner shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

Review of trial examiner's report.

Use, etc., of other agencies and services.

"(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

Payment of expenses.

"SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

Principal office.

"SEC. 6. The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

Rules and regulations.

"RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

"UNFAIR LABOR PRACTICES

Employer.

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor

practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

Labor organization or agents.

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

Engaging in certain strikes, etc.

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his

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employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

Excessive or discriminatory fees.

"(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

Payment by employer for services not performed.

"(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

"(c) 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 any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

"To bargain collectively."

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, 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: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such 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 sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty 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 Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

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"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given 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 or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9 (a), 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. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

Intervening certification of Board.

Loss of status by employee.

"REPRESENTATIVES AND ELECTIONS

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the 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: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

Decision of Board regarding appropriate unit.

Investigation of petition; hearing.

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

Election by secret ballot.

"(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

"(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

"(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

"(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

Post, p. 147.

"(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

Petition to make agreement with employer.

"(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organ-

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ization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

"(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such labor organization and to the employer.

"(3) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

Filing of constitution, etc., prior to action by Board.

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

Report showing receipts, etc.

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

Obligation of labor organizations to file annual reports.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

Affidavit that labor officer is not member of Communist Party, etc.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

52 Stat. 197. 18 U. S. C. §§ 80, 83-85.

"PREVENTION OF UNFAIR LABOR PRACTICES

Powers of Board.

"SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

Issuance of complaint, etc.

"(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing

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or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723-B, 723-C).

48 Stat. 1064. 28 U. S. C. §§ 723b, 723c.

Testimony.

"(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

Back pay.

Applicability of rules of decision, etc.

Order dismissing complaint, etc.

Modification, etc., by Board of finding or order.

"(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

Petition to court for enforcement of order, etc.

"(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district

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court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

Findings of Board.

Jurisdiction of court, etc.

36 Stat. 1157.

Review of order.

"(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with

respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

"(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

"(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order on the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

47 Stat. 70.
29 U. S. C. §§ 101–115.

"(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

Petition to court for temporary relief, etc.

"(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the Distrct Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

Power of Board to determine dispute.

"(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

Preliminary investigation of charge.

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging

Petition for injunctive relief.

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party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

Ante, p. 142.

"INVESTIGATORY POWERS

"SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

Ante, p. 143.

Access to evidence.

"(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

Issuance of subpenas.

Administration of oaths, etc.

Refusal to obey subpena, etc.

"(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

"(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is

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compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

"(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Service of complaints, orders, etc.

Payment of witnesses.

"(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

"(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

Records of departments, etc.

"SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

Penalty.

"LIMITATIONS

"SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

Right to strike.

"SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

Supervisors.

"(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

Execution of agreements requiring membership, etc.

"SEC. 15. Wherever the application of the provisions of section 272 of chapter 10 of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto (U. S. C., title 11, sec. 672), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

Conflict with other laws.

52 Stat. 904.

"SEC. 16. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Separability of provisions.

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Short title.

"SEC. 17. This Act may be cited as the 'National Labor Relations Act'."

EFFECTIVE DATE OF CERTAIN CHANGES

Unfair labor practice.

Ante, pp. 140, 141.

SEC. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

Certification of representatives, etc.

49 Stat. 453.
29 U. S. C. § 159.
Ante, p. 143.

SEC. 103. No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs.

Amendments made by Title I.

Ante, p. 139.

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

SEC. 201. That it is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the

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terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

Federal Mediation and Conciliation Service. *Post*, p. 615.

SEC. 202. (a) There is hereby created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service", except that for sixty days after the date of the enactment of this Act such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of $12,000 per annum. The Director shall not engage in any other business, vocation, or employment.

Director.

Appointment, etc., of personnel.

(b) The Director is authorized, subject to the civil-service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with the Classification Act of 1923, as amended, and may, without regard to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation of such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

42 Stat. 1488. 5 U. S. C §§ 661-674.

Expenditures.

Principal office, etc.

(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

Delegation of authority.

Report to Congress.

Transfer of functions, etc.

