STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

GRAND BLANC CLERICAL ASSOCIATION, MEA, AND
MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondent,

Case No. CU14 C-020
-and- Docket No. 14-006843-MERC

MARY CARR,
An Individual-Charging Party,

-and-

BATTLE CREEK EDUCATIONAL SECRETARIES ASSOCIATION, MEA, AND
MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondent,

Case No. CU14 C-009
-and- Docket No. 14-004413-MERC

ALPHIA SNYDER,
An Individual-Charging Party.
_____/

APPEARANCES:

White, Schneider, Young and Chiodini, P.C., by Jeffrey S. Donahue, James J. Chiodini, and Catherine Tucker for Respondents

National Right to Work Legal Defense Foundation, Inc., by John N. Raudabaugh, for Charging Parties

DECISION AND ORDER

On August 29, 2014, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Disposition in the above matter finding that Respondents, Grand Blanc Clerical Association, MEA, Battle Creek Educational Secretaries Association, MEA and Michigan Education Association (Unions), violated §10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, by refusing to accept Charging Party Carr's November 4, 2013 resignation and by refusing to accept Charging Party Snyder's September 17, 2013 resignation. The ALJ held that Respondents' maintenance and enforcement of their August window policy violates §10(2)(a) because it restricts the right of employees to resign their union memberships at will. The ALJ, however, further found that Respondent MEA's demands that Charging Party Carr pay her 2013-2014 dues and its threats to hire a debt collector to collect what

she allegedly owed did not violate §10(2)(a) of PERA. The Decision and Recommended Order of the ALJ was served on the interested parties in accordance with §16 of PERA.

After requesting and receiving an extension of time, Respondents filed exceptions to the ALJ's Decision and Recommended Order on October 27, 2014. After being granted an extension of time, Charging Parties filed their statement of cross-exceptions, response to Respondents' exceptions and request for oral argument on December 5, 2014. After requesting and receiving an extension of time, Respondents filed their brief in opposition to Charging Parties' cross-exceptions on January 15, 2015.

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 Snyder's unfair labor practice charge was timely filed; 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 by ordering Respondents to remove the policy from MEA bylaws or amend the bylaws to reflect that the policy cannot be enforced.

In their cross-exceptions, Charging Parties argue that the ALJ erred (1) in concluding that union members can waive the right to resign at will; and (2) in concluding that the Commission lacks jurisdiction to find an unfair labor practice based on Respondent's attempts to use a debt collector to collect dues from a former member.

Charging Parties have requested oral argument in this matter. After reviewing their cross-exceptions and the briefs filed by both parties, we find that oral argument would not materially assist us in deciding this case. Therefore, Charging Parties' request for oral argument is denied.

We have reviewed Respondents' exceptions and find them to be without merit. We have reviewed Charging Parties' cross-exceptions and find that they have some 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, Charging Party Carr is employed by the Grand Blanc Community Schools (Grand Blanc Schools) and is part of the bargaining unit represented by the Respondent Grand Blanc Clerical Association, MEA (GBCA).

Charging Party Snyder is employed by the Battle Creek Public Schools (Battle Creek Schools) and is part of the bargaining unit represented by the Battle Creek Educational Secretaries Association, MEA/NEA (BCESA).

The GBCA and BCESA are local affiliates of Respondent Michigan Education Association (MEA), and members of the GBCA and BCESA are also members of the MEA and the National Education Association (NEA) due to the organizations' unified membership structure.

Charging Party Carr became a member of the GBCA and MEA on March 4, 1997 and Charging Party Snyder became a member of the BCESA and MEA on March 26, 1991. Each of the Charging Parties signed a "Continuing Membership Application" thereby agreeing to join Respondent MEA's unions and authorizing the Employer to deduct union dues from her paycheck.[1] On the application, just above the signature line, 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." New union members were normally given a copy of the Continuing Membership Application after they signed it.

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 most MEA publications, including its magazine, the *Voice,* include the website address.

The last collective bargaining agreement between the Grand Blanc Schools and the GBCA that contained a union security agreement and a dues check off provision expired on June 30, 2013. The last collective bargaining agreement between the Battle Creek Schools and the BCESA containing a union security agreement expired prior to April 2013.

2012 PA 53, MCL 423.10(1)(b), amended PERA to prohibit public school employers from assisting labor organizations in collecting union dues or service fees, effective March 16, 2012. Where, however, a 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.

On December 11, 2012, the Michigan Legislature passed 2012 PA 349 and expressly gave public employees the right to refrain from union activity.

On April 4, 2013, after the collective bargaining agreement between the BCESA and the Battle Creek Schools expired, Charging Party Snyder sent a letter to the MEA resigning from membership in the Union and revoking her dues deduction authorization. On April 17, 2013, the MEA informed her that her resignation was not timely because it was not submitted during the August window period for resignations. Charging Party Snyder continued to pay dues through June 2013.

[1] The Commission notes that the facts in this case are very similar to those in *Saginaw Ed Ass'n*, 29 MPER 21 (2015).

