STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SAGINAW EDUCATION ASSOCIATION,
Labor Organization-Respondent in Case No. CU13 I-054/Docket No. 13-013125-MERC; Case No. CU13 I-056/Docket No. 13-013128-MERC; Case No. CU13 I-058/13-013130-MERC; Case No. CU13 I-060/Docket No. 13-013132-MERC,

-and-

MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondent in Case No. CU13 I-055/Docket No. 13-013127-MERC; Case No. CU13 I-057/Docket No. 13-013129-MERC; Case No. CU13 I-059/Docket No. 13-013131-MERC; Case No. CU13 I -061/Docket No. 13-013134-MERC,

-and-

KATHY EADY-MISKIEWICZ,
Charging Party in Case No. CU13 I-054/13-013125-MERC and CU13 I-055/13-013127-MERC,

-and-

MATT KNAPP,
Charging Party in Case No. CU13 I-056/13-013128-MERC and CU13 I-057/13-01329-MERC,

-and-

JASON LAPORTE,
Charging Party in Case No. CU13 I-058/13-013130-MERC and CU13 I-059/13-013131-MERC,

-and-

SUSAN ROMSKA,
Charging Party in Case No. CU13 I-060/13-013132-MERC and CU13 I-061/13-013134-MERC.
_____/

APPEARANCES:

White, Schneider Young and Chiodini, P.C., by James J. Chiodini, Jeffrey S. Donahue, and Catherine E. Tucker, and Michael M. Shoudy, MEA General Counsel, for Respondents

Mackinac Center Legal Foundation, by Patrick J. Wright and Derk A. Wilcox, for Charging Parties

DECISION AND ORDER

On September 2, 2014, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents, Saginaw Education Association and Michigan Education Association (Unions), violated § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, by limiting the time in which Charging Parties, Kathy Eady-Miskiewicz, Matt Knapp, Jason LaPorte, and Susan Romska, could resign from union membership to an annual one-month period between August 1 and August 31. The ALJ held that any union rule or policy, including Respondents' August window period, that limits or restricts a public employee's right to terminate union membership is in violation of § 10(2)(a) of PERA. The ALJ reasoned that the Continuing Membership Applications signed by Charging Parties did not explicitly waive their right to resign their "financial core" memberships at will and, therefore, Respondents violated § 10(2)(a) of PERA by refusing to accept Charging Parties' resignations outside of the August window period. The ALJ rejected Charging Parties' contention that Respondents' duty of fair representation required the Unions to provide resignation information to Union members during the August window period. Further, the ALJ concluded that the Respondents did not violate § 10(2)(a) of PERA by threatening to hire a debt collector to collect the unpaid dues that the Unions claimed were owed by Charging Parties. The Decision and Recommended Order of the ALJ was served on the interested parties in accordance with § 16 of PERA.

After requesting and receiving extensions of time, Charging Parties and Respondents each filed exceptions to the ALJ's Decision and Recommended Order on October 27, 2014. Charging Parties and Respondents also requested and were granted an extension of time to respond to each other's exceptions. They filed their respective responses to exceptions on December 8, 2014.

On exceptions, Respondents contend, among other things, that the ALJ erred: (1) by concluding that the Commission has jurisdiction over this dispute, which Respondents contend is an internal union matter; (2) by concluding that 2012 PA 349 created a right for employees to resign their memberships at will; (3) by determining that Respondents' August window period for union membership resignations violated § 10(2)(a) of PERA; (4) by finding that Charging Party Knapp resigned from the union although he never submitted a resignation letter; and (5) by recommending that this Commission "unconstitutionally impair Respondents' existing contractual relationship with its members" by ordering that

Respondents cease and desist from enforcing the policy restricting members' resignations to the month of August and removing the policy from MEA bylaws or amending the bylaws to reflect that the policy cannot be enforced.

On exceptions, Charging Parties asserted error by the ALJ on two issues. First, they contend that the ALJ erred by finding that a failure to pay union dues, after dues deduction ceased, is not sufficient to provide the Unions with notice of resignation. Secondly, Charging Parties argue that the ALJ erred by failing to find that Respondents had a duty to provide Union members with adequate information to make an informed choice during the August window period and that Respondents' failure to do so violated their duty of fair representation.[1]

We have reviewed the exceptions filed by Charging Parties and by Respondents and find them to be without merit.

Factual Summary:

The facts in this case were set forth fully in the ALJ's Decision and Recommended Order and need not be repeated in detail here. Briefly, each of the Charging Parties is employed by Saginaw Public Schools (Employer) and is part of the bargaining unit represented by the Respondent Saginaw Education Association (SEA). The SEA is a local affiliate of Respondent Michigan Education Association (MEA), and members of the SEA are also members of the MEA and the National Education Association (NEA) due to the organizations' unified membership structure.

Around the time they were hired, each of the Charging Parties signed a "Continuing Membership Application" agreeing to join Respondents' unions and authorizing the Employer to deduct union dues from their pay and transmit those funds to Respondent SEA. Just above the signature line on the application, there are two checkboxes, one for cash payment and one for payroll deduction. The language next to the cash payment checkbox states: "Membership is continued unless I reverse this authorization in writing between August 1 and August 31 of any year." The language next to the payroll deduction checkbox states: "I authorize my employer to deduct Local, MEA and NEA dues, assessments and contributions as may be determined from time to time, unless I revoke this authorization in writing between August 1 and August 31 of any year." It was the standard practice for new members to be given a copy of the Continuing Membership Application after they signed it. The application is a four-page set containing an original and three carbon copies; the bottom copy is designated for the new member.

1 Although the ALJ found no merit to Charging Parties' contention that Respondents violated § 10(2)(a) by threatening collection actions for unpaid dues, Charging Parties did not raise that issue in their exceptions. Therefore, that matter is not before us. Pursuant to Rule 176(6) of the General Rules of the Michigan Employment Relations Commission, R 423.176(6): "An exception to a ruling, finding, conclusion, or recommendation that is not specifically raised is waived."

Article I of the MEA bylaws provides in relevant part: "The official membership year shall extend from September 1 through August 31 each year. . . . Continuing membership in the Association shall be terminated at the request of a member when such a request is submitted to the Association in writing, signed by the member and postmarked between August 1 and August 31 of the year preceding the designated membership year." The MEA bylaws are posted on the MEA's website and are available to the general public. Although the bylaws do not contain a specific link directing viewers to information about resigning union membership, there is a link for the bylaws on the website. Moreover, most MEA publications, including its magazine, the *Voice*, include the website address.

The collective bargaining agreement between the Employer and Respondent SEA that covered the 1995 to 1998 academic years contained a union security agreement and required the Employer to deduct union dues from employees' wages when authorized by the respective employees. That contract expired June 30, 1998. The subsequent collective bargaining agreements did not contain a union security agreement, but did require the Employer to deduct union dues from employees' wages when authorized by the respective employees. Charging Party Eady-Miskiewicz signed a Continuing Membership Application on March 1, 1996, while the collective bargaining agreement included a union security provision. Each of the other Charging Parties, Knapp, LaPorte, and Romska, signed their Continuing Membership Applications after the collective bargaining agreement containing the union security clause had expired.

2012 PA 53, MCL 423.10(1)(b), which amended PERA to prohibit public school employers from assisting labor organizations in collecting union dues or service fees, became effective March 16, 2012. However, where the public school employer collected dues or service fees pursuant to a collective bargaining agreement that was in effect on the effective date of Act 53, the prohibition did not apply until the contract expired. The collective bargaining agreement in place immediately prior to the matter at issue expired on June 30, 2013.

On December 11, 2012, the Michigan Legislature passed 2012 PA 349, which, among other things, expressly provided that public employees have a right to refrain from union activity and made agency shop illegal for most public employees.

On January 18, 2013, Respondent MEA prepared a letter designed to be provided to members who inquired about resigning from membership. The letter indicated that resignation from membership must be submitted in writing and postmarked during the annual August window period.

Pursuant to 2012 PA 53, which prohibited public school employers from collecting union dues or service fees from their employees, the Employer ceased dues deductions after the collective bargaining agreement with Respondent SEA expired on June 30, 2013. Subsequently, Respondents established an e-dues program to allow employees to pay their union dues electronically. On July 9, 2013, and on three subsequent occasions in July and August 2013, members of Respondent SEA were provided with an e-mail describing the e-

dues program. None of the four Charging Parties signed up for the e-dues program; nor did any of the four pay union dues after the Employer stopped dues deductions.

On August 8, 2013, Jim Perialas, a former MEA local affiliate leader, sent an e-mail to 30,000 or more Michigan public school teachers, including Charging Parties, which purportedly laid out teachers' options with respect to union membership. The options included remaining a union member, possible union resignation, becoming a service fee payer, and possibly seeking decertification of a union representative. The e-mail stressed that for many teachers in Michigan some of the options suggested could only be exercised in the month of August.

In September 2013, Charging Parties LaPorte, Eady-Miskiewicz, and Romska sent letters to Respondents resigning from the Unions and revoking their dues deduction authorizations. Respondents informed each of them that their resignations were not timely in light of the August window period for resignations. Respondents provided both Eady-Miskiewicz and Romska with instructions on resigning from the Unions during the August window period. Those instructions indicated that a notice of resignation must be submitted in writing and may be sent by e-mail or regular mail. It is not clear from the record whether LaPorte received the same instructions. However, on September 30, 2013, LaPorte sent an e-mail to the president of Respondent SEA asking if Respondent would accept union resignation letters "if they are predated back to August?"

Also, in September 2013, Knapp told an SEA representative that he no longer wanted to pay union dues. On September 11, he received an e-mail from an MEA UniServ director acknowledging his statement that he was "not interested in paying dues at this time" and asking him to meet with her to discuss his options in light of that statement. On October 7, Knapp sent an e-mail to Respondents explaining that he had assumed he was no longer a union member if he did not sign up for the e-dues program. Knapp's e-mail also requested information about leaving the two unions. In response, Respondents' agent contacted Knapp, explained the window period, and informed him that failing to sign up for the e-dues program did not constitute a resignation from the Unions.

On October 21, 2013, Charging Parties filed unfair labor practice charges against Respondents.

Discussion and Conclusions of Law:

In brief, the issues before us are: (1) whether we have jurisdiction over this matter since Respondents' actions had no effect on Charging Parties' employment; (2) whether the Unions violated PERA, as amended by Act 349, by restricting union members' resignations to an annual one month period in August; (3) whether the remedy recommended by the ALJ is constitutionally permissible; and (4) whether the Unions breached their duty of fair representation by failing to provide Charging Parties with sufficient information on the resignation process.

Commission Jurisdiction

Respondents contend that the ALJ erred by concluding that the Commission has jurisdiction over this matter. Section 16 of PERA provides that violations of § 10 "shall be deemed to be unfair labor practices remediable by the commission." Charging Parties contend that Respondents violated § 10(2)(a), which prohibits a labor organization or its agents from restraining or coercing "public employees in the exercise of the rights guaranteed in section 9." Charging Parties assert that Respondents restrained or coerced them by unlawfully refusing to recognize Charging Parties' resignations from the Unions. Respondents contend that the Commission has no jurisdiction over this matter based on their assertion that the window period for membership resignation is an internal matter which has no impact on the terms or conditions of Charging Parties' employment.

We agree with Respondents that this Commission generally has no jurisdiction over the internal affairs of labor organizations in the absence of a direct impact on the employment relationship or the denial of rights under § 9 of PERA. *Michigan Ed Ass'n*, 18 MPER 64 (2005). See also, *Michigan State Univ Admin-Prof'l Ass'n*, 25 MPER 30 (2011); *AFSCME Local 118*, 1991 MERC Lab Op 617, 619 (no exceptions); *MESPA (Alma Pub Sch Unit)*, 1981 MERC Lab Op 149 (no exceptions).

We last addressed the issue of our jurisdiction with respect to window periods for resignation from union membership in *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004). In that case, schoolteacher Frank Dame sought to resign his union membership and become an agency fee payer. Dame contended that the union's refusal to allow him to resign his union membership outside the window period was a breach of the duty of fair representation. The union contended that the issue raised by the charge was an internal union matter over which the Commission had no jurisdiction. The Commission noted that the duty of fair representation "does not apply to matters that are strictly internal union affairs, which did not impact the relationship of bargaining unit members to their employer." However, the Commission explained that under circumstances where the law permits agency shop, "the collection of agency fees from nonmembers cannot be characterized as purely an internal union matter, since it can only be accomplished pursuant to a negotiated contract provision, and there is a potential impact on employment should the nonmember refuse to pay." Therefore, the Commission held that it did have jurisdiction over that matter.

Prior to the enactment of Act 349, §§ 9 and 10 of PERA[2] provided in relevant part:

> 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.

2 The quotation contains the language of PERA after its amendment by 2012 PA 53, which was effective March 16, 2012.

* * *

Sec. 10. (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 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) 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.

(b) Restrain or coerce a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(c) Cause or attempt to cause a public employer to discriminate against a public employee in violation of subsection (1)(c).

(d) Refuse to bargain collectively with a public employer, provided it is the representative of the public employer's employees subject to section 11.

(4) By March 1 of each year, each exclusive bargaining representative that represents public employees in this state shall file with the commission an independent audit of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment during the prior calendar year. The commission shall make the audits available to the public on the commission’s website. For fiscal year 2011-2012, $100,000.00 is appropriated to the commission for the costs of implementing this subsection.

Prior to the enactment of 2012 PA 349, § 9 gave public employees the right to engage in collective bargaining and other activity for their mutual aid and protection to the extent

they chose. Although they were never required to join a union, under § 10(2), public employees could be required to financially support a union if the collective bargaining agreement between their employer and the union representing their bargaining unit agreed to language requiring employees to pay their fair share of collective bargaining costs. The duty of fair representation stems from the language in § 10(3)(a)(i)[3] which prohibits labor organizations from restraining or coercing public employees in the exercise of the rights guaranteed in § 9. Therefore, when PERA contained language permitting agency shop and the applicable collective bargaining agreement contained a union security clause, the Commission had jurisdiction to examine whether a union's collection of agency fees breached its duty of fair representation, as in *West Branch-Rose City Ed Ass'n*.

In the matter before us, three of the four Charging Parties joined the Unions when there was no union security clause in effect, and none of those three could have been responsible for paying an agency or service fee. Their membership in the Unions was entirely voluntary. Resignation from the Unions would have had no impact on their employment. The same was true of the continuing membership of the fourth Charging Party, Eady-Miskiewicz, who joined while the union security clause was in effect, but was free to resign from union membership during August of any year after June 30, 1998, when the contract containing the union security clause expired. Therefore, the rationale supporting our jurisdiction in *West Branch-Rose City Ed Ass'n* does not support jurisdiction in this case. Prior to the adoption of Act 349, the resignations of the Charging Parties from the Respondent Unions would have been internal union matters over which this Commission would have had no jurisdiction.