(d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 8 of the Act entitled "An Act to create a Department of Labor", approved March 4, 1913 (U. S. C., title 29, sec. 51), and all functions of the United States Conciliation Service under any other law are hereby transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after the date of enactment of this Act. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

37 Stat. 738.

FUNCTIONS OF THE SERVICE

Conciliation and mediation.

SEC. 203. (a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

Proffer of services.

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the

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request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

(d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

Maintenance of agreements, etc., by employers and employees.

Sec. 204. (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

National Labor-Management Panel. *Post*, p. 615.

Sec. 205. (a) There is hereby created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be selected from among persons outstanding in the field of management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of $25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

Pay and allowances.

Duty.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner

in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

NATIONAL EMERGENCIES

Board of inquiry. *Post*, p. 615.

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

Report.

Members; powers.

SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

Pay and expenses.

(b) Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

Attendance of witnesses, etc.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

38 Stat. 722, 723.

Enjoining of strike, etc.

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

47 Stat. 70. 29 U. S. C. §§ 101-115.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347).

36 Stat. 1157. 28 U. S. C. §§ 346, 347.

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to

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adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

Reconvening of board of inquiry.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

Secret ballot of employees.

Discharge of injunction.

Report to Congress.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

COMPILATION OF COLLECTIVE BARGAINING AGREEMENTS, ETC.

SEC. 211. (a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

EXEMPTION OF RAILWAY LABOR ACT

SEC. 212. The provisions of this title shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time.

44 Stat. 577.
45 U. S. C. §§ 151-163, 181-188.

TITLE III

SUITS BY AND AGAINST LABOR ORGANIZATIONS

Violation of contracts.

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Acts of agents.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer

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whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction of district courts.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of summons upon agent, etc.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

Payment, etc., by employer.

SEC. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

Acceptance, etc., by representative.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

Nonapplicability of section.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or

Written assignment from employee.

Payments held in trust for benefit of employees, etc.

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death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

Penalty.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., title 29, secs. 101–115).

38 Stat. 737.

38 Stat. 731, 738.

47 Stat. 70.

Nonapplicability of section.

(f) This section shall not apply to any contract in force on the date of enactment of this Act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

Contributions to trust funds.

(g) Compliance with the restrictions contained in subsection (c) (5) (B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport,

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or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

Ante, p. 143.

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

Ante, p. 143.

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

Ante, p. 136.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

RESTRICTION ON POLITICAL CONTRIBUTIONS

SEC. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows:

43 Stat. 1074.

"SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of

Penalty.

"Labor organization."

this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

STRIKES BY GOVERNMENT EMPLOYEES

SEC. 305. It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any individual employed by the United States or by any such agency who strikes shall be discharged immediately from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for reemployment for three years by the United States or any such agency.

TITLE IV

CREATION OF JOINT COMMITTEE TO STUDY AND REPORT ON BASIC PROBLEMS AFFECTING FRIENDLY LABOR RELATIONS AND PRODUCTIVITY

Joint Committee on Labor-Management Relations.

SEC. 401. There is hereby established a joint congressional committee to be known as the Joint Committee on Labor-Management Relations (hereafter referred to as the committee), and to be composed of seven Members of the Senate Committee on Labor and Public Welfare, to be appointed by the President pro tempore of the Senate, and seven Members of the House of Representatives Committee on Education and Labor, to be appointed by the Speaker of the House of Representatives. A vacancy in membership of the committee shall not affect the powers of the remaining members to execute the functions of the committee, and shall be filled in the same manner as the original selection. The committee shall select a chairman and a vice chairman from among its members.

Study and investigation.

SEC. 402. The committee, acting as a whole or by subcommittee, shall conduct a thorough study and investigation of the entire field of labor-management relations, including but not limited to—

(1) the means by which permanent friendly cooperation between employers and employees and stability of labor relations may be secured throughout the United States;

(2) the means by which the individual employee may achieve a greater productivity and higher wages, including plans for guaranteed annual wages, incentive profit-sharing and bonus systems;

(3) the internal organization and administration of labor unions, with special attention to the impact on individuals of collective agreements requiring membership in unions as a condition of employment;

(4) the labor relations policies and practices of employers and associations of employers;

(5) the desirability of welfare funds for the benefit of employees and their relation to the social-security system;

(6) the methods and procedures for best carrying out the collective-bargaining processes, with special attention to the effects of industry-wide or regional bargaining upon the national economy;

(7) the administration and operation of existing Federal laws relating to labor relations; and

(8) such other problems and subjects in the field of labor-management relations as the committee deems appropriate.