On September 17, 2013, after receiving a BCESA communication regarding the MEA's e-dues process, Snyder sent an email to the MEA stating that she had resigned in April:

> I received information regarding upcoming dues you are expecting from me. I would like to remind you that I sent my resignation letter to you last April which was effective immediately. I understood it would not be effective until August of this year and I continued to pay my dues. Please let the appropriate departments know that I will not be paying any more dues since I am no longer a paying member.

On October 9, the MEA responded and again informed Snyder that her resignation was not timely. Snyder replied on October 10 as follows:

> Please stop playing games. I have resigned and that is it. I will no longer be paying union dues. I have corresponded with a National Right to Work attorney and when Michigan passed its Right to Work law, it also amended its public-sector labor law to provide employees with a new right to "refrain" from joining or supporting a union. Under the National Labor Relations Act, employees have the right to resign their memberships at any time and union restrictions on resignations are unlawful. Therefore it is illegal now to make restrictions on resignation in Michigan.

On October 31, 2013, Snyder received a letter from MEA Executive Director Gretchen Dziadosz, in which the executive director quoted Article I of the MEA bylaws and stated that the continuing membership agreement Snyder signed provided that written notice of resignation of membership must be made in writing during August for the following fiscal year. The MEA executive director further informed Snyder that her resignation was ineffective because it was not submitted during the MEA's August window period.

On November 9, 2013, after receiving this letter, Snyder again emailed the MEA and reiterated her belief that she resigned in April and informed the MEA that she would not be paying any more dues. On March 18, 2014, Snyder filed the unfair labor practice charge involved in this dispute.

On November 4, 2013, after the last collective bargaining agreement between the GBCA and the Grand Blanc Schools containing a union security agreement and dues deduction provision expired, Charging Party Carr sent a letter to the MEA and resigned her membership. On December 19, 2013, the MEA informed her that, to be effective, her resignation must be submitted in writing and postmarked between August 1 and August 31.

On February 11, 2014, Carr received an email from the MEA stating that if her 2013-2014 dues were not paid her debt would be sent to collections. On February 13, Carr received another e-mail from the MEA regarding her e-dues in which she was informed that the GBCA was getting emails from the MEA about her failure to pay. On February 15, 2014, Carr received an emailed billing statement showing her balance owed as of February 14, 2014. This balance consisted of dues and other assessments that had accrued since the beginning of the 2013-2014 membership year on

September 1, 2013, less sums paid on her account by the GBCA for September 2013. On April 14, Carr received another emailed billing statement showing her balance as of April 14, 2014.

On May 12, 2014, Carr sent the MEA a check for $134.58, and a letter stating that this represented payment of dues through November 4, 2013, the date of her resignation. On April 24, 2014, Carr filed the instant unfair labor practice.

Discussion and Conclusions of Law:

In brief, the issues before us are: (1) whether Charging Party Snyder's unfair labor practice charge was timely filed; (2) whether we have jurisdiction over this matter since Respondents' actions had no effect on Charging Parties' employment; (3) whether the Unions violated PERA, as amended by Act 349, by restricting union members' resignations to an annual one month period in August; (4) whether the remedy recommended by the ALJ is constitutionally permissible; and (5) whether Respondent's threats to use a debt collector to collect dues from a former member were an unfair labor practice.

Charging Party Snyder's ULP Charge Was Timely Filed

Although Respondents contend the ALJ erred when she failed to dismiss Charging Party Snyder's unfair labor practice charge as untimely, the Commission agrees with the ALJ that the charge was timely filed on March 18, 2014. Pursuant to § 16(a) of the Act, no complaint shall issue based upon any alleged unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The limitations period under § 16(a) commences when the charging party knows or should have known of the acts constituting the unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983).

Although Charging Party Snyder did not file the instant charge within 6 months of the MEA's refusal to accept her April 4, 2013 resignation, Snyder sent another email to the MEA, on September 17, 2013, that clearly indicated both her intent to resign and her belief that she had already done so. In responding to Snyder on October 9, 2013, the MEA reiterated that she would not be permitted to resign until she submitted a resignation in the month of August. The ALJ correctly found that this October 9, 2013 response to Snyder constituted a separate, independent unfair labor practice in violation of §10(2)(a). Because this unfair labor practice occurred within the six month statute of limitations, the Commission is not prohibited by §16(a) from finding an unfair labor practice based on this conduct. Consequently, the Commission agrees that Charging Party Snyder timely alleged that Respondents violated §10(2)(a) on October 9, 2013 by refusing to accept her September 17, 2013 resignation.

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." In this case, the Charging Parties allege 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," by unlawfully refusing to recognize Charging Parties' resignations from the Unions and by threatening to use a debt collector to collect dues from a former member. In response, the Respondents maintain that the Commission has no jurisdiction over this matter because their actions had no impact on the terms or conditions of Charging Parties' employment.

We recently addressed the issue of our jurisdiction over unfair labor practice charges alleging restraint or coercion in the exercise of public employees' right to refrain in *Saginaw Ed Ass'n*, 29 MPER 21 (2015). As we explained in that decision, "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 "join[ing], or assist[ing] in labor organizations" and "[t]he 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." *Id*.