Act 349, which became effective March 28, 2013, amended § 9 of PERA by adding subdivision (b) to subsection 9(1) and by adding subsections (2) and (3). Subdivision (b) of subsection 9(1) expressly gives public employees the right to refrain from union activity. Act 349 also amended § 10 by eliminating the language previously contained in subsection 10(2) that permitted unions and employers to agree to provisions in their collective bargaining agreements that required all bargaining unit members to share in the financial support of those employees' exclusive bargaining representatives. Act 349 also added subsections (3) through (10) to § 10. Sections 9 and 10 as amended[4] provide in relevant part:

> Sec. 9. (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.

3 This sentence refers to section 10(3)(a)(i) of PERA prior to the enactment of Act 349. The language that was in § 10(3)(a)(i) remained in PERA after the adoption of Act 349, but is now at § 10(2)(a).

4 The quotation does not contain the language of the amendments to PERA made by 2014 PA 414, which became effective December 30, 2014, since those changes are not relevant to the matter before us.

(b) Refrain from any or all of the activities identified in subdivision (a).

(2) No person shall by force, intimidation, or unlawful threats compel or attempt to compel any public employee to do any of the following:

(a) Become or remain a member of a labor organization or bargaining representative or otherwise affiliate with or financially support a labor organization or bargaining representative.

(b) Refrain from engaging in employment or refrain from joining a labor organization or bargaining representative or otherwise affiliating with or financially supporting a labor organization or bargaining representative.

(c) Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or public employees represented by a labor organization or bargaining representative.

(3) A person who violates subsection (2) is liable for a civil fine of not more than $500.00. A civil fine recovered under this section shall be submitted to the state treasurer for deposit in the general fund of this state.

* * *

Sec. 10. (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.

(b) Restrain or coerce a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(c) Cause or attempt to cause a public employer to discriminate against a public employee in violation of subsection (1)(c).

(d) Refuse to bargain collectively with a public employer, provided it is the representative of the public employer's employees subject to section 11.

(3) Except as provided in subsection (4), an individual shall not be required as a condition of obtaining or continuing public employment to do any of the following:

(a) Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization or bargaining representative.

(b) Become or remain a member of a labor organization or bargaining representative.

(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.

(d) Pay to any charitable organization or third party any amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or public employees represented by 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. This subsection applies only to an agreement, contract, understanding, or practice that takes effect or is extended or renewed after the effective date of the amendatory act that added this subsection.

(6) The court of appeals has exclusive original jurisdiction over any action challenging the validity of subsection (3), (4), or (5). The court of appeals shall hear the action in an expedited manner.

(7) For fiscal year 2012-2013, $1,000,000.00 is appropriated to the department of licensing and regulatory affairs to be expended to do all of the following regarding the amendatory act that added this subsection:

(a) Respond to public inquiries regarding the amendatory act.

(b) Provide the commission with sufficient staff and other resources to implement the amendatory act.

> (c) Inform public employers, public employees, and labor organizations concerning their rights and responsibilities under the amendatory act.
>
> (d) Any other purposes that the director of the department of licensing and regulatory affairs determines in his or her discretion are necessary to implement the amendatory act.

Our goal in construing the language amending PERA is to effectuate the Legislature's intent. *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156-157 (2011); *Casco Twp v Sec'y of State,* 472 Mich 566, 571, (2005). *Robertson v Daimler Chrysler Corp*, 465 Mich 732, 748 (2002). To do so, we must first review the statute's wording, which provides the most reliable evidence of the Act's intent. *Neal v Wilkes*, 470 Mich 661, 665 (2004); *Sun Valley Foods Co v Ward*, 460 Mich 230, 236 (1999). Every word of a statute should be given meaning, and no word should be made nugatory. *Apsey v Mem'l Hosp*, 477 Mich 120, 127 (2007); *People v Warren*, 462 Mich 415, 429 n. 24, (2000); *Baker v Gen Motors Corp*, 409 Mich 639, 665 (1980). Where there is no statutory definition of the words used in the statute, those words and phrases must be given their plain and ordinary meaning. *Western Michigan Univ Bd of Control v State*, 455 Mich 531, 538-539 (1997); *Bingham v American Screw Products Co*, 398 Mich 546, 563 (1976).

The amendments to PERA by Act 349 now prohibit unions and employers from requiring employees to financially support unions. Section 9(1)(b) expressly gives public employees the right to refrain from "join[ing], or assist[ing] in labor organizations." The prohibition against labor organizations "restrain[ing] or coerc[ing] public employees in the exercise of the rights guaranteed in section 9," that had been included in § 10(3)(a)(i) prior to the adoption of Act 349, is now in § 10(2)(a) of PERA. Therefore, we have jurisdiction over matters in which a public employee chooses to refrain from engaging in activities protected under § 9(1)(a) but is unlawfully restrained from doing so by a labor organization. Accordingly, we have jurisdiction to determine whether Respondents' actions in refusing to allow Charging Parties to resign from the Unions outside the August window period is an unlawful restraint on Charging Parties' right to refrain from union activity.

Respondents' Policy Limiting Union Resignations to the Annual August Window Period

The last collective bargaining agreement between Charging Parties' employer and Respondent SEA that contained a union security agreement expired on June 30, 1998. Knapp, LaPorte, and Romska, signed Continuing Membership Applications after that date and, therefore, did so voluntarily. Although Charging Party Eady-Miskiewicz signed a Continuing Membership Application while the collective bargaining agreement included a union security provision, she had the right to resign her membership in August 1998 without any impact on her employment. All four Charging Parties had the right to resign their union membership without an impact on their employment during August 1998 or during the month of August in any year thereafter. Under the provisions of PERA in effect at the time of *West Branch-Rose City Ed Ass'n*, and before the adoption of Act 349, Charging Parties would

have been required to wait until the August following their decision to resign before they could submit a valid resignation to Respondent SEA.

In *West Branch-Rose City Ed Ass'n*, the collective bargaining agreement between the charging party's employer and the union contained a standard union security clause requiring all bargaining unit members to either join the union or pay a service fee.[5] At that time, union security clauses in the collective bargaining agreements were lawful pursuant to § 10(2) of PERA. As in this case, the charging party's bargaining representative, the West Branch-Rose City Education Association, was the local affiliate of the MEA and the NEA; union membership was on a continuing basis and could only be terminated by the employee upon a written request during the month of August. In that case, charging party Dame submitted his request to resign from the union in the month of April and was told that he had to wait until August to resign and to assert his "*Beck*"[6] rights. When considering the issue of whether the union's refusal to accept resignations outside the window period constituted an unfair labor practice, we found persuasive the reasoning of the U.S. Court of Appeals for the Seventh Circuit in *Nielsen v Int'l Ass'n Machinists & Aerospace Workers, Local Lodge 2569*, 94 F3d 1107, 1116 -17 (CA 7 1996) *cert den* 520 US 1165 (1997). In *Nielsen*, the court held:

> Nothing in the NLRA or in *Beck* confers a right to instantaneous action, regardless of the administrative burden the union might bear in implementing these requests.
>
> It is not unreasonable for a union to require existing members or full fee nonmembers to voice their objections in a timely fashion, and to be aware that the price of not doing so will be to wait at most ten or eleven months before implementing their new status. Life is full of deadlines, and we see nothing particularly onerous about this one. When people miss the deadline for filing an appeal to this Court, their rights can be lost forever, not just for eleven months, but that does not make time limits for filing appeals in violation of the law. Other courts that have considered "window periods" have come to the same conclusion. See *Abrams,* 59 F 3d at 1381-82; *Tierney v City of Toledo,* 824 F2d 1497, 1506 (6th Cir 1987) (requiring non-union

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5 See, *West Branch-Rose City Ed Ass'n*, 2000 MERC Lab Op 333; 14 MPER 32006. Upon initial review of Dame's charge against West Branch-Rose City Education Association, the Commission found an unfair labor practice based on its conclusion that the union had failed to provide Dame with sufficient notice of the union's policy for filing objections to service fees and the right to refrain from joining the union. The Court of Appeals remanded the matter back to the Commission upon finding that the notice issue had not been raised in Dame's exceptions. *Michigan Ed Ass'n v Dame*, unpublished opinion per curiam of the Court of Appeals, issued January 24, 2003 (Docket No. 230803) 16 MPER 5.

6 In *Communications Workers v Beck*, 487 US 735; 108 S Ct 2641; 101 L Ed 2d 634 (1988), the Supreme Court held that exactions of agency fees from objecting nonmembers beyond those necessary to pay for the chargeable expenses of collective bargaining, contract administration, and grievance adjustment violated a union's duty of fair representation as well as the nonmembers' First Amendment rights. Thus, where agency shop is lawful, nonmembers who object to paying for a union's political and ideological projects, may request a reduction in their service fees such that they pay no more than the amount of the union's expenses for collective bargaining, contract administration, and grievance adjustment. See also, *Abood v Detroit Bd of Ed*, 431 US 209; 97 S Ct 1782; 52 L Ed 2d 261 (1977).

> members to object by January 31 of a given year permissible if the union makes appropriate disclosures before objections must be made); *Andrews v Education Ass'n of Cheshire*, 653 F Supp 1373, 1378 (D Conn 1987), *aff'd*, 829 F 2d 335 (2d Cir 1987); *Kidwell v Transportation Communications Int'l Union*, 731 F Supp 192, 205 (D Md 1990), *aff'd in part and rev'd in part on other grounds*, 946 F 2d 283 (4th Cir 1991), *cert denied*, 503 US 1005, 112 S Ct 1760, 118 L Ed 2d 423 (1992).

We went on to note that "the Association's one-month window period is a reasonable rule that is justified by the union's administrative and budgetary needs. In order to successfully perform its role of exclusive representative of bargaining unit employees and to fulfill its statutory mission to bargain collectively on behalf of public employees, a union must be able to effectively budget and allocate its resources." Finding that the 30-day annual window period was reasonable and was justified by the union's budgetary and administrative needs, we concluded that the 30-day window period did not violate the union's duty of fair representation and dismissed the unfair labor practice charge.

In *West Branch-Rose City Ed Ass'n*, we rejected the rationale of the National Labor Relations Board (NLRB or Board) in *Polymark Co*, 329 NLRB 9, (1999) (finding that the union violated its duty of fair representation when it refused to honor *Beck* objections filed outside the designated window period). We pointed out that the issue was distinguishable from cases under the NLRA, stating, "In its decisions, the Board relies on the 'right to refrain' from union activity found in Section 7 of the NLRA. The analogous section of PERA, Section 9, does not contain this language and we will not infer it in the absence of clear legislative intent. While, clearly, union membership cannot be required under PERA, in this case Dame joined the Union voluntarily."[7] Significantly, now that the right to refrain from union activity has become part of PERA, in § 9(1)(b), the rationale we applied to this issue in *West Branch-Rose City Ed Ass'n*, no longer applies. Moreover, since public employees now have the express right to refrain from union activity, we agree with the ALJ that it is appropriate to look to NLRB decisions for guidance with respect to the right to refrain.[8] In short, the NLRA and PERA are now analogous on this critical issue.

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7 *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004), n 5.

8 We note the arguments of Respondents and of ALJ Peltz in his Decision and Recommended Order in *Teamsters Local 214* (Case No. CU13 I-037, issued October 3, 2014) against reliance on National Labor Relations Board decisions in this context given the numerous issues that distinguish cases under the National Labor Relations Act from those under PERA. While federal precedent is often given great weight in interpreting PERA, at least where PERA's language is identical to that of the NLRA, this Commission is not bound to follow its "every turn and twist," *Northpointe Behavioral Healthcare Systems*, 1997 MERC Lab Op 530, 537; 11 MPER 29002; *Marquette Co Health Dep't*, 1993 MERC Lab Op 901, 906. Indeed, there are several issues over which PERA and the NLRA differ or where MERC has not followed Board changes in position. The chief example of that is the right of private sector employees to strike, which affects many of the policies adopted by the NLRB, but is not recognized under PERA. *Rockwell v Crestwood Sch Dist Bd of Ed*, 393 Mich 616 (1975). See also above discussion regarding *West Branch-Rose City Ed Assn*, 17 MPER 25 (2004). See also *Seventeenth Dist Court (Redford Twp)*, 19 MPER 88 (2006), which discusses the Commission's continued application of the *Midwest Piping/Shea Chemical* principle of employer neutrality after the Board expressly overruled *Shea Chemical*, in *RCA Del Caribe*, 262 NLRB 963 (1982). However, in the absence of any Michigan case law on issues regarding the withdrawal from union membership where there is a

Labor Organization Rules With Respect to the Acquisition or Retention of Membership

Respondents contend that the second sentence of § 10(2)(a) allows them to make rules regarding the circumstances under which their members may resign. That language, which was formerly included in § 10(3)(a)(i), provides: "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." However, Respondents have offered us no authoritative support for their assertion that a rule placing an annual one-month window period on union members' right to resign from the union is permissible under § 10(2)(a) where the applicable state law expressly gives union members the right to refrain from union activity. Indeed, we did not rely on that language when we upheld the imposition of an annual one-month window period for union member resignations in *West Branch-Rose City Ed Ass'n*. There, we found persuasive the Seventh Circuit Court's decision in *Nielsen v Int'l Ass'n Machinists & Aerospace Workers, Local Lodge 2569*, 94 F3d 1107, 1116 (CA 7 1996), which also upheld an annual one-month window period for union members' resignations. That court examined the issue in the context of the NLRA but did not rely on the analogous language found in § 8(b)(1)(a) of the NLRA, 29 USC § 158(b)(1)(a). As noted by the Supreme Court in *Pattern Makers' League of North America, AFL-CIO v NLRB*, 473 US 95, 107-09; 105 S Ct 3064, 3072 (1985), "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."

Nevertheless, we agree that unions generally have the right to make rules governing when an employee may become a member and when a union member may no longer continue as a member, provided that does not affect the members' employment relationship. See, *AFSCME Council 25, Local 1583 v Yunkman,* unpublished opinion per curiam of the Court of Appeals, issued May 26, 2015, (Docket Nos. 320626, 320655, 320658, 324291, 324323, 324350); 28 MPER 80 (2015) aff'g *AFSCME Council 25, Local 1583*, 27 MPER 48 (2014). However, the language of § 10(2)(a) relied upon by Respondents does not permit unions to deny a public employee the rights provided by § 9, which now include the right to refrain from union activity. Accordingly, we agree with the NLRB that where employees have a right to refrain from union activity, the union may not make rules interfering with or restraining employees in the exercise of that right.

Respondents contend that Charging Parties have a contractual obligation to the Unions to pay union dues until they resign within the August window period. They argue that by accepting union membership, a union member agrees to be governed by the union's bylaws and constitution, citing *Cleveland Orchestra Committee v Cleveland Federation of Musicians*, 303 F2d 229, 230 (CA 6, 1962). There, the court states that union members agree to be governed by the "union constitution, bylaws, and rules, *not inconsistent with rights and procedures established by the Act* [Labor-Management Reporting and Disclosure Act of

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right to refrain from union activity, we are guided on some issues by case law under the NLRA and by the case law of other states.