Report to Congress.

SEC. 403. The committee shall report to the Senate and the House

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of Representatives not later than March 15, 1948, the results of its study and investigation, together with such recommendations as to necessary legislation and such other recommendations as it may deem advisable, and shall make its final report not later than January 2, 1949.

Powers.
42 Stat. 1488.
5 U. S. C. §§ 661-674.

SEC. 404. The committee shall have the power, without regard to the civil-service laws and the Classification Act of 1923, as amended, to employ and fix the compensation of such officers, experts, and employees as it deems necessary for the performance of its duties, including consultants who shall receive compensation at a rate not to exceed $35 for each day actually spent by them in the work of the committee, together with their necessary travel and subsistence expenses. The committee is further authorized, with the consent of the head of the department or agency concerned, to utilize the services, information, facilities, and personnel of all agencies in the executive branch of the Government and may request the governments of the several States, representatives of business, industry, finance, and labor, and such other persons, agencies, organizations, and instrumentalities as it deems appropriate to attend its hearings and to give and present information, advice, and recommendations.

SEC. 405. The committee, or any subcommittee thereof, is authorized to hold such hearings; to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Eightieth Congress; to require by subpena or otherwise the attendance of such witnesses and the production of such books, papers, and documents; to administer oaths; to take such testimony; to have such printing and binding done; and to make such expenditures within the amount appropriated therefor; as it deems advisable. The cost of stenographic services in reporting such hearings shall not be in excess of 25 cents per one hundred words. Subpenas shall be issued under the signature of the chairman or vice chairman of the committee and shall be served by any person designated by them.

Reimbursement for expenses.

SEC. 406. The members of the committee shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the committee, other than expenses in connection with meetings of the committee held in the District of Columbia during such times as the Congress is in session.

Appropriation authorized.
Post, p. 611.

SEC. 407. There is hereby authorized to be appropriated the sum of $150,000, or so much thereof as may be necessary, to carry out the provisions of this title, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman.

TITLE V

DEFINITIONS

Ante, p. 137.

SEC. 501. When used in this Act—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees.

(3) The terms "commerce", "labor disputes", "employer", "employee", "labor organization", "representative", "person", and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

Ante, p. 136.

SAVING PROVISION

SEC. 502. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act.

SEPARABILITY

SEC. 503. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

JOSEPH W. MARTIN JR.
Speaker of the House of Representatives.

A H VANDENBERG.
President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U. S.,
June 20, 1947.

Certificate of House of Representatives.

The House of Representatives having proceeded to reconsider the bill (H. R. 3020) entitled "An Act to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest: JOHN ANDREWS
Clerk.

Certificate of origin.

I certify that this Act originated in the House of Representatives.

JOHN ANDREWS
Clerk.

IN THE SENATE OF THE UNITED STATES,
June 23 (legislative day, April 21), 1947.

Certificate of Senate.

The Senate having proceeded to reconsider the bill (H. R. 3020) "An Act to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, and passed by the House of Representatives on reconsideration of the same, it was

Resolved, That the said bill pass, two-thirds of the Senate having voted in the affirmative.

Attest: CARL A. LOEFFLER
Secretary.

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[CHAPTER 121]

AN ACT

To provide for emergency flood-control work made necessary by recent floods, and for other purposes.

June 23, 1947
[H. R. 3792]
[Public Law 102]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sum of $15,000,000 is hereby authorized to be appropriated as an emergency fund to be expended under the direction of the Secretary of War and the supervision of the Chief of Engineers for the repair, restoration, and strengthening of levees and other flood-control works which have been threatened or destroyed by recent floods, or which may be threatened or destroyed by later floods: *Provided*, That pending the appropriation of said sum, the Secretary of War may allot, from existing flood-control appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized, such appropriations to be reimbursed from the appropriation herein authorized when made: *Provided further*, That funds allotted under this authority shall not be diverted from the unobligated funds from the appropriation "Flood control, general", made available in War Department Civil Functions Appropriation Acts for specific purposes.