Therefore, as we said in *Saginaw Ed Ass'n*, "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 [or coerced] from doing so by a labor organization." *Id*. Consequently, the Commission has jurisdiction to determine whether Respondents' refusal to allow Charging Parties to resign from the Unions outside the August window period and Respondent's threats to use a debt collector to collect dues from a former member were unfair labor practices.

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

In *Saginaw Ed Ass'n*, we also addressed Respondents' policy that limits union resignations to an annual August window period. As we explained in *Saginaw Ed Ass'n*, "under the provisions of PERA in effect…before the adoption of Act 349, Charging Parties would have been required to wait until the month of August following their decisions to resign before they could submit a valid resignation to Respondent."

In *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004), the charging party 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*"[2] rights. In considering the issue of whether the union's refusal to accept resignations outside the window period constituted an unfair labor practice, we found that the 30-day annual window period was reasonable and concluded that it did not violate the union's duty of fair representation. We noted that the issue was distinguishable from cases under the NLRA, stating:

[2] 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).

> 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.[3]
>
> Significantly, as we pointed out in *Saginaw Ed Ass'n:*
>
> [N]ow 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, [as employees do under the NLRA] it is appropriate to look to NLRB decisions for guidance [regarding] the right to refrain…The NLRA and PERA are now analogous on this critical issue.[4]

Respondents' Allegations Regarding Charging Parties' Contractual Obligations

Respondents contend that the second sentence of § 10(2)(a) allows them to make rules regarding the circumstances under which their members may resign. They also argue that Charging Parties have a contractual obligation to the Union to pay union dues until they resign within the August window period.

The language of § 10(2)(a) relied upon by Respondents 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." As we found in *Saginaw Ed Ass'n*, Respondents' exceptions and other pleadings in this matter do not include any authoritative support for Respondents' "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." *Id*. To the contrary, 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."

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

[4] On exceptions, Charging Parties maintain that the ALJ erred when she concluded that the right to resign at will can be waived. We addressed an employee's ability to waive the right to refrain from financially supporting a labor organization in *Teamsters Local 214 (Beutler)*, 29 MPER __ (Case No. CU13 I-037, issued December 11, 2015). See also *Teamsters Local 214* (Cottrell), 29 MPER __ (Case No. CU13 K-067, issued January 14, 2016) which further explained the circumstances under which the right to refrain from financially supporting a union may be waived. However, nothing in those decisions or any other prior Commission decision establishes that the right to resign from union membership can be waived. Here, there is no basis to conclude that either of the Charging Parties waived her right to refrain from financially supporting the Unions. Moreover, Charging Parties' resignations from their respective unions, although outside the window period, were sufficient to end their membership.

Although Respondents contend, as in *Saginaw Ed Ass'n*, that Charging Parties have a contractual obligation to the Unions to pay union dues until they resign within the August window period, we agree with the NLRB, as we did in *Saginaw Ed Ass'n*, that where employees have a right to refrain from union activity, the union may not make rules that interfere with or restrain employees in the exercise of that right.

The enactment of Act 349 gave Charging Parties an express right to refrain from union activity. In *Saginaw Ed Ass'n*, we stated:

> 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.

In the present case, Charging Parties were not subject to a union security agreement. Their union memberships were voluntary. Therefore, Charging Parties had the right to resign their union memberships. Based on *Pattern Makers' League of North America, AFL-CIO v NLRB,* 473 US 95; 105 S Ct 3064 (1985), Charging Parties' membership obligations to Respondents, including the obligation to pay dues, ended at the point Charging Parties provided the Unions with notice of their resignations.

The Question of an Unconstitutional Impairment of Respondents' Contract Rights

Respondents argue that the ALJ erred by recommending that we order Respondents to cease and desist from restricting membership resignations to the month of August and 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).

We recently addressed this issue in *Saginaw Ed Ass'n*, 29 MPER 21 (2015). As we explained in that decision, "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)." We noted that, 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).

In the present case, as in *Saginaw Ed Ass'n,* even assuming that Respondents could establish a substantial impairment of their contractual rights, we find that "a legitimate public purpose is served [by] requiring the immediate application of the right to refrain." As we explained in Saginaw:

> [In the absence of] the remedy recommended by the ALJ, Charging Parties would be denied their right to refrain…The recommended order…is reasonably related to protecting public employees' right to refrain from union activity [and] 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[ed] at the point that Charging Parties provided the Unions with effective notice of their resignations.

Respondent MEA's Threats to Use a Debt Collector to Collect Dues from a Former Member

On exceptions, Charging Parties correctly argue that the ALJ erred in determining that the Commission does not have jurisdiction under PERA to find an unfair labor practice based on the MEA's threats to hire a debt collector to collect what Charging Party Carr allegedly owed.

Prior to Act 349, the Commission did not consider a union's threat to initiate a collection action for unpaid dues to be an unfair labor practice provided there was no effect on employment. *Ass'n of School Administrators (Ann Arbor P.S.),* 1987 MERC Lab Op 710; *West Branch-Rose City Education Association,* 14 MPER ¶ 32006.