1959, § 101, 29 USC 411]" (emphasis added.) *Id.* Indeed, as with other voluntary associations, it is generally recognized that members of unions have a contractual relationship with the union that is set by the union's bylaws and constitution. See e.g. *NLRB v Allis-Chalmers Mfg Co*, 388 US 175, 182-83; 87 S Ct 2001, 2007-08 (1967); *Arnold v Burgess*, 241 AD 364, 369; 272 NYS 534, 539 (1934). Within that contractual relationship, unions are free to enforce properly adopted rules that reflect legitimate union interests, impair no policy imbedded in the relevant labor laws, and are reasonably enforced. *Scofield v NLRB*, 394 US 423, 430; 89 S Ct 1154, 1158 (1969); *Bossert v Dhuy*, 221 NY 342, 365; 117 NE 582, 587 (1917). It should, therefore, be clear that unions' rights to set terms governing the relationship with their members remain subject to the members' rights to engage in protected concerted activity and to refrain from such activity. See, for example *Ballas v McKiernan*, 41 AD2d 131, 133-34; 341 NYS2d 520 (1973), where the court refused to uphold fines assessed by a union against three of its members for supporting a rival union in a representation election. The court found the fines were not validly imposed since the union members' activities were protected by the free speech provision of the Labor-Management Reporting and Disclosure Act of 1959, 29 USC 411(a)(2).

The enactment of Act 349 gave Charging Parties an express right to refrain from union activity. Thus, under § 9(1)(b) of PERA, if a public employee is not a member of a union, the right to refrain means that he or she cannot be required to become a member of a union. If he or she has no financial obligation to support a labor organization, he or she cannot be required to begin supporting a labor organization. It is also evident that refraining from union activity includes ceasing union activities that the employee has already begun. Therefore, if a public employee is a member of a labor organization, he or she has the right to resign from that organization. If a public employee has undertaken a financial obligation to support a labor organization and is not subject to a lawful union security agreement, he or she has the right to terminate that financial support obligation.

We note that § 9(1)(b) does not indicate when public employees' right to refrain entitles them to stop supporting labor organizations if they have already joined such organizations. However, there is nothing in § 9(1)(b) that limits or authorizes placing limits on the right to refrain. While we agree with the ALJ that Respondents had legitimate business reasons for establishing the annual window period for membership resignation, those reasons cannot take precedence over public employees' statutory rights. Under the common law doctrine on withdrawal from voluntary associations, "a member of a voluntary association is free to resign at will, subject of course to any financial obligations due and owing the association." *Communications Workers v NLRB*, 215 F2d 835, 838 (CA 2 1954). See also, *Arnold v Burgess*, 241 App Div 364, 272 NYS 534 (1934); *Bossert v Dhuy*, 221 NY 342, 117 NE 582 (1917). Charging Parties were not subject to a union security agreement; their union memberships were voluntary. Therefore, as of the effective date of Act 349, Charging Parties had the right to resign their union memberships, subject to any lawful constraints in the parties' membership contract. Based on *Pattern Makers' League of North America, AFL-CIO v NLRB, 473 US 95; 105 S Ct 3064 (1985)* and the Board cases cited by the ALJ, Charging Parties' membership obligations to Respondents, including the

obligation to pay dues, should end at the point Charging Parties provided the Unions with notice of their resignations.

The Question of an Unconstitutional Impairment of Respondents' Contract Rights

Respondents contend that the ALJ erred by recommending that we order Respondents to cease and desist from restricting membership resignations to the month of August. Respondents assert that such an order would be an unconstitutional impairment of pre-existing contractual obligations. It is Respondents' contention that the newly enacted right to refrain can only be applied to allow union members to resign from their union if their union membership agreements were entered into after the effective date of Act 349, as only those membership agreements could violate the rights of public employees under § 9(1)(b).

This Commission has no jurisdiction to resolve questions regarding the constitutionality of legislative enactments. *Michigan State Univ*, 17 MPER 75 (2004). We must decide matters before us based on the language of PERA and its amendments. *Waverly Cmty Sch*, 26 MPER 34 (2012). Our review of the ALJ's Decision and Recommended Order persuades us that the ALJ's decision properly interprets PERA, as amended by Act 349, and her recommended order is consistent with that interpretation. However, we cannot adopt her recommended order if by doing so we act to impair constitutionally protected contract rights.

Before the enactment of Act 349, PERA did not contain an express right to refrain from union activity. See, *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004), n 5. The enactment of Act 349 gave Charging Parties an express right that they had not previously enjoyed. The fact that the right to refrain is a new statutory enactment distinguishes this matter from cases under the NLRA, which has long contained a right to refrain. In *West Branch-Rose City Ed Ass'n*, we found an MEA policy limiting union members' resignations to the month of August to be lawful. That policy is the same one that is before us in this case. The policy that was lawful before Act 349 was enacted is no longer lawful. Therefore, Respondents clearly cannot enforce that policy against any union member who joined the Unions on or after the effective date of Act 349, March 28, 2013. Thus, to the extent the ALJ's recommended order applies to the Unions' members who joined on or after March 28, 2013, there is no question of an unconstitutional impairment of contract rights. We agree that, with respect to any union member who joined the Unions on or after March 28, 2013, Respondents can be ordered to "cease and desist from enforcing this policy and either remove Article I from the MEA bylaws or amend it to reflect that the August window period, as reflected in the last sentence of that article, cannot be enforced."

Thus, the question to be addressed is whether application of Act 349 to the Unions' members who joined before the effective date of Act 349 is an impairment of Respondents' constitutional rights. The Michigan Constitution, at art. 1, § 10, as well as the United States Constitution, art. I, § 10, prohibits the enactment of legislation that impairs contractual obligations.

> Both the federal and state constitutions prohibit the enactment of state law that impairs existing contractual obligations. The language contained in our state constitution, virtually identical to that used in the federal constitution, provides: "No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted." The purpose of the Contract Clause is to protect bargains reached by parties by prohibiting states from enacting laws that interfere with preexisting contractual arrangements.

Studier v Michigan Pub Sch Employees' Ret Bd, 260 Mich App 460, 474; 679 NW2d 88, 97 (2004) *aff'd in part, rev'd in part* 472 Mich 642; 698 NW2d 350 (2005).

We do not presume that the Legislature intended to impair provisions of existing union membership agreements in existence at the time Act 349 was enacted. However, to determine the Legislature's intent, we must apply principles of statutory construction. See *Casco Twp v Sec'y of State*, 472 Mich 566, 571 (2005). A statute is enacted and is meant to be read as a whole. *Metropolitan Council 23, AFSCME* v *Oakland Co (Prosecutor's Investigators)*, 409 Mich 299, 317-318 (1980). Any provision that is in dispute must be read in the light of the general purpose of the act. *Romeo Homes, Inc* v *Comm'r of Revenue*, 361 Mich 128, 135 (1960).

When we examine Act 349 to determine the Legislature's intent in the light of the Contract Clause, we note that the language of § 10(5) indicates that the Legislature intended to make it clear that the changes to PERA in § 10(3) were not to impair existing contracts:

> (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. *This subsection applies only to an agreement, contract, understanding, or practice that takes effect or is extended or renewed after the effective date of the amendatory act that added this subsection.* (Emphasis added.)

Although we might presume that the Legislature did not intend the addition of § 9(1)(b) to be applied in a manner that could impair existing contracts, we find it more likely that the Legislature's specific limitation on the applicability of § 10(3) indicates that it only intended to limit the application of § 10(3) and no other provision of Act 349, based on the principle of statutory construction " expressio unius est exclusio alterius." Under that principle, the U.S. Court of Appeals for the Sixth Circuit explained, "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *In re Robinson*, 764 F3d 554, 562 (CA 6 2014) *cert den sub nom. Robinson v United States*,135 S Ct 2372; 192 L Ed 2d 148 (2015), quoting *Andrus v Glover Constr Co*, 446 US 608, 616–17, 100 S Ct 1905, 64 L Ed 2d 548 (1980). See also *Loughrin v United States*, 134 S Ct 2384, 2390; 189 L Ed 2d 411 (2014); *Smitter v Thornapple Twp*, 494 Mich 121, 136-37; 833 NW2d 875, 884-85 (2013). Therefore, we do not believe the Legislature intended to limit union resignations

based on the right to refrain under § 9(1)(b) to those public employees who became union members after the effective date of Act 349.

While the language of the Contract Clause of the U.S. and Michigan constitutions may appear absolute, the prohibition against the impairment of contract rights must be balanced against the State's inherent police power. *Energy Reserves Group, Inc v Kansas Power & Light Co*, 459 US 400, 410-13; 103 S Ct 697, 704-05 (1983); *Blue Cross & Blue Shield of Michigan v Governor*, 422 Mich 1, 22-23; 367 NW2d 1, 14 (1985). In *Health Care Ass'n Workers Comp Fund v Dir of the Bureau of Worker's Comp*, 265 Mich App 236, 241; 694 NW2d 761, 765-66 (2005) the Court of Appeals explained the balancing test as follows:

> A three-pronged test is used to analyze Contract Clause issues. The first prong considers whether the state law has operated as a substantial impairment of a contractual relationship. The second prong requires that legislative disruption of contractual expectancies be necessary to the public good. The third prong requires that the means chosen by the Legislature to address the public need be reasonable. *In re Certified Question; (Fun 'N Sun RV, Inc. v Michigan),* 447 Mich 765, 777, 527 NW2d 468 (1994); *Studier, supra* at 474–475, 679 NW2d 88. In other words, if the impairment of a contract is only minimal, there is no unconstitutional impairment of contract. However, if the legislative impairment of a contract is severe, then to be upheld it must be affirmatively shown that (1) there is a significant and legitimate public purpose for the regulation and (2) that the means adopted to implement the legislation are reasonably related to the public purpose. *Wayne Co Bd of Comm'rs v Wayne Co Airport Auth*, 253 Mich App 144, 163–164, 658 NW2d 804 (2002), citing *Blue Cross & Blue Shield of Michigan v Governor*, 422 Mich 1, 23, 367 NW2d 1 (1985).

As Charging Parties point out, Respondents' brief on exceptions does not discuss the test that is used to determine whether there is a violation of the Contract Clause. Nor do Respondents argue that an order requiring them to stop restricting membership resignations to the month of August would be a substantial impairment of their contractual rights under their agreements with current members. However, for the sake of this discussion, we will assume that a substantial impairment of Respondents' contract rights would be created by requiring them to eliminate the restriction on membership resignations to the August window period for all members, including those who joined the Unions prior to the effective date of Act 349. Then, we must look at whether there is a significant and legitimate public purpose in requiring Respondents to eliminate the policy restricting membership resignations to the month of August. The elimination of the August window period is designed to ensure that Respondents' members are able to act on their right to refrain from union activity. While the right to refrain from union activity has not been expressly recognized in Michigan until recently, it has long been recognized in many other states[9] and by the federal government in the NLRA at 29 USC 157. We, therefore, find a legitimate public purpose in requiring the

9 See for example, Cal Lab Code § 3502; Cal Lab Code § 3543; Fla Stat ch 447.301; Iowa Code § 20.8; NM Stat Ann § 10-7E-5.

immediate application of the right to refrain. Without the remedy recommended by the ALJ, Charging Parties would be denied their right to refrain. The recommended order, requiring Respondents to recognize Charging Parties' membership resignations and requiring Respondents to either amend their bylaws to remove the language that restricts public employees' right to refrain from union activity or inform their members that said language is unenforceable, is reasonably related to protecting public employees' right to refrain from union activity. Therefore, we find the order recommended by the ALJ does not create an unconstitutional impairment of Respondents' contractual rights. Inasmuch as the language in Respondents' bylaws restricting membership resignation to the month of August is no longer a lawful restraint on membership resignation, Charging Parties' membership obligations to Respondents, including the obligation to pay dues, end at the point that Charging Parties provided the Unions with effective notice of their resignations.

Criteria for an Effective Resignation from a Union

In September 2013, Charging Parties LaPorte, Eady-Miskiewicz, and Romska sent e-mails to Respondents with letters attached informing Respondents of their resignations from the Unions. Respondents received the e-mails from LaPorte, and Eady-Miskiewicz on September 18, 2013, and from Romska on September 20. Inasmuch as Respondents' policy requires written notice of resignation and permits that notice to be delivered by e-mail LaPorte, Eady-Miskiewicz, and Romska effectively notified Respondents of their resignations as of the date of their respective e-mails. Thus, each of their resignations should have been treated as effective on the date of their e-mails.

Charging Party Knapp informed an SEA representative, in September 2013, that he did not want to pay union dues. As a result, an MEA UniServ director sent Knapp an e-mail on September 11, asking him to meet with her to discuss his options in light of his earlier statement that he no longer wanted to pay union dues. At that point, Respondents were on notice that Knapp had concerns about continuing his union membership. In Knapp's October 7 e-mail to Respondents, he explained that he had assumed his union membership ended when he failed to enroll in the e-dues program and asked for information about leaving the two Unions. That e-mail, along with his prior conversation with the SEA representative, was sufficient to inform Respondents of his desire to resign from the Unions. When Respondents' agent subsequently contacted Knapp, explained the window period, and informed him that Respondents would not treat his failure to enroll in the e-dues program as a resignation from the Unions, it would have been clear to Knapp that there was no point in submitting a formal resignation letter until the following August. Accordingly, we agree with the ALJ that Knapp's October 7 e-mail to Respondents should have been treated as an effective resignation.

Charging Parties contend that the ALJ erred by finding that a failure to pay union dues, after dues deduction ceased, is not sufficient to provide the Unions with notice of resignation. As the ALJ stated, a failure to pay union dues can have more than one reason. In this case, the employees' dues had been paid by payroll deduction through June 2013. The failure to pay dues could have resulted from negligence, inability to pay, a desire not to pay,

or other reasons. We cannot expect a union to know what a member's reason is for not paying dues unless that member provides the union with notice of the reason. Therefore, the union member must give notice to the union of his or her intention to resign from the union. Unless the notice specifies a later date, the notice is effective when it is received. A union's requirement that the notice be in writing is not unreasonable and does not constitute a restraint on the right to refrain from union activity. The requirement of written notice serves "the legitimate purpose of enabling the union to maintain an accurate membership roll." See, *United Auto Workers v NLRB*, 865 F2d 791, 797 (CA 6 1989). We agree with the ALJ, for the reasons stated above and those stated in her decision, that: the resignations submitted by LaPorte, and Eady-Miskiewicz were effective on September 18, 2013; Romska's resignation was effective on September 20, 2013; and Knapp's resignation was effective on October 7, 2013. For the above reasons, we find the Unions' refusal to allow Charging Parties to resign their union memberships after Charging Parties effectively notified Respondent SEA of their respective resignations to be a breach of the duty of fair representation in violation of § 10(2)(a) of PERA.