Appropriation authorized.
Post, p. 187.

Allotments from existing appropriations.

SEC. 2. The provisions of section 1 shall be deemed to be additional and supplemental to, and not in lieu of, existing general legislation authorizing allocation of flood-control funds for restoration of flood-control works threatened or destroyed by flood.

Approved June 23, 1947.

[CHAPTER 124]

AN ACT

To amend the Act entitled "An Act to provide for a permanent Census Office", approved March 6, 1902, as amended (the collection and publication of statistical information by the Bureau of the Census).

June 25, 1947
[S. 614]
[Public Law 103]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Act entitled "An Act to provide for a permanent Census Office", approved March 6, 1902, as amended (U. S. C., title 13, sec. 111), is amended by adding at the end of the first sentence thereof the words: "*Provided*, That where the doctrine, teaching, or discipline of any religious denomination or church prohibits the disclosure of information relative to membership, such information shall not be required."

32 Stat. 52.

Approved June 25, 1947.

[CHAPTER 125]

AN ACT

To regulate the marketing of economic poisons and devices, and for other purposes.

June 25, 1947
[H. R. 1237]
[Public Law 104]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

SECTION 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act".

DEFINITIONS

SEC. 2. For the purposes of this Act—

a. The term "economic poison" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, and other forms of plant

"Economic poison."

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Attachment 5: 1947 PA 336

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[No. 336.]

AN ACT to prohibit strikes by certain public employees; to provide certain disciplinary action with respect thereto; to provide for the mediation of grievances; and to prescribe penalties for the violation of the provisions of this act.

The People of the State of Michigan enact:

[17.455(1)] **Strike defined.**

Sec. 1. As used in this act the word "strike" shall mean the failure to report for duty, the wilful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, or compensation, or the rights, privileges or obligations of employment: *Provided, however,* That nothing contained in this act shall be construed to limit, impair or affect the right of any public employee to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment.

[17.455(2)] **Strikes by public employes prohibited.**

Sec. 2. No person holding a position by appointment or employment in the government of the state of Michigan, or in the government of any 1 or more of the political subdivisions thereof, or in the public school service, or in any public or special district, or in the service of any authority, commission, or board, or in any other branch of the public service, hereinafter called a "public employee," shall strike.

[17.455(3)] **Authorizing strike, etc., unlawful.**

Sec. 3. No person exercising any authority, supervision or direction over any public employee shall have the power to authorize, approve or consent to a strike by 1 or more public employees, and such person shall not authorize, approve or consent to such strike, nor shall any such person discharge or cause any public employee to be discharged or separated from his or her employment because of participation in the submission of a grievance in accordance with the provisions of section 7 of this act.

[17.455(4)] **Appointment, etc., terminated.**

Sec. 4. Notwithstanding any other provision of law, any public employee who violates the provisions of this act shall thereby abandon and terminate his appointment or employment and shall no longer hold such position, or be entitled to any of the rights or emoluments thereof, including pension or retirement rights or benefits, except if appointed or reappointed as hereinafter provided.

[17.455(4a)] **State employes.**

Sec. 4a. The provisions of this act as to state employees within the jurisdiction of the civil service commission shall be deemed to apply in so far as the power exists in the legislature to control employment by the state or the emoluments thereof.

[17.455(5)] **Reappointment, etc., conditions.**

Sec. 5. Notwithstanding any other provision of law, a person knowingly violating the provisions of this act may subsequent to such violation be appointed or reappointed, employed or re-employed, as a public employee, but only upon the following conditions:

(a) His compensation shall in no event exceed that received by him immediately prior to the time of such violation;

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(b) The compensation of such person shall not be increased until after the expiration of 1 year from such appointment or reappointment, employment or re-employment; and

(c) Such person shall be on probation for a period of 2 years following such appointment or reappointment, employment or re-employment, during which period he shall serve without tenure and at the pleasure of the appointing officer or body.

[17.455(6)] When deemed on strike.

