

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

TRUE COPY

In the Matter of:

DEWITT EDUCATIONAL SUPPORT PERSONNEL  
ASSOCIATION, MICHIGAN EDUCATION ASSOCIATION,  
Respondent-Labor Organization,

-and-

MERC Case No. CU13 J-065

KIMBERLY STEPANSKI,  
An Individual Charging Party.

APPEARANCES:

White Schneider PC, by Jeffrey S. Donahue, James J. Chiodini and Michael M. Shoudy, for Respondent

National Right to Work Legal Defense Foundation, Inc., by Amanda K. Freeman, Milton L. Chappell and John N. Raudabaugh, for Charging Party

DECISION AND ORDER

On May 1, 2019, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order<sup>1</sup> in the above-entitled matter, finding that Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that they cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts as its order the order recommended by the Administrative Law Judge.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Edward D. Callaghan, Commission Chair



Robert S. LaBrant, Commission Member



Natalie P. Yaw, Commission Member

Issued: JUN 12 2019

<sup>1</sup> MOAHR Hearing Docket No. 13-014908

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STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

DEWITT EDUCATIONAL SUPPORT PERSONNEL  
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Case No. CU13 J-065  
Docket No. 13-014908-MERC

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APPEARANCES:

White Schneider PC, by Jeffrey S. Donahue, James J. Chiodini and Michael M. Shoudy,  
for Respondent

National Right to Work Legal Defense Foundation, Inc., by Amanda K. Freeman, Milton  
L. Chappell and John N. Raudabaugh, for Charging Party

**DECISION AND RECOMMENDED ORDER**  
**OF ADMINISTRATIVE LAW JUDGE**  
**ON SUMMARY DISPOSITION**

This case arises from an unfair labor practice charge filed on November 15, 2013, by Kimberly Stepanski against DeWitt Educational Support Personnel Association (DESPA), Michigan Education Association (MEA). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings and Rules, formerly the Michigan Administrative Hearing System, acting on behalf of the Michigan Employment Relations Commission (the Commission).

The Unfair Labor Practice Charge and Procedural History:

The charge alleges that Respondent violated Sections 9(1)(b) and 10(2) of PERA by refusing to honor Stepanski's resignation from membership in the Union and by denying her request to end dues payments. An evidentiary hearing was scheduled for March 28, 2014. At Charging Party's request, this case was consolidated with *Manistique Education Association, MEA -and- Mike Rochon*, Case No. CU14 B-003; Docket No. 14-002388-MERC, and *Manistique Education Association, MEA -and- Shannon Rochon*, Case No. CU14 B-004; Docket No. 14-002560-MERC, both of which involved the

interpretation of 2012 PA 349, the “right to work” legislation which became effective on March 28, 2013. As a result of the consolidation, the hearing was rescheduled for May 22, 2014.

On May 12, 2014, Charging Parties in the consolidated cases, including Stepanski, filed a motion for summary disposition. The hearing was once again adjourned in order to give the Unions the opportunity to file a response to the motion. The Unions filed their response brief on June 9, 2014. Thereafter, the parties agreed to hold the consolidated cases in abeyance until after the issuance of a decision in another dispute then pending before the Commission involving the attempted enforcement by a labor organization of a resignation window period under 2012 PA 349. On July 30, 2018, the parties entered into a joint stipulation to keep the consolidated cases in adjourned without date status pending review by the courts of various Commission decisions.

On January 11, 2019, I granted a request from Charging Party to reactivate the instant case and to sever it from the *Rochon* matters.<sup>1</sup> At the same time, it was agreed that the parties would file supplemental briefs in this matter and then have the case decided by the undersigned on summary disposition. Supplemental briefs were filed by both Charging Party and Respondent on February 8, 2019. Thereafter, I directed Charging Party to address in writing certain issues raised by the Union in its supplemental brief. Charging Party filed its response brief on March 6, 2019, and the case was then placed on my decisional docket.

Facts:

The following facts, none of which are in dispute, are derived from the unfair labor practice charge and the various motions and briefs filed in this matter. Charging Party is employed as a lunch room assistant by DeWitt Public Schools and is a member of a bargaining unit represented by DESPA, a local affiliate of the MEA. She began working for the school district in October of 2011. At that time, the Union and the Employer were parties to a collective bargaining agreement covering the period 2011-2012 which contained a union security clause requiring members of the bargaining unit to either join the DESPA or pay a service fee to the Union as a condition of employment.

