

SERVICE FEE INCLUDING NATIONAL UNION EXPENSES CHARGEABLE TO LOCAL NONMEMBERS

In a unanimous ruling, the Supreme Court decides that a local union affiliated with the Service Employees International Union (SEIU) can charge public employees who are not union members a service fee that includes a charge for the SEIU litigation expenses involving collective bargaining or contract enforcement, but do not relate directly to the local or its bargaining units.

Writing for the Court, Justice Stephen G. Breyer says the Maine State Employees Association (MSEA) did not violate the First Amendment rights of objecting members by requiring them to make payments that included a contribution to the SEIU's litigation expenses because the litigation had an appropriate connection to collective bargaining, and the MSEA's contribution to the SEIU was made under a "reciprocal" arrangement that gave the local a reasonable expectation of receiving support from other union locals if and when it was needed.

The MSEA, representing executive branch employees in Maine, entered into a collective bargaining agreement with the state government providing that all bargaining unit employees who were not union members were required to pay a "service fee" to the SEIU local. The service fee includes a charge representing the affiliation fee the local pays to the SEIU, but the charge is limited to support only the SEIU activities that are related to collective bargaining and contracts, excluding the national union's expenditures on political, lobbying, and public relations activities.

An arbitrator approved the calculation of nonmember fees, but 20 nonmembers, represented by the National Right to Work Legal Defense Foundation, filed a lawsuit against the MSEA under the Civil Rights Act of 1871, alleging that requiring them to contribute to national litigation activities that did not directly benefit their Maine local violated their speech and association rights under the First Amendment.

The district court for the District of Maine refused to enjoin the MSEA from enforcing the contribution requirement and granted summary judgment to the union, finding that including the extra-unit litigation costs among the chargeable expenses did not violate the nonmembers' rights. The First Circuit upheld that decision, and the Supreme Court granted review. In October 2008, the high court heard oral argument in the case. The nonmember employees argued that under the Supreme Court's decision in *Ellis v. Bhd. of Railway Clerks*, 466 U.S. 435, (1984), which defined germane activities as those directly related to the local unit, the extra-unit litigation expenses the MSEA included in its calculation of agency fees were not chargeable to nonmembers. The MSEA argued that participation in the SEIU "pooling arrangement" was permissible.

In *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991), the Supreme Court held that chargeable expenses include "services that may ultimately inure to the benefit of the members of the local union by virtue of their membership in the parent organization," as long as the expenses also are substantively related to representational duties. Justice Breyer, however, notes that the Court decided *Lehnert* by a narrow 5-4 vote, with no majority on the legality of charging national litigation expense to nonmembers in local bargaining units. "As a result of the *Lehnert* Court's failure to find a majority as to the chargeability of national litigation expenses, the lower courts have been uncertain about the matter."

Applying *Lehnert* to the litigation expenses covered by MSEA's service fee, Justice Breyer finds that "we find them chargeable." The Court adds that while "the location of the litigation activity" at issue was at the national level, rather than local, *Lehnert* had recognized that such expenses could "ultimately inure" to the benefit of local bargaining units.

The decision is available at <http://op.bna.com/dlrcases.nsf/r?Open=ldue-7nhly5>.

(Source: *Locke v. Karass*, U.S., No. 07-610, January 21, 2009, as reported in BNA, *Daily Labor Report*, No. 12, January 22, 2009, pp. AA1-AA2, E1- E5.)