Sec. 6. Notwithstanding the provisions of any other law, any person holding such a position who, by concerted action with others, and without the lawful approval of his superior, wilfully absents himself from his position, or abstains in whole or in part from the full, faithful and proper performance of his duties shall be deemed to be on strike: *Provided, however,* That such person, upon request, shall be entitled, as hereinafter provided, to establish that he did not violate the provisions of this act. Such request must be filed in writing, with the officer or body having power to remove such employee, within 10 days after regular compensation of such employee has ceased. In the event of such request such officer or body shall within 10 days commence a proceeding for the determination of whether the provisions of this act have been violated by such public employee, in accordance with the law and regulations appropriate to a proceeding to remove such public employee. Such proceedings shall be undertaken without unnecessary delay. The decision of such proceeding shall be made within 10 days. In the event that the employee involved is held to have violated this law and his employment terminated he shall have the right of review by way of petition to the labor mediation board, as provided for in section 7 of this act.

[17.455(7)] Mediating grievances.

Sec. 7. Upon the request of a majority of any given group of public employees evidenced by a petition signed by said majority and delivered to the labor mediation board, or upon request of any public official in charge of such employees, it shall be the duty of the labor mediation board to forthwith mediate the grievances set forth in said petition or notice, and for the purposes of mediating such grievances, the labor mediation board shall exercise the powers and authority conferred upon said board by sections 10 and 11 of Act No. 176 of the Public Acts of 1939.

[17.455(8)] Misdemeanor, penalty.

Sec. 8. Any person not a public employee who shall knowingly incite, agitate, influence, coerce, or urge a public employee to strike shall be deemed to be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not to exceed 1 year, or by a fine of not less than $100.00 nor more than $1,000.00, or both such fine and imprisonment in the discretion of the court.

Approved July 3, 1947.

[No. 337.]

AN ACT to amend sections 1 and 3 of Act No. 3 of the Public Acts of 1939, entitled "An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to create a public service commission and to prescribe and define the powers and duties thereof; to abolish the Michigan public utilities commission, and to confer the powers and duties now vested by law therein, on the public service commission hereby created; to provide for the continuance, transfer and completion of matters and proceedings now pending; to provide for appeals; to provide appropriations therefor; to declare the effect of

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Attachment 6: 2012 PA 53

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SENATE SUBSTITUTE FOR

HOUSE BILL NO. 4929

A bill to amend 1947 PA 336, entitled

"An act to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; to require certain provisions in collective bargaining agreements; and to prescribe means of enforcement and penalties for the violation of the provisions of this act,"

by amending the title and section 10 (MCL 423.210), the title as amended by 2011 PA 9.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to prohibit strikes by certain public employees; to

3 provide review from disciplinary action with respect thereto; to

4 provide for the mediation of grievances and the holding of

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1 elections; to declare and protect the rights and privileges of
2 public employees; to require certain provisions in collective
3 bargaining agreements; ~~and~~ to prescribe means of enforcement and
4 penalties for the violation of the provisions of this act; **AND TO**
5 **MAKE APPROPRIATIONS.**
6 Sec. 10. (1) ~~It shall be unlawful for a~~ **A** public employer or
7 an officer or agent of a public employer **SHALL NOT DO ANY OF THE**
8 **FOLLOWING:**
9 (a) ~~to interfere~~ **INTERFERE** with, restrain, or coerce public
10 employees in the exercise of their rights guaranteed in section 9.
11 ~~;~~
12 (b) ~~to initiate,~~ **INITIATE,** create, dominate, contribute to, or
13 interfere with the formation or administration of any labor
14 organization. ~~: Provided, That a public employer shall not be~~
15 ~~prohibited from permitting~~ **A PUBLIC SCHOOL EMPLOYER'S USE OF PUBLIC**
16 **SCHOOL RESOURCES TO ASSIST A LABOR ORGANIZATION IN COLLECTING DUES**
17 **OR SERVICE FEES FROM WAGES OF PUBLIC SCHOOL EMPLOYEES IS A**
18 **PROHIBITED CONTRIBUTION TO THE ADMINISTRATION OF A LABOR**
19 **ORGANIZATION.** <<
20 >>
21 **HOWEVER, A PUBLIC SCHOOL EMPLOYER'S COLLECTION OF DUES OR SERVICE**
22 **FEES PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT THAT IS IN**
23 **EFFECT ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS**
24 **SENTENCE IS NOT PROHIBITED UNTIL THE AGREEMENT EXPIRES OR IS**
25 **TERMINATED, EXTENDED, OR RENEWED. A PUBLIC EMPLOYER MAY PERMIT**
26 employees to confer with ~~it~~ **A LABOR ORGANIZATION** during working
27 hours without loss of time or pay. ~~;~~