Unions' Duty to Inform Members of the Resignation Procedure

Charging Parties contend that the ALJ erred by not finding that Respondents breached their duty of fair representation by failing, during the August window period, to provide the Unions' members with information on resignation. We disagree. For the reasons stated by the ALJ, we agree that the information provided by Respondents to members about the resignation process was sufficient to comply with the Unions' duty of fair representation.

We expressly agree with the ALJ's finding that in passing Act 349, the Legislature did not expect unions to assume the responsibility for informing their membership of the effect of that Act. As indicated above, we believe the Legislature intended to give public employees the immediate right to refrain from union activity. That change to PERA could have a significant effect on the relationship between unions and their members. The Legislature included in § 10(7) of the Act an appropriation of $1 million to the Department of Licensing and Regulatory Affairs for the 2012-2013 fiscal year to be used to take action in support of the implementation of the Act, including responding to public inquiries and to inform public employers, public employees, and labor organizations about their rights and responsibilities under the Act. Part of that appropriation was used to provide funding for the Bureau of Employment Relations, the administrative agency for this Commission, to hire a full-time professional employee to provide information to the public about the effect of Act 349. That expenditure would not have been necessary had the Legislature believed that unions had a duty to advise their members about the changes under Act 349. Soon after the passage of the Act, the Bureau of Employment Relations began receiving requests for information from the public about the effect of Act 349 on the rights and responsibilities of public employers, public employees, and labor organizations representing public employees; the Bureau continues to receive and respond to such requests.

As noted above, Charging Parties' membership in the Unions was voluntary. After June 30, 1998, their employment was not dependent upon their union membership. At the

time each of them joined the Unions, they signed a Continuing Membership Application that provided their membership would continue unless they revoked the membership authorization in writing between August 1 and August 31 of any year. It further provided that their employer was authorized to deduct union dues unless they submitted a written revocation of that authorization between August 1 and August 31 of any year. That document put them on notice that they had the right to terminate both their membership and their obligation to pay union dues upon submitting written notice during August of any given year. It was common practice for Respondent SEA to provide new members with a copy of the Continuing Membership Application when it was signed. Charging Parties have not denied that they received a copy of the Continuing Membership Application. Moreover, the MEA bylaws contain language describing the procedure for resignation from membership. Those bylaws are posted on the MEA website and are available to the general public.

Several years after Charging Parties became union members, they decided to resign. There is no evidence that Charging Parties requested information about the procedure for resigning before they submitted letters of resignation.[10] After receiving Charging Parties' letters of resignation, Respondent informed them that, because they did not submit their resignations during the August window period, they could not resign at that time. Respondents provided each of the Charging Parties with information about resigning after they attempted to resign.[11]

While Respondents did not actively publicize the procedure for resignation, there is no evidence that either Respondent declined to provide the necessary information about resignation to any requesting union member. Indeed, the record indicates that the information was provided to any union member who requested it.

Unions are based on the principle of strength in numbers. *Foltz v Harding Glass Co*, 263 F Supp 959, 963 (WD Ark 1967). Larger unions typically have greater bargaining power. *ITT Indus, Inc v NLRB*, 413 F3d 64, 70-71 (DC Cir 2005); *First Healthcare Corp v NLRB*, 344 F3d 523, 533 (CA 6 2003). It would, therefore, be counter to a union's goal of promoting the mutual benefit of its members to actively publicize the resignation procedure. Clearly, a union must take action to ensure that such information is available to its members, as Respondents have done by posting the bylaws containing the requirements for resignation on their website. Further, as Respondents have done, unions must provide information regarding resignation procedures when a member joins the union and when that information is requested by a union member. Where there is a right to refrain from union activity and the union and employer are not parties to a union security agreement, we find that unions have no duty, outside of the types of steps taken by Respondents herein, to provide resignation

10 We are including within these letters of resignation Knapp's October 7 e-mail requesting information on resignation.

11 As noted in the factual summary it is not clear whether LaPorte, received the same information about resigning that the other three Charging Parties received. However, it is evident that she was aware of the August window period when she sent the September 30, 2013 e-mail to the president of Respondent SEA, in which she asked if she could submit a resignation letter dated in August.

information when it has not been requested by a member.[12] Accordingly, we find that the Respondents did not breach their duty of fair representation by failing to provide more information regarding resignation from the Unions to Charging Parties than that reflected in the record.

We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case. We, therefore, affirm the ALJ's decision and adopt the Order recommended by the ALJ.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: September 23, 2015

12 This does not apply to labor organizations whose members are subject to a lawful union security agreement in which employees are required to pay a share of the financial support of their labor organization or exclusive bargaining representative, such as those labor organizations covered by § 10(4) of PERA.

NOTICE TO UNION MEMBERS

AFTER A PUBLIC HEARING, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND THE **SAGINAW EDUCATION ASSOCIATION** AND THE **MICHIGAN EDUCATION ASSOCIATION** TO HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

WE HEREBY NOTIFY OUR MEMBERS THAT:

WE WILL NOT restrain and coerce employees in the exercise of their rights under §9 of PERA to refrain from joining or assisting in labor organizations.

WE WILL NOT maintain or enforce a rule that prohibits members from resigning their union memberships except during the month of August.

WE WILL NOT refuse to accept Kathy Eady-Miskiewicz's September 18, 2013 resignation from her union membership, Jason LaPorte's September 18, 2013 resignation from his union membership, Susan Romska's September 20, 2013 resignation from her union membership, and Matt Knapp's October 7, 2013 resignation from his union membership.

WE WILL remove the last sentence of Article I from the bylaws or amend it to reflect the fact that it can no longer be enforced as written.

WE WILL affirmatively notify Kathy Eady-Miskiewicz, Jason LaPorte, Susan Romska, and Matt Knapp in writing that their resignations in September and October 2013 have been accepted.

SAGINAW EDUCATION ASSOCIATION

By: _____

Title: _____

MICHIGAN EDUCATION ASSOCIATION

By: _____

Title: _____

Date: _____

Any questions concerning this notice may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510. Case Nos. CU13 I-054/13-013125-MERC through CU13 I-061/13-013134-MERC

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

SAGINAW EDUCATION ASSOCIATION,
Labor Organization-Respondent in Case No. CU13 I-054/ Docket No. 13-013125-MERC; Case No. CU13 I-056/ Docket No. 13-013128-MERC; Case No. CU13 I-058/13-013130-MERC; Case No. CU13 I-060/ Docket No. 13-013132-MERC,

-and-

MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondent in Case No. CU13 I-055/Docket No. 13-013127-MERC; Case No. CU13 I-057/Docket No. 13-013129-MERC; Case No. CU13 I-059/Docket No. 13-013131-MERC; Case No. CU13 I -061/Docket No. 13-013134-MERC,

-and-

KATHY EADY-MISKIEWICZ,
Charging Party in Case No. CU13 I-054/13-013125-MERC and CU13 I-055/13-013127-MERC,

MATT KNAPP,
Charging Party in Case No. CU13 I-056/13-013128-MERC and CU13 I-057/13-01329-MERC,

JASON LAPORTE,
Charging Party in Case No. CU13 I-058/13-013130-MERC and CU13 I-059/13-013131-MERC,

SUSAN ROMSKA,
Charging Party in Case No. CU13 I-060/13-013132-MERC and CU13 I-061/13-013134-MERC.
_____/

APPEARANCES:

White, Schneider Young and Chiodini, P.C., by James J. Chiodini, Jeffrey S. Donahue, and Catherine E. Tucker, and Michael M. Shoudy, MEA General Counsel, for Respondents.

Mackinac Center Legal Foundation, by Patrick J. Wright and Derk A. Wilcox, for Charging Parties

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

The above unfair labor practice charges were filed with the Michigan Employment Relations Commission (the Commission) on October 21, 2013 pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. They were heard in Lansing, Michigan on February 26, 2014, before Administrative Law Judge Julia C. Stern of the Michigan Administrative Hearing System (MAHS). Based upon the entire record, including joint stipulations of fact by the parties, testimony presented and exhibits admitted at the hearing, and post-hearing briefs filed by the parties on or before May 9, 2014, I make the following findings of fact, conclusions of law, and recommended order.[13]

The Unfair Labor Practice Charges:

The four Charging Parties, Kathy Eady-Miskiewicz, Matt Knapp, Jason LaPorte, and Susan Romska are teachers employed by the Saginaw Public Schools (the Employer) and part of a collective bargaining unit represented by the Respondents Michigan Education Association (MEA) and its local affiliate, the Saginaw Education Association (SEA).[14] A collective bargaining agreement covering this unit expired on June 30, 2013. This agreement did not contain a union security agreement. There is not now, and has not been since 1998, any agreement between the Employer and Respondents requiring Charging Parties to pay dues or agency fees as a condition of employment. However, all four Charging Parties signed "Continuing Membership Agreements" agreeing to become members of Respondent around the time that they first became employed.

Charging Parties allege that in September and October 2013, they attempted to resign their union memberships and terminate their financial obligations to Respondents, but were told they could not do so except during Respondents' August "window" or "opt out" period. The Charging Parties filed charges against both the SEA and the MEA on October 21, 2013. The charges were consolidated, assigned to me, and amended on November 8, 2013. As amended, the charges allege that Respondents unlawfully restrained or coerced Charging Parties in the exercise of their §9 right to refrain from joining and/or assisting a labor organization, and thereby violated §10(2)(a) of PERA, by refusing to allow Charging Parties to resign their memberships when they attempted to do so and by threatening to attempt to collect dues they allegedly owed by hiring a debt collector and/or suing Charging Parties to collect the alleged debt.[15] The charges also allege that Respondents' violated their duty of fair representation under §10(2)(a) by failing to adequately notify them and other

13 See also my Decisions and Recommended Orders on Motions for Summary Disposition in *Grand Blanc Clerical Assn, MEA and Battle Creek Educational Secretaries Assn (Carr and Snyder)* Case Nos. CU14 C-020/ Docket No. 14-006843-MERC and CU14 C-009/Docket No. 14-004413-MERC and *Standish-Sterling Support Personnel Assn, MEA (Norgan)*, Case No. CU14 B-002/Docket No. 14-002293, both issued this same date.

14 A fifth Charging Party, teacher Kurt Alliton, withdrew his charges at the hearing.

15 The charges also allege that Respondents' actions violated §9(2) of PERA because they constitute attempts to "compel public employees to remain members of a labor organization and/or to financially support a labor organization through threats and intimidation of reporting and trying to collect a debt that is not owed." However, under §16(a) of PERA, only violations of §10 are unfair labor practices remediable by the Commission. Charging Parties do not argue in their brief that Respondents violated §9(2).

teachers of the "steps they would need to take to extricate themselves fully from any financial obligation to the unions."

Findings of Fact and Stipulated Facts:

The MEA's Window Period Policy and Continuing Membership Application

The MEA is a private voluntary membership organization incorporated as a private non-profit corporation under the laws of the State of Michigan, and a 501(c)(4) social welfare organization under the Internal Revenue Code. Membership is open to all non-supervisory personnel employed by an educational institution or agency in Michigan. Local affiliates of the MEA, of which the SEA is one, are the basic units of self-governance within the MEA. Local affiliates, and not the MEA, are the exclusive bargaining representatives of employees for purposes of collective bargaining under PERA. However, the MEA and its affiliates have what is known as a "unified membership structure," which means that membership in a local affiliate includes membership in both the MEA and the National Education Association (NEA).

Article I of the current version of the MEA bylaws reads as follows:

Membership year and payment of dues

> The official membership year shall extend from September 1 through August 31 each year. The terminal dates for other than full-year membership shall be the same as for full-year members. All membership dues shall be paid on or after September 1 of each year but may be paid earlier according to Administrative Policies as established by the Board of Directors. *Continuing membership in the Association shall be terminated at the request of a member when such a request is submitted to the Association in writing, signed by the member and postmarked between August 1 and August 31 of the year preceding the designated membership year*. [Emphasis added]

The MEA has had a continuing membership policy since at least the 1950's. The MEA's August window period policy, as set out in Article I of its bylaws, has been in effect since 1973. Pursuant to this policy, the MEA does not accept a member's resignation unless it is made in the month of August, or the member resigns their employment or is terminated by their employer in the middle of a school year and is no longer employed in a Michigan educational institution. Case-by-case exceptions are granted in appropriate extenuating circumstances.

The MEA bylaws are available on the MEA's website. The MEA website includes a link to the bylaws, and a Google search for the MEA's bylaws directs one to the website. The website, however, does not include a specific link for resignations or window period. The MEA has many publications, including a magazine, the *Voice,* with print and online editions. The *Voice* is emailed to all members who have provided the MEA with a home email address and mailed to all others; members can opt out of receiving the *Voice* if they choose. The website address appears on almost all MEA publications, including the *Voice.* Aside from making the bylaws available through its website

and publicizing the website, the MEA does not regularly publish information about the window period in any of its publications or send information about the window period to its members.

The MEA has instructed all staff who receive inquiries from members about resigning to tell them about the August window period. In addition, in August 2013 the MEA implemented a help line to improve its member service. Members who call the help line to inquire about resigning are told about the August window period.

In order to become a member of the MEA and/or its affiliates, individuals are required to sign a membership application, titled "Continuing Membership Application Local-Michigan-National Education Association." The Continuing Membership Application has differed in its content over the years. However, the membership applications signed by the Charging Parties in this case, and the application admitted at the hearing as the current application, include the following:

> Please check one (1) below:
>
> [Box] Cash Payment – Membership is continued unless I reverse this authorization in writing between August 1 and August 31 of any year.
>
> [Box] Payroll Deduction – I authorize my employer to deduct Local, MEA and NEA dues, assessments and contributions as may be determined from time to time, unless I revoke this authorization in writing between August 1 and August 31 of any year.

The Continuing Membership Applications signed by the Charging Parties do not mention either the MEA's bylaws or its website.

There is no evidence in the record as to whether the Charging Parties in this case received copies of their Continuing Membership Applications. However, standard practice is that members are given a signed carbon copy of their Continuing Membership Application immediately upon submission.

Charging Party Eady-Miskiewicz signed a Continuing Membership Application on March 1, 1996. Charging Party Romska signed on August 16, 1998, Charging Party Knapp signed on August 13, 2003, and Charging Party LaPorte signed on August 15, 2005. All of the Charging Parties checked Box 2, payroll deduction, when they signed their membership applications.

Purpose of the Window Period

Respondents assert that the primary purpose of the August window period is to give them a stable membership count for the upcoming school year for budgeting and other administrative purposes. Gretchen Dziadosz, the MEA's executive director, testified at the hearing that school districts generally do layoffs at the end of the school year, and that school districts have generally hired all employees for the upcoming school year by the end of August.[16] Moreover, retirement

16 Laid-off MEA members continue to pay dues, but at a reduced rate.

paperwork of teachers retiring at the end of the previous school year has generally been completed by the end of August. Accordingly, the MEA does a membership count each year at the end of its August window period. It then uses the membership count to calculate its anticipated revenue for its upcoming fiscal year, which runs from September 1 through August 31. Since dues constitute most of the MEA's operating revenue, knowing how many dues paying members it will have through the fiscal year substantially assists the MEA in budgeting its expenditures.