The amendments to PERA by Act 349, however, now prohibit unions and employers from requiring employees to financially support unions as a condition of employment. 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)

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 regardless of whether the labor organization's actions have an impact on the individual's employment. Accordingly, we have jurisdiction to determine whether Respondent MEA's threats to use a debt collector to collect dues from former member Carr unlawfully restrained or coerced her in her right to refrain from union activity. Since public employees now have the express right to refrain from union activity as employees covered by the NLRA have, it is appropriate to look to NLRB decisions for guidance with respect to the right to refrain.

In interpreting the NLRA, the NLRB has repeatedly found that a union's threats to use a debt collector to collect dues to which the union was not entitled from a former member unlawfully restrained or coerced the employee. In *IBEW Local 396* (*Central Telephone Co*), 229 NLRB 469 (1977), for example, the Board held:

> ...statements to the nonmember employees that they would be required to pay dues for the privilege of being represented by the Union and that the Union would turn over claims against the employees to a collection agency or institute court proceedings for collection of dues violate Section 8(b)(1)(A) since Respondent had no legal basis to require nonmembers to pay dues.

See also *Professional Association of Golf Officials*, 317 NLRB 774, 777 (1995); *Quebecor Printing Hazelton*, 330 NLRB 32, 34-35 (1999), enfd. 245 F.3d 231 (3d Cir. 2001); *Service Employees Local 121RN (Pomona Valley Hospital Medical Center)*, 355 NLRB 234, (2010), enfd. 440 Fed Appx 524 (9th Cir. 2011), and *International Brotherhood of Teamsters Local No. 89* (*United Parcel Service*), 361 NLRB No. 5, Footnote 6 (2014).

In the absence of a valid contract requiring the payment of dues or fees, threats to hire a collection agency or to report delinquencies to a credit bureau are unlawful ways to attempt to collect dues from an employee once the employee has resigned--at will--from his or her union membership. In the present case, Respondent MEA had no legal basis to require that Charging Party Carr pay dues that accrued after her resignation. Nonetheless, on February 11, 2014, Carr received an email from the MEA stating that, if her 2013-2014 dues were not paid, her debt would be sent to collections. When the MEA threatened to send Charging Party Carr's debt to collections on February 11, 2014, Carr did owe past due union dues that had accrued prior to her resignation from the Union. However, the MEA's claim for the full amount of union dues for the 2013-2014 academic year includes a claim for dues to which the MEA is not entitled.

Nonetheless, we recognize that, at that time, this Commission had not issued any decisions interpreting the changes resulting from the amendment of PERA by Act 349. As a result, the interpretation of the applicable law was uncertain. Act 349 significantly changed public employees' rights and our jurisdiction to address issues affecting those newly recognized employee rights. As noted above, prior to the adoption of Act 349, this Commission had no jurisdiction over matters in which public employees contended that the union was seeking to collect sums to which the union was not entitled if the union's action had no effect on terms and conditions of employment. Before the initial decisions addressing the changes resulting from Act 349, union rules restricting union

resignations to certain window periods were legal. Therefore, if a union member resigned at a point outside that window period, the union member could be required to continue to pay dues or agency fees until he or she resigned within the designated window period. See, *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004). That has now changed. Unless the right to refrain from financially supporting a union has been willingly and knowingly waived[5] or the employee is covered by a lawful union security agreement, the employee does not owe union dues for the period after the employee's resignation from the union. However, prior to our decision in *Saginaw Ed Ass'n,* 29 MPER 21 (2015), unions may not have recognized the effect Act 349 would have on their responsibilities or on our jurisdiction. We now find that a union's threat to hire a debt collector regarding a claim for dues that accrued *after* a former union member's resignation may be considered to be a violation of § 10(2)(a). However, under the circumstances of this case, we cannot find that the MEA knew or reasonably should have known that it was unlawful to attempt to collect dues that accrued after Carr resigned, since she did not resign within the designated window period. Therefore, we will issue no order addressing the MEA's threat to hire a debt collector. However, such a threat, if made in the future and established by substantial evidence, will be considered a violation of §10(2)(a).

We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case. After a careful and thorough review of the record, we find that the ALJ's Decision is affirmed as modified herein and issue the following order.

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: February 11, 2016

[5] See, *Teamsters Local 214 (Beutler)*, 29 MPER __ (Case No. CU13 I-037, issued December 11, 2015).

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

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John N. Radabaugh, National Right to Work Legal Defense Foundation, Inc., for Charging Parties

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE ON MOTION FOR SUMMARY DISPOSITION

On March 18, 2014, Alphia Snyder, employed as a clerical employee by the Battle Creek Public Schools (Battle Creek Schools), filed an unfair labor practice charge with the Michigan Employment Relations Commission alleging that the Battle Creek Educational Secretaries Association, MEA/NEA (BCESA) and the Michigan Education Association (MEA), violated §§9 and 10 of the of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, by

refusing to accept her resignation from membership in that labor organization. On April 24, 2014, Mary Carr, employed as a secretary by the Grand Blanc Community Schools (Grand Blanc Schools), filed a charge under these same sections of the Act against the Grand Blanc Clerical Association, MEA, (GBCA) and the MEA. The charges were consolidated and assigned for hearing to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System (MAHS).