On November 18, 2011, Charging Party joined the Union by signing a “continuing membership application” requesting membership in the DESPA, the MEA and the National Education Association (NEA). On that application, Stepanski checked a box authorizing the school district to deduct from her paycheck “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 MEA bylaws which were in existence at the time also referenced the August window period. Article 1 of the MEA bylaws stated:

The official membership year shall extend from September 1 through August 31 each year. The terminal dates for other than full-year membership

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<sup>1</sup> The parties later reached a settlement in the related cases and the unfair labor practice charges in the *Rochon* matters were withdrawn on February 13, 2019.

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.

On December 11, 2012, Michigan became a “right-to-work” state with the passage of 2012 PA 349. The legislation, which became effective on March 28, 2013, amended Sections 9 and 10 of PERA, MCL 423.209 and 423.210. Section 9 of PERA sets out the rights of public employees covered under the Act. Prior to 2012 PA 349, Section 9 of PERA read:

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.

With the passage of the right-to-work legislation, Section 9 now expressly recognizes the pre-existing entitlement of public sector employees in Michigan to refrain from engaging in the activities described therein. As amended, Section 9 provides:

(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).

In addition to recognizing the right of public sector employees to refrain from engaging in certain concerted activities, the Legislature added the following two new provisions to Section 9 of the Act:

(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, any portion of dues, fees, assessments, or other charges or expenses required of members of 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.

Section 10 of PERA sets forth the specific conduct which constitutes an unfair labor practice by a public employer or a labor organization. Both before and after the 2012 amendments to the Act, a labor organization was prohibited under Section 10 from restraining or coercing public employees in the exercise of their Section 9 rights. 2012 PA 349 added the following new language as subsections 10(3) and 10(5) of PERA:

(3) [A]n 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.

On or about August 15, 2013, DeWitt Public Schools and the Union entered into a new collective bargaining agreement covering the period 2013 to 2014. Pursuant to the requirements of Act 349, the new agreement did not require, as a condition of employment, that any member of the bargaining unit financially support the Union by paying dues or agency service fees.

On or about October 29, 2013, DESPA treasurer Barbara Laing issued a memo to Union members who had not yet paid, or arranged for the payment of dues. In the memo, Laing wrote, "Since MEA did not hear from you during the opt-out period, which was August 1 through August 31, they are requesting that I find out what is your plan for paying dues." Charging Party was handed a copy of the memo by a co-worker on November 1, 2013. In response, Stepanski sent an email to Laing on or about November 3, 2013, alleging that the memo was the first time she had been notified of an "opt out option for dues payment." Stepanski indicated that she wished to exercise that option and that she would not be paying DESPA membership dues.

On November 4, 2013, Laing advised Charging Party by email that she was obligated to continue paying union dues throughout the remainder of the 2013-2014 school year. Laing wrote, "As stated in the memo, the opt out period for MEA was August 1st through August 31. This was covered in the August membership meeting. You can opt out for the next school year in August." The email gave Stepanski the option of paying dues online or by regular mail at an MEA address which Laing provided at the end of the message.

In an email to Laing dated November 5, 2013, Charging Party reiterated her request to stop paying dues. Stepanski wrote, in pertinent part:

I am an employee with DeWitt Public Schools and am in the collective bargaining unit of DESPA. By this letter, I am seeking to immediately and permanently exercise my rights under Michigan's right-to-work law, MCL 423.210(3)(c). Therefore, I seek an immediate end to any union dues or agency fee withdrawals being made from my paycheck for the purposes of paying any union dues or agency fees. I hereby revoke any dues authorization form previously signed; if the authorization cannot be revoked at this time, this letter is to serve as a revocation as soon as it is legally permissible.

To the extent that it is necessary to resign my union membership to effectuate my rights under MCL 423.210(3)(c), this letter also serves as an immediate resignation from the union and any of its affiliates.

Failure to comply with this request can lead to a civil fine, MCL 423.210(8) and/or a damages action and the payment of attorney fees under MCL 423.210(10).

Laing responded by notifying Charging Party that her request had been forwarded to MEA UniServ Director Charles Richardson. On November 7, 2013, Stepanski emailed Richardson directly and asked that he respond to her request within ten business days. That

same day, Richardson sent an email to Stepanski indicating that because she had not submitted her “opt-out request” between August 1 and August 31, she was still considered a member of the Union and was obligated to pay dues for the school year. At the conclusion of the email, Richardson wrote, “While it is unfortunate that you desire [to] resign your membership, we respect that you have the right to do so.”