As Dziadosz explained at the hearing, one of the MEA's most significant expenditures is providing staff to assist local affiliates with their representative functions. The MEA employs approximately 100 Uniserv Directors located in forty-three field offices across the state. The locations of the field offices and Uniserv Directors are currently determined according to a ratio based on the number of members in a geographical area. The MEA uses the August membership count to determine whether changes need to be made during the fiscal year in the location or number of offices or staff. The assurance of a stable member count in a particular geographical area allows the MEA to negotiate office lease agreements, hire staff, and lease or purchase the equipment and technology necessary to serve its membership over the course of the school year. It also allows the MEA to schedule local conferences and other professional development activities and allocate funds for training local officers based on the number of members and dues revenue generated in a particular geographical area.

In addition to services provided to members and non-members alike, the MEA offers a variety of members-only benefits. These include free employment liability insurance to members for both criminal and civil cases through the Educators Employment Liability program administered by the NEA. The MEA must pay for this liability insurance at the beginning of its fiscal year; the per-member cost to the MEA of buying this insurance depends on the number of members. The MEA asserts that its ability to provide this benefit would be severely impaired if its membership fluctuated throughout the year. Members-only benefits also include numerous discounts negotiated by the MEA and made available to individual members. These include tuition discounts at certain universities, group automobile and homeowners' insurance discounts, a no-fee MEA-sponsored credit card with a low rate, MEA-sponsored group term life insurance, and member discounts on long-term care insurance and investment and financial services. In addition, MEA members often receive substantial discounts from local merchants across the state. As an example, Dziadosz described a member who had recently saved $3,000 on an auto purchase from a local dealer because of the MEA discount. As Dziadosz testified, the MEA is able to negotiate these member-only discounts because of its large and stable membership base. She also testified that the MEA was concerned that if it permitted individuals to resign their memberships at any time during the school year, individuals would abuse their membership privileges by becoming members solely to take advantage of the discounts and then immediately resign.

MEA members also have certain rights not possessed by employees within the bargaining unit who are not members. These include the rights to vote in elections for officers, both at the local affiliate and MEA level, to attend and vote at membership conventions, and to vote in elections to ratify collective bargaining agreements. Both elections for local officers and contract ratification elections are often held at the beginning of the school year, after the August window period. The August window period, Respondents argue, reasonably protects them from individuals who might

become members only to vote in a particular election. In addition, local delegates to the MEA's representative assembly are apportioned based on the number of members the local affiliate has recorded as of August 31. Therefore, the August membership count impacts the voting power of a local affiliate for an entire year.

Also geared to the MEA's fiscal year are the MEA's current procedures for collecting service fees from nonmembers who object to the use of their fees for non-collective bargaining purposes. These procedures were approved by a Federal District Court in 1989 in *Lehnert v Ferris Faculty Assn*, 707 F Supp 1490 (WD Mich, 1989), aff'd 893 F2d 111 (CA 6, 1989) after over a decade of litigation. The procedures require Respondents, after the close of their fiscal year in August, to calculate Respondents total expenditures for chargeable and non-chargeable expenditures for that fiscal year and to calculate the reduced agency fee an objecting nonmember is to be required to pay for the upcoming fiscal year based on these expenditures. By November 30, Respondents are required to provide all nonmembers who are obligated to pay an agency or service fee with a notice that includes: (1) a list of expenditures, by major category, made by the NEA, MEA and, if applicable a local association, verified by an independent auditor; (2) a statement of whether a major category of expense, or a particular portion thereof, is chargeable to objectors; (3) the amount of the reduced agency fee; (3) the method used to calculate the agency fee; and (4) a statement of the MEA's procedures for collecting agency fees from objectors. Non-members then have a thirty-day window period in which to notify Respondents of their decision, for the current fiscal year to: (1) join the union and pay dues; (2) pay an agency fee equal to the amount of dues less the cost of NEA members-only liability insurance; (3) pay the reduced agency fee as determined by Respondents; or (4) pay the reduced agency fee into an escrow account and challenge Respondents' calculation of the reduced fee. Collection of the service fee from nonmembers does not begin until after this thirty-day window period has expired. If the non-member does not respond in a timely fashion, he or she is charged an agency fee in the amount of dues less the cost of the NEA liability insurance. The challenges of objecting nonmembers to Respondents' calculation of the reduced fee are heard by an impartial arbitrator and a decision is rendered no later than May 1. After the arbitrator renders a decision, the funds in the escrow account, including interest, are disbursed in accord with that decision; if an objecting nonmember has not paid enough into the escrow account, he or she is responsible for the deficit.

The procedures for collecting service fees require Respondents to provide separate notice, as set out above, to nonmembers who become part of a bargaining unit after the November 30 notice is sent and give these individuals a thirty-day window period to make the choice to become a member, to remain a nonmember and pay an agency fee equivalent to dues, or to become an objecting nonmember and either pay the reduced fee as calculated by Respondent or pay it into an escrow account while challenging the calculation. Non-members hired after November 1 are allowed to participate in the hearing before the impartial arbitrator unless their challenges come too late for them to participate. The procedures make no provision for individuals who resign their membership after the November 30 notice.

Some local affiliates assess local dues and fees, while others do not. In order to collect a local service fee under the MEA's procedures, a local affiliate must conduct an audit of its financial statements as of the end of the fiscal year and have that information available to be included in the

November 30 mailing. Local affiliates decide whether or not to conduct an audit based on the number of nonmembers within the bargaining unit as of September 1. If a local affiliate decides not to pay for an audit, it waives any right to collect a local service fee from nonmembers during the fiscal year. Respondents assert that knowing how many dues-paying members it has at the beginning of the school year is therefore important to local affiliates in determining whether to spend the money for an audit.

2012 PA 53 and 2012 PA 349

All collective bargaining agreements between the Employer and Respondents, including the 2008-2013 collective bargaining agreement which expired on June 30, 2013, required the Employer to deduct union dues or agency fees from the paychecks of unit members who had authorized it. The 2008-2013 collective bargaining agreement included this provision:

> Upon SEA certification of membership or agency status and checkoff authorizations, the District will deduct monthly dues from each eligible employee's pay and remit to SEA an amount equal to the authorized monthly dues, PAC and other contributions, subject to applicable law.

On March 16, 2012, the Legislature passed 2012 PA 53, which amended §10(1)(b) of PERA to make it unlawful for a public school employer "to assist a labor organization in collecting dues or service fees from wages of public school employees." The collection of such dues and service fees pursuant to any collective bargaining agreement in effect on March 16, 2012 was not prohibited under PA 53 until the agreement expired or was terminated, extended, or renewed. On June 11, 2012, a U.S. District Court enjoined enforcement of PA 53 on equal protection grounds. *Bailey v Callaghan,* 873 F Supp 2d 879, (ED Mich, 2012). On May 9, 2013, the Court of Appeals reversed and remanded to the District Court to dissolve the injunction. 715 F3d 956 (CA 6, 2013). After the collective bargaining agreement covering Charging Parties' bargaining unit expired on June 30, 2013, and before any of the Charging Parties attempted to resign their memberships, the Employer ceased deducting dues and contributions from the Charging Parties' paychecks.

On December 11, 2012, the Legislature passed 2012 PA 349. The law, which became effective on March 28, 2013, amended both §9 and §10 of PERA. Section 9 sets out the rights of public employees protected by PERA. Prior to PA 349, §9 read as follows:

> 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.

Section 9 was modeled on §7 of the National Labor Relations Act (NLRA), 29 USC 150 et seq. However, §7 of the NLRA, as amended by the 1947 Taft-Hartley amendments, includes an explicit "right to refrain" from engaging in §7 activities. The Michigan Legislature did not include a "right to refrain" from §9 activities when it adopted PERA in 1965, and it did not add this language

to §9 when it amended PERA in 1973 to add provisions making certain conduct by labor organizations unfair labor practices under the Act. Among the statutory changes effected by PA 349, however, was the addition to §9 of PERA of the "right to refrain" language that had been part of §7 of the NLRA since 1947. Section 9(1) now reads:

> Sec. 9. (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).[17]

Section 10 of PERA was modeled on §8 of the NLRA. Like §8, §10 contains the conduct constituting unfair labor practices by public employers and labor organizations. Section 10(2)(a), like §8(b)(1)(A) of the NLRA, makes it unlawful for a labor organization or its agents to "restrain or coerce public employees in the exercise of rights guaranteed in §9 [or §7 of the NLRA]." Like §8(b)(1)(A) of the NLRA, §10(2)(a) also states that this section does not "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership."

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17 Section 9 now also contains subsections (2) and (3), which read as follows:

> (2) No person shall by force, intimidation, or unlawful threats compel or attempt to compel any public employee to do any of the following:
>
> (a) Become or remain a member of a labor organization or bargaining representative or otherwise affiliate with or financially support a labor organization or bargaining representative.
>
> (b) Refrain from engaging in employment or refrain from joining a labor organization or bargaining representative or otherwise affiliating with or financially supporting a labor organization or bargaining representative.
>
> (c) Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or public employees represented by a labor organization or bargaining representative.
>
> (3) A person who violates subsection (2) is liable for a civil fine of not more than $500.00. A civil fine recovered under this section shall be submitted to the state treasurer for deposit in the general fund of this state.

As noted in n 3, the charges allege that Respondents violated §9(2), but Charging Parties do not make this argument in their brief.

In addition to adding "right to refrain" language to §9, PA 349 removed provisions in PERA explicitly making it lawful for a public employer and labor organization to agree to make payment of an agency fee a condition of employment. It also added the following new language in §10(3):

> (3) Except as provided in subsection (4), an individual shall not be required as a condition of obtaining or continuing public employment to do any of the following:
>
> > (a) Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization or bargaining representative.
> >
> > (b) Become or remain a member of a labor organization or bargaining representative.
> >
> > (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.
> >
> > (d) Pay to any charitable organization or third party any amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or public employees represented by a labor organization or bargaining representative.

Subsection (4) states that subsection (3) does not apply to public police or fire department employees or state troopers.

SEA and MEA Response to PA 53 and PA 349

Sometime after the passage of PA 53 in March 2012, the MEA set up an e-dues program which allowed members and nonmember agency fee payers to sign up online to pay their dues and fees by credit card or deduction from their bank accounts. As noted above, enforcement of PA 53 was enjoined between June 2012 and May 2013.

On December 28, 2013, after the passage of PA 349, MEA President Steve Cook sent an email to local presidents, board members and staff discussing the MEA's response to that statute. Cook said that MEA membership applications indicate that if a member wished to resign, they must do so only in August, and that the MEA was going to stick to that. He told staff that members who indicate that they wish to resign should be told they could do so only in August. Cook's email also stated that the MEA would use any legal means at its disposal to collect the dues owed under signed membership forms from any member who withheld dues prior to terminating their membership in August for the following fiscal year.

On January 18, 2013, Cook sent an email to a larger list of local presidents, officers, Uniserv Directors, and other staff that provided them with a form letter to send to members who contacted

local affiliates about resigning, a comparison sheet of benefits provided to members vs nonmembers, and talking points for discussing the impact of PA 349 and bargaining strategies with members. The form letter quotes Article 1 of the bylaws, and also states that the continuing membership agreement that the members signed provides that written notice of resignation of membership must be made in writing during August for the following fiscal year.

On January 23, 2013, a message from Cook regarding the impact of PA 349 was posted as part of the online edition of the *Voice.* The principle point of the message was that it had always been illegal to require anyone to join a union, and that what PA 349 really did was allow individuals to freeload, i.e., enjoy the benefits of union representation without paying its costs. Cook argued that PA 349 was likely to cause division within locals because providing help to freeloaders would take up an increasing amount of the local union's time. He also asserted that tracking down dues from union members would take up staff time better spent in organizing members to take collective action for their mutual benefit.

As discussed above, there is no indication in the record that the MEA publishes specific information about the August window period in any of its publications. There is also no indication that, after the passage of PA 349, the MEA sent any type of notice or reminder of the August window period to members who did not explicitly ask about resigning. Finally, there is no evidence that the MEA either urged its local affiliates to provide information about the August window period to its members or instructed them not to do so unless a member inquired.

In June, July, and August 2013, SEA President LeAnn Bauer sent a series of emails and letters to SEA members discussing the importance of paying dues, explaining the e-dues system and the fact that PA 53 had ended the deduction of MEA dues from their paychecks, and urging/reminding members to sign up for e-dues. None of these communications either mentioned the August window period or said anything about the consequences of not signing up for e-dues. SEA members who asked SEA representatives about when and how to resign during these months were told about the August window period. Five SEA members submitted written resignations in August 2013 and were permitted to resign.

On August 8, 2013, all teachers in Michigan were sent an email entitled "August is Teacher Freedom Month" from James Perialas. Perialas identified himself as president of the Roscommon Teachers Association. He explained that in Roscommon the teachers had decertified from their "parent" union and formed a "local-only" union. He argued that teachers in Roscommon were now better off. Perialas stated that he was sending the letter to help teachers seek out information regarding their "rights, options and implications of choosing to remain with their union or not." The email stated that he was sending the letter because "the month of August may be the only opportunity many of you have to choose what type of union representation fits your situation best." One of the options mentioned by Perialas was exercising the right to "fully opt out of paying dues or agency fees" if the teacher's collective bargaining agreement had expired. Perialas did not explain that the MEA did not permit "opt out" except in August, but his email did provide a link to a non-MEA website that had information about the window period. On August 12, 2013, Bauer sent SEA members an email responding to Perialas' argument that teachers would be better off forming their own association instead of remaining part of the MEA. In this email, Bauer stated that educators had

always had the choice of joining their local association or not joining. She said that the only change from the "right to work" law was that educators were now entitled to have rights under a collectively bargained contract without any obligation to pay for bargaining and protecting these rights. Cook also published a response to Perialas' email in the August 9, 2013 online edition of the *Voice*. Neither Bauer's email nor Cook's article mentioned the August window period.

The August window period became a topic of discussion at an SEA membership meeting held on September 26, 2013. During this meeting, Bauer admitted that SEA members had not been notified about the window period. A member also asked the SEA representatives during the meeting what would happen if a member did not pay dues. One of these representatives stated that the debt could be "taken to collections."

In November 2013, the MEA adopted a new dues collection policy, as follows:

Members in Arrears in Their Dues/Refusing to Pay/ Members Not in Good Standing

Local Association

1. The local association president or local membership chair should consult the ME412R report (local membership list and dues payment history) available from the membership system to assess which members are not paying dues . . .

2. Someone who is in arrears or not paying should be contacted by an association representative (president-treasurer, or building rep) about making payments. All conversations should be cordial. The eventual use of collections to collect dues should not be discussed in the first conversation. They should be reminded of their agreement to pay dues as members.

3. The member can/should be given the list of what a member loses if they become a member in arrears/not in good standing.