On May 16, 2014, Charging Parties filed a joint motion for summary disposition. On June 16, 2014, Respondents filed a brief in opposition to the motion. In its brief, Respondents assert that both charges should be dismissed for the reasons stated in its brief. Charging Parties filed a reply brief on June 25, 2014.

Based on facts set out in the charges and pleadings and not in dispute, and on the arguments made by the parties in the motions and briefs, I make the following conclusions of law and recommend that the Commission issue the following order.6

The Unfair Labor Practice Charges:

Charging Party Snyder became a member of the BCESA and MEA on March 26, 1991, and, in her membership application, authorized her employer to deduct union dues and assessments from her paycheck. During Snyder's employment, a series of collective bargaining agreements between the BCESA and the Battle Creek Schools contained union security agreements that required members of the unit to either be union members or pay a service fee to the union as a condition of employment. The last of these collective bargaining agreements expired sometime between June 2012 and April 2013. On April 4, 2013, Snyder sent an email to MEA Uniserv Director George Przygodski resigning her union membership and revoking her dues checkoff authorization. She received a response from the MEA on April 17, 2013 stating that to be effective, her resignation had to be filed during the month of August. On September 19, 2013, after receiving a BCESA communication regarding dues for the 2013-2014 membership year, Snyder sent an email to the MEA stating that she had resigned in April. In October 2013, Snyder received two communications from the MEA informing her that her resignation was ineffective because it was not sent and postmarked between August 1 and August 31 in accord with the MEA's August window period policy for resignations.

Snyder alleges that the refusal of the BCEA and MEA to accept her resignation outside of the August window period constituted unlawful restraint and coercion of her right under §9 of PERA to refrain from joining or assisting a labor organization, and thus violated §10(2)(a) of PERA.

Charging Party Carr became a member of the GBCA and MEA on March 4, 1997, and, in her membership application, authorized her employer to deduct union dues and assessments from her paycheck. On June 30, 2013, the last collective bargaining agreement between the Grand Blanc Schools and the GBCA containing a union security agreement and dues checkoff provision expired. In October 2013, Carr received a communication from the GBCA urging her to sign up to pay her

6 See also my Decisions and Recommended Orders in *Saginaw Ed Assn and MEA (Eady-Miskiewicz et al),* Case Nos. CU13 I-054-CU13 I-06/Docket No 13-013125-MERC through 13-013134-MERC, and *Standish-Sterling Support Personnel Assn, MEA (Norgan),* Case No. CU14 B-002/Docket No. 14-002293, both issued this same date.

2013-2014 dues through the MEA's e-dues system. Carr then was copied on emails from GBCA Treasurer Dian von Linsowe and MEA Uniserv Director Abby Zarimba informing GBCA members that they could only resign in August, and that if they had not submitted their resignations in August 2013 they were obligated to pay dues for the 2013-2014 membership year. Zarimba's email stated that members who failed to pay dues would eventually have their debt sent to a debt collector. On November 4, 2013, Carr sent a letter to the MEA resigning her membership. On December 19, 2013, she received a response which informed her that to be effective, her resignation must be submitted in writing and postmarked between August 1 and August 31. On February 11, 2014, Carr received an email from the MEA stating that if her 2013-2014 dues were not paid her debt would be sent to collections. Like Snyder, Carr alleges that the refusal of the GBCA and MEA to accept her resignation outside of the August window period constituted unlawful restraint and coercion of her right under §9(1)(b) of PERA to refrain from joining or assisting a labor organization. She also alleges that Respondents violated §10(2)(a) of PERA by threatening to hire a debt collector to collect the dues she allegedly owed after resigning.

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 BCEA and GBCA are two, are the basic units of self-governance within the MEA. However, the MEA and its affiliates have a "unified membership structure," which means that membership in a local affiliate includes membership in both the MEA and the National Education Association (NEA).

The MEA has had some form of a continuing membership policy since the 1950s and an August window period for resignations has been part of its bylaws since 1973. 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]

In order to become a member of the MEA and a local affiliate, an employee must complete, sign, and submit a document entitled "Continuing Membership Application." Standard practice dictates that each member receive a copy of his or her Continuing Membership Application when it

is submitted. The MEA maintains a database of all Continuing Membership Applications, and members can obtain a copy of their membership applications by contacting an MEA representative.

The MEA does not accept a member's resignation unless it is made in writing during the month of August as provided in Article I of the bylaws. Case-by-case exceptions are made where appropriate extenuating circumstances exist.

On March 4, 1997, Carr signed a "Continuing Membership Application -Local-MEA-NEA – MEA-PAC Voluntary Contribution Authorization." The MEA-PAC and NEA-PAC Voluntary Contribution Authorization section of the application explained that contributions to the PACS were not a condition of employment or a condition of membership. The form allowed the member to sign up for specific contributions, to specify the amount of the contribution or to decline participation. Carr checked the box declining participation.