On April 15, 2014, the Union sent Charging Party a billing statement which indicated a balance of \$91.92 for membership dues covering the 2013-2014 school year. On April 28, 2014, Charging Party sent Respondent payment for union dues in the amount of \$24.13.<sup>2</sup> There is no allegation that Charging Party received any additional billing statements from Respondent, nor is there any contention that the Union ever threatened to report Stepanski to a collections agency for any dues which it claimed were delinquent.

At some point after the filing of the instant charge, the MEA changed the language of Article 1 of its by-laws. That provision now states, in pertinent part:

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 last sentence of Bylaw I is currently not being enforced as written.\*\*

#### Discussion and Conclusions of Law:

Following the passage of 2012 PA 349, several charges were filed by individual public employees pertaining to the legality of the MEA’s August window period. Based upon facts similar to those in the instant case, the Commission in *Saginaw Ed Ass’n*, 29 MPER 21 (2015) held that the union had restrained or coerced the charging parties in the exercise of their Section 9 right to refrain from joining and/or assisting a labor organization by enforcing a one-month annual window period on resignations. In so holding, the Commission rejected the union’s assertion that maintenance of the window period constituted an internal union matter over which this tribunal lacked jurisdiction. The Commission recognized that although PERA did not expressly provide that public employees had the right to refrain from union activity or from financially supporting unions prior to the enactment of PA 349, that is no longer the case. The Commission concluded that public employees now have the right to resign their memberships at any time and that the union violated Section 10(2)(a) of the Act by refusing to accept the written resignations submitted by the charging parties. In addition to a notice posting, the Commission ordered the union to cease and desist from its unlawful conduct and to remove the last sentence of Article I from the MEA bylaws to reflect the fact that such sentence “can no longer be enforced as written.” The Commission’s decision was subsequently affirmed by the Court of Appeals in *Saginaw Ed Ass’n v Eady-Miskiewicz et al*, 319 Mich App 422 (2017).

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<sup>2</sup> It is unclear from the record in this matter what portion of the \$24.13, if any, was to cover dues for the period subsequent to Charging Party’s resignation.

In the instant case, Respondent does not contest that its maintenance and enforcement of the August window period was unlawful. Based upon the undisputed facts, I conclude that Respondent violated Sections 9(1)(b) and 10(2) of PERA by rejecting Charging Party's revocation of her financial obligation and restricting her right to resign her membership at will and that Stepanski is therefore entitled to summary judgment in this matter. Accordingly, the only remaining issue in this matter is the appropriate remedy for the Union's unlawful conduct. In her charge, Stepanski seeks a remedial order which includes the following: (1) elimination of the union's restriction on the right to resign from its bylaws; (2) recognition of Charging Party's resignation; (3) return of all dues illegally collected from November 3, 2013, the date of resignation, to the present, with interest; (4) cessation of any attempt to collect dues and/or fees; and (5) a bargaining unit wide notice that the Union will cease and desist from enforcing any restriction on the right to resign.

Respondent concedes that it would be proper for the Commission to order the Union to recognize Charging Party's November 3, 2013, resignation retroactively to the date of that letter, update its records to reflect that resignation and remove any dues obligation from her account. However, Respondent asserts that it would be inappropriate for the Commission to order the Union to cease and desist from attempting to collect dues and/or fees from Stepanski or to require that Respondent post a notice informing bargaining unit members that it will cease and desist from enforcing the August window period. I disagree. The record in this matter establishes that Respondent continued to assert that Charging Party was a Union member after her attempt to resign on November 3, 2013. In addition, it is undisputed that Respondent sent a billing statement to Stepanski on April 14, 2015, seeking the payment of dues that accrued after she had already expressed her desire to resign from the Union. The fact that this was the only billing statement sent to Charging Party does not obviate the fact that the Union's attempt to collect dues from Stepanski under such circumstances constituted a violation of Section 10(2)(a) of PERA.