4. The local should attempt multiple contacts with the person within the first 90 days the member is in arrears.

MEA

1. Once the member is 60 days or more in arrears from the billing due date, MEA Membership will attempt at least three contacts (email, phone, or mail depending on the data in the system.) After this, if there has been no positive response, the member will receive a letter or email informing him/her that we are about to send the account to collections and he/she has 30 days to forward payment or to contact MEA to arrange for a payment schedule. A copy via email will be sent to the local association president and the local Uniserv director.

. . .

Alternative arrangements may include, but are not limited to:

The local association has determined to pay the dues on the member's behalf or

The individual and the MEA Secretary-Treasurer have agreed to a repayment plan that the member is following.

Dziadosz testified that between 900 and 1500 MEA members resigned during August 2013 She also testified that approximately 500 members contacted the MEA seeking information about resigning between August 31, 2013 and the date of the hearing in February 2014, and that about 200 members sent letters attempting to resign during that period.

During the 2013-2014 school year, there were approximately 112,000 active status (excluding student and retiree) MEA members. Dziadosz testified that as of the date of the hearing in February 2014, approximately 8,000 members who were no longer having dues deducted from their paychecks had not yet signed up for e-dues or paid their 2013-2014 dues in cash. She testified that the MEA had not yet implemented its November 2013 dues collection policy because it was finding many errors in its membership database and wanted to make sure the database was as accurate as possible before implementing the policy. She also testified that many members believed that they were still paying dues by payroll deduction, and were happy, after being contacted directly, to sign up and pay their dues.

According to Dziadosz, at the time of the hearing the MEA had hired debt collectors to collect dues from a few members who had not paid all the dues they owed for 2012-2013 after their employers stopped deducting dues from their paychecks. She testified that the MEA had taken this action when, despite previous contacts with them the previous year, these members had failed to set up payment plans. She testified that she believed that the MEA had not yet hired debt collectors to attempt to collect unpaid dues for the 2013-2014 membership year.

Charging Parties Resign their Memberships

On September 18, 2013, both LaPorte and Eady-Miskiewicz sent emails to Bauer with letters attached resigning from the SEA and MEA. Romska sent an email and resignation letter to Bauer on September 20, 2013. The letters sent by LaPorte, Eady-Miskiewicz and Romska also revoked their dues checkoff authorizations, even though the Employer had by this time ceased deducting dues because of PA 53. On or about October 10, 2013, Eady-Miskiewicz was sent a letter from MEA Uniserv Director Sue Rutherford stating that because her resignation was not made during the August window, it was untimely. The letter gave Eady-Miskiewicz instructions on how to properly submit her resignation the following August. Romska received a similar letter. It is not clear whether LaPorte also received a letter from Rutherford. However, after the September 26, 2013 SEA meeting, LaPorte sent Bauer an email asking if she was willing to accept a resignation letter if it was predated to August. Bauer replied on October 1, stating that she was unable to accept resignations at that time; she told him that if payroll deduction was not an issue, the Employer would still be collecting dues. In this email, Bauer also told LaPorte, "I don't know of any organization that tells members how to resign."

In early September 2013, Knapp told an SEA building representative that he did not want to pay dues. On September 11, 2013, Knapp received an email from Rutherford asking to meet with him to "discuss his options." Knapp did not contact Rutherford, but in early October received a letter from the MEA about dues. On October 7, he sent Bauer an email stating that he was under the assumption that he was no longer a member if he did not sign up to pay dues, and asking her to explain the protocol for leaving the SEA and MEA. Rutherford then contacted Knapp and explained the window period. She told him that Respondents did not consider failing to sign up for e-dues to be a resignation.

None of the four Charging Parties signed up for e-dues. None of the four Charging Parties have paid any dues or fees to Respondents since June 2013.

Discussion and Conclusions of Law:

Impact of PA 349

The parties submitted a joint statement of "questions presented for decision" listing the issues which each party believed should be addressed. The parties did not stipulate to any issue.

I find, first, that all four Charging Parties in this case resigned their union memberships outside of Respondents' window period, and that Respondent rejected their resignations as untimely. I reject Respondents' argument that Knapp never resigned because he never submitted a resignation letter. Knapp's October 7, 2013 email to Bauer clearly indicated that he wanted to resign. Knapp did not submit a formal resignation letter because he was orally informed by Uniserv Director Rutherford that it would not be accepted.[18]

However, because the Employer was not deducting dues from Charging Parties' paychecks, Respondents' refusal to accept their resignations had no immediate financial consequences. Nor do Charging Parties allege that Respondents' refusal to accept their resignations had any other immediate adverse consequences. Rather they allege that Respondents violated §10(2)(a) of PERA by threatening to take legal action, including hiring a debt collector, to collect membership dues that Respondents assert that they owe because they did not submit a timely resignation. As Respondents point out, taking legal action to collect the alleged debt would not have any impact on Charging Parties' employment. The Commission has repeatedly held that only union actions which impact employment or employment status violate §10(3)(a)(i), the predecessor to §10(2)(a). See, e.g., *Assn of School and Community Service Administrators (Mettler),* 1987 MERC Lab Op 710, in which the Commission held that a union did not violate an employee's §9 rights by filing an action in Small

18 Charging Parties seem to suggest in their brief that the mere failure to pay union dues, after dues deduction ceased, might constitute a resignation. I do not accept this argument. It seems obvious that the desire to cease being a member is only one of a number of reasons why a union member might fail to actually pay his or her dues. I find that in order for a union member to resign, he or she must affirmatively express the intent to do so. I also find that it is reasonable for a union to require that the resignation be put in writing, and that merely requiring a written resignation is not a restriction on the right to resign. See, e.g., *Int'l Union, United Auto, Aerospace & Agr Implement Workers of Am. (UAW) v NLRB*, 865 F2d 791, 797 (CA 6, 1989).

Claims court to collect a service fee it claimed that the employee, a nonmember, owed it. The collective bargaining agreement covering the employee did not contain any form of union security agreement. The Small Claims court had entered a judgment against the employee based on a provision in the union's bylaws that required nonmembers to pay an annual service fee. The Commission noted that it had no power to review the court's judgment. It also held that bringing the action could not be construed as a violation of PERA because there was no effect on the employee's employment.

Prior to PA 349, therefore, under established Commission precedent, Respondents' enforcement of its window period for resignations in this case would not have constituted an unfair labor practice because it did not impact the Charging Parties' employment. However, PA 349 added to §9 of PERA an explicit right to refrain from the activities described in that section, including joining and assisting a labor organization. Charging Parties assert that by adding this language, the Legislature gave public employees the right to resign their union memberships at any time. They also assert that any restriction on this right by a labor organization violates §10(2)(a).

The goal of statutory construction is to effectuate the Legislature's intent. *Casco Twp v Secretary of State,* 472 Mich 566, 571 (2005). That intent is clear if the statutory language is unambiguous, and the statute must then be enforced as written. *Lorencz v Ford Motor Co,* 439 Mich 370, 376 (1992); *Weakland v Toledo Eng Co, Inc*, 467 Mich 344, 347 (2003). Every word of a statute should be given meaning and no word should be made nugatory. *People v Warren,* 462 Mich 415, 429, n. 24 (2000). A change in statutory language is presumed to reflect either a legislative change in the meaning of the statute itself or a desire to clarify the correct interpretation of the original statute. *Bush v Shabahang,* 484 Mich 156, 168 (2009).

Section 9(1), as amended, does not explicitly give public employees the right to resign their union membership at will. However, as Charging Parties point out, the NLRB and Courts have held that under the NLRA, union members have an unrestricted right to resign. They have also held that a union commits an unfair labor practice by maintaining or enforcing rules that restrict that right. See *Pattern Makers' League of North America, AFL–CIO v NLRB,* 473 US 95 (1985) and other cases discussed below.

The Commission and Michigan Courts have long recognized that because PERA is modeled on the NLRA, federal precedent, although not controlling, provides valuable guidance in interpreting PERA. *Gibraltar Sch Dist v Gibraltar MESPA-Transp.,* 443 Mich. 326, 335, (1993);, *Central Michigan Univ Faculty Assn v Central Michigan Univ.,* 404 Mich. 268, 273 (1978); *Pontiac Police Officers Assn v Pontiac (After Remand),* 397 Mich 674, 246 N.W.2d 831 (1976); *Detroit Police Officers Assn v Detroit,* 391 Mich 44 at 53 (1974). Respondents argue that *Pattern Makers,* and other authority under the NLRA on resignation of union membership, should serve as precedent for interpreting §9(1)(b) because NLRA permits negotiation of collective bargaining agreements that require membership in a labor organization as a condition of employment, while PERA has never had that requirement. It is true that the 1973 amendment to PERA, which authorized union security agreements, permitted only those agreements that required employees to pay service fees to a union, while the NLRA, on its face, authorizes agreements requiring union membership. However, long before the 1973 amendments to PERA, the requirement of membership in a labor organization under

the NLRA had been "whittled down to its financial core," i.e., the payment of union dues and fees. *NLRB v General Motors Corp,* 373 US 734, 742 (1963). Moreover, until PA 349 made agency fee agreement unlawful, PERA, on its face, permitted union security agreements that required the payment of service fees equal to the amount charged to members as dues and fees. The right of a union to charge agency fees in the amount of dues and fee was limited only by *Abood v Detroit Bd of Ed,* 431 US 209 (1977), which held that public employees could not constitutionally be required to pay an agency fee that funded expenditures other than those for collective bargaining and contract administration. Later, in *Communications Workers of America v Beck,* 487 US 735 (1988), the Supreme Court brought *Abood* into the private sector by further limiting "financial core" membership under the NLRA to the support of activities germane to collective bargaining, contract administration, and grievance adjustment. In sum, I find that by the time PA 349 went into effect, there was no significant difference between lawful union security agreements under the NLRA and under PERA.

In PA 349, the Legislature inserted into PERA language from the NLRA giving employees the right to refrain from §9 activities, language that had been omitted from previous versions of PERA. I conclude that the Legislature's intent was to incorporate into PERA the right to refrain as it has been interpreted under the NLRA, including what union conduct constitutes unlawful restraint or coercion of the exercise of that right. How I believe these rights and obligations have been interpreted is discussed below.

Reasonableness of Respondents' Window Period and *West Branch*

Before addressing that question, however, I note that I agree that Respondents presented ample evidence at the hearing that its window period serves the interests of its membership as a whole. The August window period provides Respondents with stable membership numbers and, consequently, a stable revenue figure for the upcoming fiscal year. This substantially assists Respondents in planning for the upcoming year and in budgeting. Knowing the number of members and their locations also helps Respondent adjust staffing. These efficiencies strengthen the organization and allow Respondents to better serve the interests of all the employees it represents. A stable membership figure, by ensuring businesses access to a large and stable market, also allows the MEA to negotiate significant discounts on goods and services for its members.

In *West Branch Rose City EA, MEA,* 17 MPER 25 (2004), an employee covered by a union security agreement sought to resign his MEA membership and assert his right under *Abood* to become an objecting nonmember and limit his contributions to the union to sums used for collective bargaining and contract administration. The Commission held in that case that the MEA's window period was reasonable and organizationally necessary. It concluded, therefore, that the MEA's window period policy was not an arbitrary rule and that it did not violate its duty of fair representation by refusing to allow the charging party to resign outside of the window period in order to exercise his *Abood* rights. However, *West Branch* was decided before PA 349 added the "right to refrain" language to PERA. In *West Branch,* at n 5, the Commission noted that PERA lacked the right to refrain language contained in the NLRA, and stated that it would not infer a right to refrain in the absence of clear legislative intent. While the footnote acknowledged that union membership could not be required under PERA even in the absence of this language, the Commission noted that

the charging party in *West Branch* had voluntarily joined the union initially. I agree with Charging Parties that because of the addition to §9 of a right to refrain, *West Branch* is no longer binding on the issue of whether the MEA's August window period violates §10(2)(a) of PERA.

Relevant Case Law under the NLRA

In a seminal decision, *Pattern Makers League of North America,* the Supreme Court declared that union members have a right to resign under the NLRA. This case upheld a decision by the National Labor Relations Board (NLRB) holding that a union violated §8(b)(1)(A) of the NLRA by fining members for violations of a union rule against working during a strike that occurred after the individuals had attempted to resign their memberships. *Pattern Makers League of North America,* 265 NLRB 1332 (1978), In *Pattern Makers,* the union's constitution stated that resignations or withdrawals would not be accepted during a strike. A number of members submitted resignations during a strike and then returned to work. The union refused to accept their resignations and imposed substantial fines on them for violating the rule against working during the strike. One employee was expelled, and the union later attempted to cause his discharge under the union security agreement. The decision does not indicate whether the employees who resigned, but were not expelled, continued to pay dues to the union after they tendered their resignations, but the union did not seek their discharge under the union security clause. The decision also does not indicate how, or whether, the union made efforts to collect the fines from the employees it had not expelled.

Prior to *Pattern Makers,* the Supreme Court had held that fining union members for violations of a union rule did not violate §8(b)(1)(A). *NLRB v Allis-Chalmers Mfg Co,* 388 US 175 (1967). It had also held that where there was no provision in the union constitution or bylaws restricting the right to resign, a union could not lawfully fine employees who had resigned their union memberships before violating a union rule. *NLRB v Granite State Joint Bd, Textile Workers Union of America, Local 1029, AFL-CIO,* 409 US 213 (1972). However, the Supreme Court had never directly addressed the effect of a restriction on resignations contained in a union's constitution. The Court in *Pattern Makers,* at 101, n 9, implicitly acknowledged that provisions in a union's constitution and bylaws are generally considered to constitute a contract between a union and its members, noting that in previous cases it had explicitly left open "the extent to which contractual restrictions on a member's right to resign may be limited by the Act." The Court held, nevertheless, that the union's imposition of fines on employees after they had tendered their resignations from membership constituted unlawful restraint and coercion under §8(b)(1)(A).

The *Pattern Makers* Court rejected the union's argument that language in the NLRA protecting a union's right to prescribe its own rules with respect to the acquisition and retention of membership protected its conduct in that case. The Court held, at 104, that §8(b)(1)(A) allowed unions to enforce only those rules that "impaired no policy Congress embedded in the Act." After reviewing the legislative history of the "acquisition and retention" language, the Court concluded that Congress did not intend that language to authorize restrictions on the right to resign and escape union discipline, noting that in 1947, when the Taft-Hartley Act added that language to the NLRB, union constitutional provisions restricting the right to resign were uncommon. Citing legislative history, the Court concluded that Congress intended to give unions the right to expel members for violations of union rules, but not the right to prevent them from resigning. The Court declared that a

policy of "voluntary unionism" was embedded in the NLRA, and it concluded that the restriction on resignations in *Pattern Makers* impaired this policy.

As the Board thereafter stated in *Auto Workers Local 148 (McDonnell-Douglas),* 296 NLRB 970 (1989), after *Pattern Makers* it became settled law under the NLRA that any restrictions placed by a union on its members' right to resign were unlawful, irrespective of the period of restriction, and that the maintenance of such a restriction restrains and coerces employees from exercising their Section 7 rights. *Sheet Metal Workers Local 73 (Safe Air),* 274 NLRB 374 (1985), aff'd 840 F.2d 501 (CA 7, 1988).