Carr's Continuing Membership Application also contained this language:

> Please check one (1) below:
>
> [Box] Cash Payment – Membership is continued unless I revoke 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. I also authorize my employer to deduct MEA-A dues as so indicated above from my wages.

Carr checked the box for payroll deduction. Carr's Continuing Membership Application did not mention the MEA bylaws.

On March 26, 1991, Snyder signed a Continuing Membership Application that was, in all pertinent aspects, identical to the membership application signed by Carr. Snyder also declined participation in the PACs and checked the box for payroll deduction.

2012 PA 53 and 2012 PA 349

On March 16, 2012, the Legislature passed 2012 PA 53 (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." PA 53 allowed the collection of dues and service fees pursuant to any collective bargaining agreement in effect on March 16, 2012 until the agreement expired or was terminated, extended, or renewed. On June 11, 2012, a U.S. District Court enjoined the enforcement of PA 53. *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. *Bailey v Callaghan,* 715 F3d 956 (CA 6, 2013).

On December 11, 2012, the Legislature passed 2012 PA 349 (PA 349). The law, which became effective on March 28, 2013, substantively altered both §9 and §10 of PERA.

Section 9 sets out the rights of public employees that are 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, in §9(1)(b), of the right to refrain language that had been part of §7 of the NLRA since 1947. Section 9, therefore, now explicitly gives employees the right to refrain from any or all of the activities identified in subdivision (a).[7]

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[7] 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.

Per §16(a), violations of §10 are unfair labor practices remediable by the Commission. As noted above, the penalty for a violation of §9(2) is a civil fine.

Section 10 of PERA, which was modeled on §8 of the NLRA, sets out the conduct by employers and labor organizations which constitute unfair labor practices under the Act. 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 also states that the "restrain or coerce" language in §10 does not "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership."

In addition to adding "right to refrain" language to §9, PA 349 removed provisions in §10 making union security agreements lawful and added the following new language as §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.

Snyder Resigns Her Union Membership

As noted above, PA 349 became effective on March 28, 2013. On April 4, 2013, after the collective bargaining agreement between the BCESA and the Battle Creek Schools had expired, Snyder emailed the following resignation letter to MEA Uniserv Director George Przygodski:

> I am employed by Battle Creek Public Schools. Effective immediately, I resign from membership in the local union and all of its affiliated unions. Since I have resigned my membership in the union, you must now immediately cease enforcing the dues checkoff authorization agreement. This agreement was solely in conjunction with, and in contemplation of, my becoming a member of the union and, as such, is no longer valid.

> If you refuse to accept this letter as both an effective resignation and an immediately effective dues check-off revocation, I ask that you promptly inform me, in writing, of exactly what steps I must take to effectuate my revocation of the dues check-off authorization.

On April 17, 2013, Snyder received an email response from Jeff Murphy from the MEA Legal Services Office. The email misidentified Snyder's bargaining representative as the Battle Creek Education Association (instead of the BCESA). It stated, incorrectly, that Snyder was a member of a bargaining unit with a collective bargaining agreement in effect through June 30, 2017 that required all members of the bargaining unit, as a condition of employment, to either be members of the Association or pay a fair share fee. The email went on to describe some of the members-only benefits offered to MEA members and explained that, as a fee payer and not a member, Snyder would not be eligible to hold office in the Association, or attend and vote at Association meetings including contract ratification elections.

Murphy sent Snyder a second email on April 17, 2013, in which he apologized for his mistake regarding her bargaining unit affiliation. In this email, Murphy quoted the portion of Article I of the bylaws setting out the August window period for resignation, including the sentence in Article I stating that the resignation must be postmarked between August 1 and August 31 of the year preceding the designated membership year. The email also stated:

> The continuing membership agreement that you signed also provides that written notice of resignation of membership must be made in writing during August for the following fiscal year. Since the Association's membership and fiscal year is September 1 through August 31, you may resign your membership pursuant to the MEA Bylaws and your membership agreement by making a written request to the Association between August 1 and August 31 of any year.
>
> When you became a member of the Association, you entered into an agreement in return for which you obtained the rights and benefits of membership in the Association, including liability insurance coverage for the year, which cannot be canceled at this time for a refund. Your agreement with the Association also includes a dues obligation for the membership year.

Snyder continued to pay dues through June 2013. Whether this was by dues deduction from her paycheck or by cash payment is not reflected in the pleadings. She has not paid any dues or assessments since June 2013.

On August 8, 2013, Snyder received a memo addressed to BCEA members that explained that school districts were now by law prohibited from payroll deducting union dues. The memo gave information about the MEA's e-dues process that provided members with several methods for paying their dues to MEA directly. The memo included an instruction sheet for signing up for e-dues online and a personalized e-dues authorization form with Snyder's personal information and dues amounts already filled in.