I conclude that an order requiring the Union to cease and desist from restraining or coercing unit members, including, but not limited to, Stepanski, in the exercise of their Section 9 rights is appropriate under these circumstances, as is a requirement that Respondent post a notice informing members of the bargaining unit that it will cease and desist from restraining and coercing members in the exercise of their Section 9 right to refrain from joining or assisting labor organizations. Such relief is necessary to effectuate the purposes of the Act, regardless of the extent to which the Union, purportedly in response to the Commission's decision in *Saginaw*, may have already publicly disavowed further enforcement of the August window period on its website or in various MEA publications.

I agree with Respondent, however, that Stepanski is not entitled to an order requiring the MEA to further modify its bylaws. As noted, the remedial order in *Saginaw Ed Ass'n*, *supra*, required the Union to remove the last sentence of Article I from the MEA bylaws to reflect the fact that such sentence "can no longer be enforced as written." Apparently in response to that order, the MEA changed the language of its bylaws to provide that the August window period "is currently not being enforced as written." As this is not a compliance proceeding, I have no authority to make a determination regarding whether such change specifically conforms to the remedial order issued in *Saginaw Ed Ass'n*. Nor would it be appropriate for me to consider the legality or appropriateness of any

additional changes to Article 1 which may have been proposed by Respondent during the course of the instant litigation. The determination of whether to grant the relief requested by Charging Party rests solely on the language of the MEA bylaws as they are presently comprised. Assuming arguendo that this tribunal has the authority to order a labor organization to amend its constitution or bylaws, I conclude that Article 1 of the MEA bylaws accurately reflects the Union's obligations and responsibilities under Section 9 and 10 of PERA. Accordingly, I reject as unnecessary Charging Party's request that I order the Union to make additional changes to its bylaws.

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

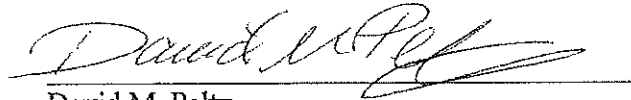
### **RECOMMENDED ORDER**

Respondent DeWitt Educational Support Personnel Association (DESPA), Michigan Education Association (MEA), its officers and agents, are hereby ordered to:

1. Cease and desist from interfering with, restraining, or coercing employees, including, but not limited to Kimberly Stepanski, in the exercise of their rights guaranteed by Section 9 of PERA, including the right to not financially support a labor organization, by:
  - a. Maintaining or enforcing a one-month window period which prohibits bargaining unit members from resigning their membership in the union except during the month of August.
  - b. Refusing to accept Stepanski's November 3, 2014, resignation from her union membership.
  - c. Collecting or attempting to collect dues and/or fees from Stepanski or any other bargaining unit members after they have resigned from union membership.
2. Take the following affirmative action to effectuate the purposes of the Act:
  - a. Affirmatively notify Stepanski in writing that her resignation on November 3, 2014, has been accepted, update Union records to reflect that resignation and remove any dues obligations from Stepanski's account.
  - b. Refund to Stepanski dues she paid, if any, including interest at the statutory rate, for the period after she resigned from her union membership.

- c. With the agreement of Stepanski's employer, DeWitt 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 DeWitt Educational Support Personnel Association are normally posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



David M. Peltz  
Administrative Law Judge  
Michigan Office of Administrative Hearings and Rules

Dated: May 1, 2019

## NOTICE TO EMPLOYEES

UPON THE FILING OF AN UNFAIR LABOR PRACTICE CHARGE BY **KIMBERLY STEPANSKI**, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND THE **DEWITT EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION, MEA**, TO HAVE COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

**WE HEREBY NOTIFY THE MEMBERS OF OUR BARGAINING UNIT THAT:**

**WE WILL NOT** maintain or enforce a one-month window period which prohibits bargaining unit members from resigning their membership in the union except during the month of August.

**WE WILL NOT** refuse to accept Kimberly Stepanski's November 3, 2014, resignation from her union membership.

**WE WILL NOT** collect or attempt to collect dues and/or fees from Stepanski or any other bargaining unit members after they have resigned from union membership.

**WE WILL** affirmatively notify Stepanski in writing that her resignation on November 3, 2014, has been accepted, update Union records to reflect that resignation and remove any dues obligations from Stepanski's account.

**WE WILL** refund to Stepanski dues she paid, if any, including interest at the statutory rate, for the period after she resigned from her union membership

DEWITT EDUCATIONAL SUPPORT PERSONNEL  
ASSOCIATION, MEA

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This notice must remain posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. 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.