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1 (c) ~~to discriminate~~ **DISCRIMINATE** in regard to hire, terms, or
2 other conditions of employment ~~in order~~ to encourage or discourage
3 membership in a labor organization. ~~: Provided further, That~~
4 ~~nothing in~~ **HOWEVER,** this act or ~~in~~ any **OTHER** law of this state
5 ~~shall~~ **DOES NOT** preclude a public employer from making an agreement
6 with an exclusive bargaining representative as ~~defined~~ **DESCRIBED** in
7 section 11 to require as a condition of employment that all
8 employees in the bargaining unit pay to the exclusive bargaining
9 representative a service fee equivalent to the amount of dues
10 uniformly required of members of the exclusive bargaining
11 representative. ~~;~~
12 (d) ~~to discriminate~~ **DISCRIMINATE** against a public employee
13 because he **OR SHE** has given testimony or instituted proceedings
14 under this act. ~~; or~~
15 (e) ~~to refuse~~ **REFUSE** to bargain collectively with the
16 representatives of its public employees, subject to the provisions
17 of section 11.
18 (2) It is the purpose of ~~this amendatory act~~ **1973 PA 25** to
19 reaffirm the continuing public policy of this state that the
20 stability and effectiveness of labor relations in the public sector
21 require, if ~~such~~ **THE** requirement is negotiated with the public
22 employer, that all employees in the bargaining unit shall share
23 fairly in the financial support of their exclusive bargaining
24 representative by paying to the exclusive bargaining representative
25 a service fee ~~which~~ **THAT** may be equivalent to the amount of dues
26 uniformly required of members of the exclusive bargaining
27 representative.

1 (3) ~~It shall be unlawful for a~~ **A** labor organization or its
2 agents **SHALL NOT DO ANY OF THE FOLLOWING:**
3 (a) ~~to restrain or coerce: (i) public~~ **RESTRAIN OR COERCE**
4 **PUBLIC** employees in the exercise of the rights guaranteed in
5 section 9. ~~; Provided, That this~~ **THIS** subdivision ~~shall~~ **DOES** not
6 impair the right of a labor organization to prescribe its own rules
7 with respect to the acquisition or retention of membership.
8 ~~therein; or (ii) a~~
9 **(B) RESTRAIN OR COERCE A** public employer in the selection of
10 its representatives for the purposes of collective bargaining or
11 the adjustment of grievances. ~~; (b) to cause~~
12 **(C) CAUSE** or attempt to cause a public employer to
13 discriminate against a public employee in violation of ~~subdivision~~
14 ~~(c) of subsection (1); or (c) to refuse~~ **SUBSECTION (1)(C).**
15 **(D) REFUSE** to bargain collectively with a public employer,
16 provided it is the representative of the public employer's
17 employees subject to section 11.
18 **(4) BY MARCH 1 OF EACH YEAR, EACH EXCLUSIVE BARGAINING**
19 **REPRESENTATIVE THAT REPRESENTS PUBLIC EMPLOYEES IN THIS STATE SHALL**
20 **FILE WITH THE COMMISSION AN INDEPENDENT AUDIT OF ALL EXPENDITURES**
21 **ATTRIBUTED TO THE COSTS OF COLLECTIVE BARGAINING, CONTRACT**
22 **ADMINISTRATION, AND GRIEVANCE ADJUSTMENT DURING THE PRIOR CALENDAR**
23 **YEAR. THE COMMISSION SHALL MAKE THE AUDITS AVAILABLE TO THE PUBLIC**
24 **ON THE COMMISSION'S WEBSITE. FOR FISCAL YEAR 2011-2012, $100,000.00**
25 **IS APPROPRIATED TO THE COMMISSION FOR THE COSTS OF IMPLEMENTING**
26 **THIS SUBSECTION.**

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