On September 19, 2013, Snyder sent Murphy the following email:

> I received information regarding upcoming dues you are expecting from me. I would like to remind you that I sent my resignation letter to you last April which was effective immediately. I understood it would not be effective until August of this year and I continued to pay my dues. Please let the appropriate departments know that I will not be paying any more dues since I am no longer a paying member.

On October 9, Murphy sent Snyder a third email that reiterated what he had said in his second April 17, 2013 email. Snyder replied to Murphy on October 10, as follows:

> Please stop playing games. I have resigned and that is it. I will no longer be paying union dues. I have corresponded with a National Right to Work attorney and when Michigan passed its Right to Work law, it also amended its public-sector labor law to provide employees with a new right to "refrain" from joining or supporting a union. Under the National Labor Relations Act, employees have the right to resign their memberships at any time and union restrictions on resignations are unlawful. Therefore it is illegal now to make restrictions on resignation in Michigan.

On October 31, 2013, Snyder received a letter from Gretchen Dziadosz, the MEA's Executive Director. Like Murphy's email, Dziadosz's letter quoted Article I of the bylaws, stated that the bylaws were available on the MEA's website, and stated that the continuing membership agreement Snyder signed also provided that written notice of resignation of membership must be made in writing during August for the following fiscal year. The letter continued:

> A copy of that [membership] form is enclosed. It provides two methods for paying your dues – cash payment or payroll deduction (other current payment methods were not available at the time you joined.) The application provides that membership is continuous unless you revoke your authorization in writing between August 1 and August 31 for the following fiscal year to pay dues either directly (cash payment) or through payroll deduction.
>
> Since the Association's membership fiscal year is September 1 through August 31 and the nature of school employment is generally continuous from year to year starting around that time frame, the contract formed between us stipulates that you may resign your membership pursuant to the MEA Bylaws and your membership agreement by making a written request to the Association between August 1 and August 31 of any year. When you became a member of the Association, you entered into that contract which includes a dues obligation for the membership year in return for which you obtained the rights and benefits of membership in the Association, including liability insurance coverage for the year, which cannot be canceled for a refund after the beginning of the membership year.
>
> You message was postmarked (either by the U.S. Postal Service or by your email server, depending on how you contacted us) after the August deadline and therefore your membership automatically renewed for the 2013-2014 school year.

On November 9, 2013, after receiving the above letter, Snyder emailed Murphy reiterating her belief that she had resigned April, stating that she would not be paying any more dues, and warning Murphy that she would interpret any further communication from the MEA on the subject as harassment.

Carr Resigns Her Union Membership

As noted above, the last collective bargaining agreement between the GBCA and the Grand Blanc Schools containing a dues deduction provision expired on June 30, 2013. The Grand Blanc Schools ceased deducting union dues from its employees' paychecks sometime between June 30, 2013 and the beginning of the 2013-2014 school year. The GBCA held its first general membership meeting of the 2013-2014 school year on October 15, 2013. As of this date, many GBCA members, including Carr, had not signed up for e-dues. As a result, GBCA was already in arrears with respect to dues owed by its members to the MEA and NEA for the MEA's 2013-2014 membership year. A principal purpose of the membership meeting was to discuss how to sign up to pay dues through e-dues.

On October 16, 2013, Carol Lewandowski, the GBCA president, sent an email to all clerical union staff explaining how to sign up for e-dues. The email stated, "You must pay your dues. If you do not, they can send it to collections and we don't want that." Lewandowski asked employees to take care of this by October 20, and noted that the GBCA was already behind for the month of September. This email initiated a chain of email responses. First, a member, not Carr, responded to Lewandowski's email by asking how to "opt out" of paying dues. Dian von Linsowe, the GBCA treasurer, responded to that member's email. Von Linsowe stated that opting out was available only in August, and, if a member did not opt out by August 31, they were still a member and must pay this year's dues. Later that day, as part of the same email chain, von Linsowe emailed members to tell them that the GBCA was going to use funds in its checking account to pay members' September dues, but urged members to sign up for e-dues immediately.

A few hours later, a GBCA member sent an email to MEA Uniserv Director Abby Zarimba complaining about not being notified of the August "opt out" deadline. She suggested that since GBCA members had not been informed of the deadline, the MEA should give them an extension to opt out. Zarimba replied in an email that was forwarded to all GBCA members. Zarimba noted that there had always been an opt-out window for MEA membership from August 1 through August 31, and stated that the opt-out language was on the membership form that members signed when they joined. She stated that since the window had always been in place, there was no need to inform members of it in 2013. Zarimba said that what had changed with the legislation passed in December 2012 with regard to union dues (PA 349) was that previously members could opt out, but were required to pay a fee for the benefit of the contract, whereas now unit members could opt out of paying completely and become free riders. Zarimba pointed out that if too many members opted out, eventually there would be no funding, no union, and no collective bargaining agreement. Zarimba also mentioned the members-only benefits available to MEA members, and gave employees the number of the MEA help center if they felt they had an extenuating circumstance or hardship that should allow them to opt out outside of the August window period.