It should be noted, however, that in declaring that a policy of "voluntary unionism" was embedded in the NLRA, the Court was referring to "full" as opposed to "financial core" membership. *Pattern Makers*, at 106. That is, the issue addressed by *Pattern Makers* was whether a union could, by a provision in its constitution, restrict a member from resigning his "full" membership and escape union discipline. *Pattern Makers* did not specifically address whether a union could place restrictions on when a member could resign to escape a financial obligation toward the union.

That issue was addressed by the NLRB in *International Brotherhood of Electrical Workers, Local 2088 (Lockheed Inc),* 302 NLRB 322 (1991). In *Lockheed,* charging party May had signed a checkoff authorization authorizing Lockheed to deduct his "Initiation fee, and on the first pay day of each month, [his] regular membership dues in Local Union 2088, International Brotherhood of Electrical Workers, AFL-CIO, and remit same to said Union." The authorization, tracking the language of §302(c)(4) of the Labor Management Relations Act (LMRA), provided that it would be "irrevocable for a period of one year from the date hereof or until the expiration of the present collective bargaining agreement between the Company and the Union, whichever is the shorter of the two periods." May sent a letter to the union outside of the period stated in the checkoff authorization resigning his membership. He also sent a letter to Lockheed revoking his checkoff authorization. The union did not accept this letter as a resignation, the employer continued to deduct dues, and the union continued to accept them. At the time May sent this letter there was a collective bargaining agreement in effect between the union and Lockheed, but no union security agreement. The record did not indicate that there was any union bylaw or provision in the union constitution restricting the right to resign. May filed a charge alleging that the union violated §§8(b)(1)(A) and (2) of the NLRA. The union argued that by signing the checkoff authorization, May "elected to forego his right to be able to stop payment of dues at any time" and thereby effectively agreed to waive any right to resign except in the manner and at the time specified in the authorization. It argued that the resignation letter, which did not comply with the terms of the authorization, did not constitute an effective resignation of membership.

The NLRB framed the question as whether a union, without reliance on any valid union-security clause, could seek to require the continued checkoff of union membership dues from the wages of an employee who signed a dues-checkoff authorization that was irrevocable for 1 year or the expiration of the current collective-bargaining agreement, whichever is sooner, but who resigned from membership before the end of that period of irrevocability. It concluded that its policy concerning the effect of a resignation on a checkoff authorization for deduction of union dues needed

reexamination. In its reexamination, the Board first examined the legislative history of §302(c)(4), but concluded that it provided no answer and that the question should be decided in accord with more general policies of the NLRA. It stated, at 327-329,

> In particular, we find it reasonable to take account of the policy of "voluntary unionism" that, as the Supreme Court explained in *Pattern Makers*, was incorporated into the Act by the 1947 Taft-Hartley amendments, and of the principle that waivers of statutory rights must be clear and unmistakable.
>
> In its 1947 modification of Section 7 of the Act, Congress gave employees the right to refrain from engaging in the activities specified in that section. Because those activities include "join[ing], or assist[ing] labor organizations," it can hardly be disputed that Section 7 protects both the right to refrain from belonging to a union and the right to refrain from contributing money to it, except to the extent that the proviso to Section 8(a)(3) of the Act permits an employee to be required to pay dues under a contractual provision as there defined. These expressly stated policies of the Act, together with the contractual principles reviewed in section C below, must inform our decision concerning what the Respondent could lawfully require of May after he resigned membership and revoked his authorization for deductions made from his wages for the support of the Respondent.
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> ***
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> Our review of statutory policies and contractual principles persuades us that there is no reasonable basis for precluding an employee from individually agreeing that he will pay dues to a union whether or not he is a member of it and that he will pay such dues through a partial assignment of his wages, i.e., a checkoff. Neither is there a reasonable basis for precluding enforcement of such a voluntary agreement. But the policies discussed above also make it reasonable for us to conclude that an employee who has promised only to pay union "membership" dues by checkoff for 1 year has not necessarily thereby obliged himself to continue paying such dues throughout that period—i.e., to continuing assisting the union—even when he is no longer a union member. We will require clear and unmistakable language waiving the right to refrain from assisting a union, just as we require such evidence of waiver with regard to other statutory rights. The authorization signed by May, which refers only to an obligation with respect to payments of "my Initiation fee" and "my regular membership dues" plainly does not meet this standard.
>
> The Respondent seeks to surmount this difficulty by arguing that May in fact continued to be a "member" even after he attempted to resign, because his authorization was not merely an agreement to pay dues through a checkoff mechanism but also constituted an agreement to refrain from resigning his membership. Hence, the Respondent in essence argues May waived two rights through the authorization—his right to refrain from assisting the Respondent and his right to refrain from belonging to it. Under this theory, May continued to owe dues as

a member and to be obligated, during the stated irrevocability period of the authorization, to have those dues deducted from his wages. Because, however, we find the authorization's references to payment of dues insufficiently clear to require continued payment of membership dues after resignation, a fortiori we find the language insufficiently clear to prohibit May from resigning.

In reaching this conclusion, we are not identifying forced union membership with forced payment of dues. As noted above, we agree that the Board's decision in *Shen-Mar* rejecting that equation is still good law.[19] We recognize that paying dues and remaining a union member can be two distinct actions. We merely hold that the policy of "voluntary unionism" that informs the Supreme Court's decision in *Pattern Makers* with regard to remaining, or declining to remain, a union member also logically relates to other forms of union activity. The policy warrants the application of a test that will assure that the extraction of moneys from an employee's wages to assist a union, if not authorized by a lawful union-security clause, is in accord with the employee's voluntary agreement. If the employee did not agree, when he signed the authorization, to have "regular membership dues" deducted even when he is no longer a union member, then the employee's continued financial support of the union is not clearly "voluntary" after he has resigned.

Accordingly, we will construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the *method* by which dues payments will be made *so long as dues payments are properly owing*. We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership. If an authorization contains such language, dues may properly continue to be deducted from the employee's earnings and turned over to the union during the entire agreed-upon period of irrevocability, even if the employee states he or she has had a change of heart and wants to revoke the authorization. [Emphasis in original].

On the same day as *Lockheed*, the Board issued another case involving an employee who resigned his union membership and attempted to revoke his checkoff obligation outside of the window period provided in the checkoff authorization. In that case, the Board dismissed the charge against the union. It concluded that a checkoff agreement authorizing the employer "to deduct from my pay each month, while I am in employment with the collective bargaining unit in the Company, and irrespective of my membership status in the Union, monthly dues, assessments…" clearly obligated the charging party to pay dues after he resigned his union membership until he properly

19 *Shen-Mar Food Products*, 221 NLRB 1329 (1976), enfd as modified 557 F2d 396 (CA 4, 1977).

revoked his checkoff authorization within the designated window period. *United Steelworkers of America, Local 4671*, 302 NLRB 367 (1991).

In *Schweizer Local No 1752 (UAW) (Schweizer Aircraft Corp),* 320 NLRB 528 (1995), an employee resigned his union membership and attempted to revoke his checkoff authorization outside of the window period while he was subject to a valid union security agreement. The authorization contained language similar to that in *Lockheed,* authorizing the deduction of "membership dues, including an initiation or reinstatement fee and monthly dues in such sums as may be established from time to time by said local union in accordance with the Constitution of the International Union, UAW AFL-CIO." However, the Board concluded that since the employee was covered by a valid union security clause, he had no §7 right to refrain from financially assisting the union. Therefore, it concluded, the clear and explicit waiver analysis of *Lockheed* did not apply, and the employee was not privileged to revoke his checkoff authorization outside of the window period. The Board noted, at 530, n 6, that the case did not raise any *Beck* issue, since following the employee's resignation, an adjustment was made to the amount being deducted from his wages reflecting his status as a financial core member who objected to payment of full union dues and fees.

Two days before *Schweizer,* the Board issued *California Saw and Knife Works,* 320 NLRB 224 (1995). In that decision, it concluded that a union's window period for making *Beck* objections, as applied solely to members who resigned outside the window period and not employees who were nonmembers during the last window period, acted as an arbitrary restriction on employees' right to resign from union membership, citing *Pattern Makers,* and also on these employees' right not to be compelled to support the union's nonrepresentational expenditures. The Board noted that an employee could exercise *Beck r*ights only when not a member of the union, and that the window period, as applied to those who had newly resigned, effectively compelled these employees to contribute to (what even the union would agree were) non-collective bargaining expenditures. The majority of the Board adopted this reasoning in *Polymark Corp,* 329 NLRB 9 (1999) to again find that a union's window period for making *Beck* objections, as applied to members who resigned after the window period, violated §8 (b)(1)(A) of the NLRB.

From the above, I conclude that the law under the NLRA is as follows. First, the "right to refrain" in §7 includes the right to resign one's union membership at any time. The proviso in the NLRA which protects the right of a union to prescribe its own rules with respect to the acquisition or retention of membership, and which has been broadly interpreted as giving a union the right to control its internal affairs, does not authorize restrictions on the right to resign. Therefore, a union unlawfully restrains or coerces employees in the exercise of their §7 rights if its actions restrict their right to resign even if, as in *Pattern Makers,* there is no direct impact on the employees' employment. It is unclear whether a member could, by any means, waive his or her right to resign full membership at any time. However, it is clear, under the authority of *Pattern Makers,* that members do not waive their right to resign full membership merely by voluntarily becoming a member of a union that has a rule in its constitution or bylaws restricting the right to resign. The Board has also held that the §7 "right to refrain" of employees who are not covered by a valid union security clause also includes the right to refrain from financially assisting a union after resigning. An employee can waive that right by signing an individual agreement to financially support the union after he has resigned his membership. However, because this is an agreement to waive a statutory right, the waiver must be clear, explicit, and unmistakable.

Application to the Facts of the Case

Respondents argue that finding their August window period to be unlawful would affect their ability to establish criteria for the acquisition of membership. That is, they argue that they have the right, under §10(2)(a), to require, as a condition of membership, that employees agree to limit their right to resign. They argue that their ability to establish criteria for the acquisition of membership cannot be impaired in the absence of a demonstrable impact on the Charging Parties' employment, which is not present in this case.

As Respondents point out, PA 349 left intact the proviso in §10(2), identical to that in §8(b)(1)(A) of the NLRA, stating that the prohibition against restraint or coercion of public employees in the exercise of §9 rights does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership. As the Supreme Court noted in *Pattern Makers*, at 102, this language had been interpreted to protect a union's right to fine and expel members for violations of its internal rules. The Court in *Pattern Makers*, however, found that a restriction on the right to resign, although made part of the union's constitution, was not an internal union matter outside the reach of §8(b)(1)(A). After reviewing the legislative history, the Court concluded that in enacting the proviso protecting the union's right to make its own rules as part of the Taft-Hartley Amendments, Congress did not intend to allow union restrictions on the right to resign membership. It stated, at 103:

> The congressional purpose to preserve unions' control over their own "internal affairs" does not suggest intent to authorize restrictions on the right to resign. Traditionally, union members were free to resign and escape union discipline. In 1947, union constitutional provisions restricting the right to resign were uncommon, if not unknown. Therefore, allowing unions to "extend an employee's membership obligation through restrictions on resignation" would "expan[d] the definition of internal action" beyond the contours envisioned by the Taft-Hartley Congress. *International Assn of Machinists, Local 1414 (Neufeld Porsche-Audi, Inc,* 270 NLRB No. 209, p 11 (1984). [Footnotes omitted].]

In *Pattern Makers*, the union imposed fines on individuals it claimed had not validly resigned, but took no action that impacted their employment. Clearly, the Court in *Pattern Makers* concluded that Congress, in adopting Taft-Hartley, intended the right to resign full union membership to constitute such a fundamental right that a union's restriction of this right would constitute unlawful restraint or coercion even if the union's actions did not have an effect on their ex-members' employment.

Respondents also argue that the addition in PA 349 of §10(3) indicates the Legislature's intent to make unlawful only union restrictions on resignation from membership that impact the member's employment status. Section 10(3) now explicitly states that individuals may not be required as a condition of employment to, among other things, remain members of a labor organization. Respondents argue that if the Legislature's intent had been to make all union restrictions on the right to resign unlawful under §10(2)(a), §10(3) would be unnecessary. Section

10(3), however, is the provision in the statute which explicitly outlaws union security agreements. As such, it replaces the former §10(2) and the former proviso to §10(1)(c) which explicitly permitted such agreements. Like these former proviso, the new §10(3) addresses the rights of public employers, as well as unions and public employees. I do not agree that the inclusion of §10(3) indicates that Legislature did not also intend to bar unions from otherwise restricting its members right to resign.

As discussed above, I find that when the Legislature added the right to refrain language to §9 of PERA, it incorporated into PERA the right to refrain as it has been interpreted under the NLRA. I find that under §9(b) of PERA employees have a right to resign their union memberships at will. I conclude that any union rule or policy, including the MEA's August window period policy, which limits or restricts that right violates §10(2)(a) of PERA. I conclude, therefore, that Respondents' maintenance and enforcement of the last sentence of Article I of its bylaws, which on its face restricts the rights of employees to resign their memberships at will, constituted unlawful restraint and coercion of employees' §9 rights and therefore violates §10(2)(a) of PERA.

I also find that, under the principal of "voluntary unionism," a member can agree to limitations on his right to resign his "financial core" membership, i.e., his obligation to pay dues and fees, at least if that restriction is reasonable. I conclude that Respondents could lawfully condition admission to membership on an individual's written agreement to limit his right to resign his "financial core" membership at any time. However, I find that this agreement, as a waiver of individual statutory rights, must be clear, explicit, and unmistakable. I find that merely becoming or remaining a member of a labor organization with a rule or policy restricting the right to resign cannot constitute a clear and explicit waiver of the statutory right to resign at will. Moreover, I find that to constitute a valid waiver of the right to resign at will, any agreement signed by an individual member waiving their right to resign must clearly state that "membership" is limited to the obligation to pay dues and fees.

I find that the Continuing Membership Agreements signed by the Charging Parties in this case do not clearly, explicitly and unmistakably waive their right to resign their "financial core" memberships at will. The Continuing Membership Agreements signed by the Charging Parties do not define "membership" or clearly state that membership is limited to an obligation to pay dues or fees. I conclude, therefore, that Respondents also violated §10(2)(a) of PERA by refusing to accept Charging Parties' resignations outside of the August window period.

The remaining question is whether Respondents violated §10(2)(a) by threatening to take action against Charging Parties, whether hiring a debt collector or filing suit, to collect the dues and assessments Respondents assert that Charging Parties owe.

As discussed above, the NLRB has held that paying dues and being a union member are two separate actions, and that employees can agree to continue paying dues after resigning their memberships. In *International Brotherhood of Electrical Workers (Lockheed),* the NLRB held that where the issue was whether a union could lawfully continue to demand that the employer continue checking off dues after the employee's resignation, the Board would require the agreement to continue to pay dues after resignation to be clear and unmistakable, in accord with the standard for waivers of other statutory rights. In that case, the union sought to use the employees' employer to

collect the dues that the union claimed it was owed. Here, however, Respondents have not demanded that Charging Parties' employer continue to deduct dues from their paychecks, and the Employer is prohibited from deducting dues from the paychecks of even those members who would prefer that the Employer do so.

Respondents argue that they cannot be found to have violated §10(2)(a) of PERA by threatening to take legal action against the Charging Parties to collect dues because a threat to invoke a legal right cannot constitute a violation of the Act. Respondents argue that a statute, in this case PERA, should be interpreted in a manner consistent with constitutional principles.[20] They assert that finding them to have committed an unfair labor practice based solely on their threat to take legal action on a debt would infringe on their First Amendment right to petition and of access to the courts. Respondents cite the Supreme Court's holding in *Bill Johnson's Restaurants v NLRB,* 461 US 732, 745-46 (1983). In *Bill Johnson*, the Court held that because of the First Amendment's protection of the right to access to the courts, the filing and prosecution of a state court lawsuit by an employer against its employee could not be enjoined as an unfair labor practice under the NLRA, regardless of the employer's motive for filing the suit, unless the lawsuit "lacked a reasonable basis." The Court stated that if the plaintiff in the lawsuit was able to present the Board with evidence that its lawsuit raised genuine issues of material fact, the Board should proceed no further with the unfair labor practice proceeding until the state court suit was concluded since the NLRA should not be construed to allow the Board to usurp the traditional fact-finding function of a state court. The Court also held that if the state court proceeding resulted in a judgment adverse to the employer, and the NLRB then concluded that the suit was filed to retaliate against the employee for his protected concerted activity, the Board could find an unfair labor practice and order appropriate relief. In a subsequent case, *BE & K Construction Co v NLRB,* 536 US 516 (2002), the Court held that an employer's unsuccessful state court lawsuit against a union could not form the basis for an unfair labor practice finding unless the Board could conclude that the suit was "objectively baseless," i.e. no reasonable litigant could expect success on the merits.

Respondents also argue that the Commission lacks jurisdiction to find a violation of PERA because this dispute has no impact on Charging Parties' employment. As mentioned above, the Commission has consistently held that it has no jurisdiction to interfere with internal union affairs absent some direct impact on employment. See, e.g., *Assn of School and Community Service Administrators (Mettler),* supra*; Organization of Classified Custodians,* 1996 MERC Lab Op 181 (no exceptions) (suspension and expulsion from union membership an internal union matter not subject to regulation by the Commission absent some impact on employment); *AFSCME Local 118,* 1991 MERC Lab Op 617 (no exceptions) (whether union collected dues from members for work done during the summer months an internal union matter where there was no impact on employment); *Macomb Co Professional Deputy Sheriff's Assn,* 1995 MERC Lab Op 595 (no

20 For the proposition that PERA must be interpreted in line with constitutional principles, Respondents cite *Grass Lake Cmty Schs,* 1978 MERC Lab Op 1186, aff'd *Jackson Co Ed Assn v Grass Lake Cmty Schs,* 95 Mich App 635, (1979). In *Grass Lake,* the Commission held that even if union representatives authored a petition presented to the employer's school board asking it to replace its chief negotiator, the union did not violate §10(3)(b) of PERA prohibiting unlawful coercion of an employer in the selection of its representative for collective bargaining. The Commission held that since the presentation of a petition to a governing body is conduct protected by the First Amendment, it would not find the mere presentation of the petition to violate the Act.

exceptions) (union's lawsuit, after member resigned, to collect back dues that were mistakenly not withheld during her employment an internal union matter not affecting her employment); *Detroit Assn of Educational Office Employees,* (no exceptions) 1980 MERC Lab Op 1058 (dispute between union and members over whether they were required to pay back dues as a condition of remaining members an internal union matter where no employer action or involvement in the dispute).

As discussed above, I agree that a union's restrictions on the right to resign union membership are not internal union matters protected by the provision giving the union the right to prescribe its own rules with respect to the acquisition or retention of membership. However, I agree with Respondents that the Commission does not have jurisdiction under PERA to find an unfair labor practice based on a union's attempts to enforce the terms of a private agreement between itself and an ex-member when these attempts do not involve either the ex-member's employer or employment. I conclude, therefore, that Respondents did not violate §10(2)(a) of PERA by threatening to hire a debt collector or file suit to collect the sums it claimed were owed by the Charging Parties.

In sum, my conclusions are as follows. The addition of right to refrain language to in §9(1)(b) of PERA gave employees the right under §9 of PERA to resign their union memberships at will and prohibited unions from restricting that right by rule or policy. The Charging Parties in this case had a §9 right to resign their union memberships outside of the MEA's August window period. They did not clearly and explicitly waive that right either by joining Respondents when that organization had a bylaw that restricted when they could resign or by the Continuing Memberships agreements which they signed. All four Charging Parties either resigned in writing or, in the case of Knapp, requested to resign but were explicitly told that a written resignation request made outside the union window period would be futile. I conclude that Respondents continued maintenance and enforcement of the August window period contained in the last sentence of Article I of its bylaws violated §10(2)(a) of PERA because it constituted an unlawful restriction on employees' right to resign. I also conclude that Respondents violated §10(2)(a) of PERA by refusing Charging Parties' requests to resign outside the August window period. I find that Respondents did not violate §10(2)(a) by threatening to hire a debt collector or file suit to collect the dues Respondents claimed that Charging Parties owed for them.

Respondents' Failure to Notify Charging Parties of the Window Period

Charging Parties also argue that Respondents breached their duty of fair representation toward them by failing "to take sufficient action to notify them and other teachers of the steps needed to extricate themselves fully from any financial obligation to the unions." As discussed in the fact section above, Respondents' August window period for resignations is contained in Article I of its bylaws, which are on the MEA website. However, the website does not include a specific link to "resignations" or "August window period." The MEA *Voice,* a publication regularly sent to members, publicizes the website. However, neither Article I of the bylaws nor other information specifically about the August window period is published in the *Voice.*

In support of the argument that Respondents had a duty to affirmatively notify them of the August window period, Charging Parties first cite *Steele v Louisville & NPR,* 323 US 192 (1944),

for the proposition that a union's duty of fair representation toward nonmembers includes the duty to "keep nonmembers informed of important issues." In *Steele,* which arose under the Railway Labor Act, a union representing railroad firemen excluded black firemen from membership. It also negotiated collective bargaining agreements with provisions that explicitly discriminated against them. While not holding that the union's exclusion of the black firemen from membership was unlawful, the Supreme Court held that since the union was the statutory representative of the class of firemen, it owed a duty toward all employees in that class, including those who were not union members. The Supreme Court said, at 204, that the union's duty to represent nonmembers without hostile discrimination, fairly, impartially and in good faith, required it to consider the views of nonmembers, and where necessary, provide these nonmembers with "notice of and opportunity for hearing upon its proposed action."

Charging Parties go on in their brief to discuss the development of the statutory and common law cause of action for breach of the duty of fair representation, including, as set out in *Vaca v Sipes,* 386 US 171,177 (1967), the duty of a union "to serve the interest of all unit members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." Among the other cases they cite is *American Postal Workers Union, Local 6885 v American Postal Workers Union,* 665 F2d 1096 (CA DC 1981), in which a local union challenged a contract negotiated by its international union on its behalf. The local alleged that the international breached its duty of fair representation by a series of actions it took during negotiations, including promising to consult with the local union but failing to do so before changing its bargaining position. Before rejecting the claim that the international had breached its duty of fair representation, the Court reviewed cases holding that unions violated their duty of fair representation by failing to adequately inform members about matters on which they were required to act. In one of the cases discussed, unions failed to tell members that if they ratified the contract which was before them for a vote, the employer would eliminate the entire unit. In another, the union breached its duty by failing to tell an employee that failure to join the union and pay dues would result in his discharge.

Charging Parties conclude with a discussion of *Knox v Service Employees International Union,* Local *1000,* 567 US ____ (2012), where the issue was whether a union violated the constitutional rights of nonmembers when it required them to pay a union special assessment intended to fight a ballot proposal. The special assessment was announced after the union's annual window period for nonmembers to make objections to the amount of the agency fee, and the union therefore provided nonmembers with no opportunity to object to paying the special assessment. In finding that the union acted improperly, the Court held, as Charging Parties note, that "a nonmember cannot make an informed choice about a special assessment or dues increase that is unknown when the annual notice is sent."

From the cases discussed above, Charging Parties argue that Respondents had a duty to provide them, and all its other members, with sufficient information to make an informed choice during the August window period. However, Charging Parties have provided no good authority for the proposition that a union's duty of fair representation includes the obligation to provide its members with information about how to go about resigning their memberships. A union's duty of fair representation requires it to represent employees fairly and without hostility with respect to

matters related to their employment. This sometimes includes, as discussed in the cases cited by Charging Parties, an affirmative duty to inform employees about matters that affect their employment status or their terms and conditions of employment. As Respondents rightly point out, however, the duty of fair representation is coextensive with the union's authority under the statute to bargain on the employee's behalf, i.e., it extends only to matters for which the union is the employees' exclusive representative. See, e.g., *Detroit Bd of Ed,* 1997 MERC Lab Op 394. Even if union members have the right to resign, as I have concluded that they do, I find that information about how to resign does not fall into this category, at least for members not subject to a union security agreement.[21] I conclude that Respondents' duty of fair representation under §10(2)(a) did not include an obligation to provide members not subject to a union security agreement with information about how to resign their memberships.

I note that Charging Parties argue that the sheer number of MEA members who failed to sign up for e-dues or pay their dues in cash for the 2013-2014 membership year, approximately 8,000, as contrasted with the 900 to 1500 who actually resigned in August 2013, indicates that Respondents failed to provide sufficient notice of the resignation process. Of course, some of these 8,000 members may have been unaware of Respondents' resignation process. Others may have been unaware that they needed to resign their union memberships in order to escape a financial obligation to Respondent after PA 349 took effect, or that there was and is a distinction between being a member of a bargaining unit and being a member of the union representing that unit. In recognition that employees needed information about the effect of PA 349 on their rights and responsibilities, the Legislature specifically directed the Department of Licensing and Regulatory Affairs to provide this type of information to employees, as well as to public employers and labor organizations. This to me indicates that the Legislature understood that unions did not have an affirmative duty to educate their members concerning the changes wrought by PA 349.

Proposed Remedy

In accord with my conclusion that Respondents violated §10(2)(a) by maintaining and enforcing their August window period policy on resignations because it constituted unlawful restraint or coercion of their members' right to resign their memberships at will, I will recommend to the Commission that it order Respondents to cease and desist from enforcing this policy and either remove Article I from the MEA bylaws or amend it to reflect that the August window period, as reflected in the last sentence of that article, cannot be enforced.

In accord with my conclusion Respondents violated §10(2)(a) by refusing to accept Charging Parties' resignations in September and October 2013, I will recommend that the Commission order Respondents to cease and desist from refusing to accept Charging Parties' resignations and notify them in writing that their resignations have been accepted. In accord with my conclusion that Respondents' threats to hire a debt collector or take other actions to collect sums that Charging Parties allegedly owed pursuant to a private contract with Respondents did not violate PERA, I recommend that this allegation be dismissed. I also recommend that the Commission find that

21 The issue, for members subject to a union security agreement, is whether their rights under *Abood* and *Chicago Teachers Union, Local No 1, AFT, AFL-CIO v Hudson* 475 US 292 (1986), require this notice.

Respondents duty of fair representation did not include an affirmative obligation to provide notice to Charging Parties, or to other members not subject to union security agreements, of its August window period.

I will also recommend that the Commission issue an order requiring Respondents to take the actions set forth below, including ordering Respondents, with the permission of the Employer, to post a notice to its members on the Employer's premises and ordering Respondents to publish the order in both its online and paper editions of the *Voice*.

Based on the findings and stipulations of fact and findings and conclusions of law above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

Respondents Saginaw Education Association and Michigan Education Association, its officers and agents, are hereby ordered to:

1. Cease and desist from restraining and coercing employees in the exercise of their right under §9 of PERA to refrain from joining or assisting labor organizations by:

   a. Maintaining or enforcing the rule contained in Article I of the MEA's bylaws prohibiting members from resigning their union memberships except during the month of August;

   b. Refusing to accept Kathy Eady-Miskiewicz's September 18, 2013 resignation from her union membership, Jason LaPorte's September 18, 2013 resignation from his union membership, Susan Romska's September 20, 2013 resignation from her union membership, and Matt Knapp's October 7, 2013 resignation from his union membership.

2. Take the following affirmative action to effectuate the purposes of the Act:

   a. Remove the last sentence of Article I from the bylaws or amend the bylaw to reflect the fact that the last sentence of Article can no longer be enforced as written;

   b. Affirmatively notify Kathy Eady-Miskiewicz, Jason LaPorte, Susan Romska, and Matt Knapp in writing that their resignations in September and October 2013 have been accepted;

   c. With the agreement of the Charging Parties' employer, the Saginaw Public Schools, post the attached notice to union members in conspicuous places on the employer's premises, including all places where notices to members of the Saginaw Education Association's bargaining unit are normally posted, for a period of 30 consecutive days; within 60 days of the

date of this order, publish the attached notice in both the print and online editions of the MEA *Voice* and email or mail copies of this editions of the *Voice* to all members who normally receive the *Voice.*

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 29, 2014

NOTICE TO UNION MEMBERS

AFTER A PUBLIC HEARING, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND THE **SAGINAW EDUCATION ASSOCIATION** AND THE **MICHIGAN EDUCATION ASSOCIATION** TO HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

WE HEREBY NOTIFY OUR MEMBERS THAT:

WE WILL NOT restrain and coerce employees in the exercise of their rights under §9 of PERA to refrain from joining or assisting in labor organizations.

WE WILL NOT maintain or enforce a rule that prohibits members from resigning their union memberships except during the month of August.

WE WILL NOT refuse to accept Kathy Eady-Miskiewicz's September 18, 2013 resignation from her union membership, Jason LaPorte's September 18, 2013 resignation from his union membership, Susan Romska's September 20, 2013 resignation from her union membership, and Matt Knapp's October 7, 2013 resignation from his union membership.

WE WILL remove the last sentence of Article I from the bylaws or amend it to reflect the fact that it can no longer be enforced as written.

WE WILL affirmatively notify Kathy Eady-Miskiewicz, Jason LaPorte, Susan Romska, and Matt Knapp in writing that their resignations in September and October 2013 have been accepted.

SAGINAW EDUCATION ASSOCIATION

By: _____

Title: _____

MICHIGAN EDUCATION ASSOCIATION

By: _____

Title: _____

Date: _____

Any questions concerning this notice may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510. Case Nos. CU13 I-054/13-013125-MERC through CU13 I-061/13-013134-MERC