The member who had initially emailed Zarimba replied. She asked if it was true that if members did not pay dues, they would be sent to a collections agency. Zarimba replied, "In the long run, the answer that I and all other field staff have received from headquarters is yes." Zarimba said that while the MEA respected a member's right to resign, it was its intent to follow through with the contractual agreement it had with members regarding when resignations could be submitted.

On November 4, 2013, Carr sent a letter to the MEA membership office resigning her membership. In this letter, Carr complained that she had not realized that the window to opt out was August, and stated that she believed that the GBCA should have had a meeting to properly inform members of timelines to make decisions and take proper action. She also stated that the membership form she signed referred only to payroll deduction, and that she believed that after PA 349 took effect, the form she signed on March 4, 1997 was no longer valid.

On December 19, 2013, Carr received a letter from MEA Executive Director Dziadosz identical to the letter Snyder received from Dziadosz on October 31.

Between February 11 and May 14, 2014, Carr was contacted by Respondent representatives on several occasions about paying her dues. On February 10, 2014, she received an email from a MEA employee, Angie Chinevere, who said that she was employed to assist Carr in signing up for e-dues. The email asked Carr to let the MEA know of her plan for paying her dues this year so that she would not "have any type of collections happen regarding your MEA union dues." On February 13, Carr, and four other GBCA members, received a reminder e-mail from Lewandowski about their e-dues in which Lewandowski stated that the GBCA was getting emails from the MEA about their failure to pay. On February 15, 2014, Carr received an emailed billing statement from the MEA's billing department showing her balance owed as of February 14, 2014. This balance consisted of dues and other assessments that had accrued since the beginning of the 2013-2014 membership year on September 1, 2013, less sums paid on her account by the GBCA for September 2013. On April 14, Carr received another emailed billing statement showing her balance as of April 14, 2014.

On April 24, 2014, Carr filed the instant unfair labor practice charge. On May 12, 2014, Carr sent the MEA a check for $134.58, and a letter stating that this was payment of dues through November 4, 2013, the date of her resignation, the validity of which was currently pending in a case before the Commission. At the time the motions and briefs in this case were filed, Respondent had not yet hired a debt collector to collect the remaining amount that it asserts that Carr owes for the 2013-2014 membership year.

Discussion and Conclusions of Law:

While Carr's and Snyder's charges allege violations of both §9(1)(b) and §10(2)(a) of PERA, under §16(a) only violations of §10 can constitute unfair labor practices remediable by the Commission. The issue, therefore, is whether Respondents unlawfully restrained and coerced Snyder and Carr in the exercise of their rights under §9 and thereby violated §10(2)(a). 8

8 I use "Respondents" in this discussion section to refer collectively to the MEA, the BCESA, and the GBCA.

In *West Branch Rose City EA, MEA*, 17 MPER 25 (2004), the Commission held that the MEA's August window period did not violate §10(3)(a)(i), the predecessor to §10(2)(a), because it was organizationally necessary, reasonable, and served the interests of the membership as a whole. The Commission concluded, therefore, that the window period did not violate the MEA's duty of fair representation because it was not an arbitrary rule. However, *West Branch* was decided when PERA contained no "right to refrain" language. The Commission, moreover, specifically noted the absence of this language in PERA and held that it would not, in the absence of clear legislative intent, infer a §9 right to refrain. As discussed in *Saginaw Ed Assn and MEA (Eady-Miskiewicz et al)*, Case Nos. CU13 I-054-CU13 I-06/Docket No 13-013125-MERC through 13-013134-MERC, issued this same date, I agree with Charging Parties that because PA 349 added a "right to refrain" from §9 activity to PERA, *West Branch is* no longer controlling precedent on the issue of whether Respondents' maintenance and enforcement of its August window period violates §10(2)(a) of PERA.

As discussed in *Saginaw Ed Assn*, I conclude that when the Legislature amended PERA in PA 349, it intended §9(1)(b) to have the same meaning as the "right to refrain" language found in §7 of the National Labor Relations Act (NLRA). In *Pattern Makers' League of North America, AFL–CIO v NLRB*, 473 US 95 (1985) and other cases discussed in *Saginaw Ed Assn*, the Board and Courts interpreted the right to refrain in §7 as giving the employees the right to resign their union memberships at will and have held that unions are prohibited from restricting their members' right to resign. I agree with Charging Parties, therefore, that public employees now have a §9 right to resign their union membership at will, and that §10(2)(a) of PERA prohibits a union from restricting its members' right to resign.

I also conclude, as discussed in *Saginaw Ed Assn*, that union members can enter into an agreement with their union that lawfully waives their right to resign at will. However, I find that to be valid, this waiver must be clear, explicit, and unmistakable. This means, I find, that to be valid a waiver of the right to resign must be contained in an individual agreement between the member and union. I also find that this agreement must state that "membership" is limited to the obligation to pay dues and fees. I conclude that merely joining or remaining a member of a union with a bylaw or constitutional provision placing restrictions on the right to resign does not constitute a clear, explicit and unmistakable waiver of this fundamental statutory right.

Respondents make several arguments here in support of the window period that are identical to those they made in *Saginaw Ed Assn.* They argue that since §10(2)(a) explicitly protects their right to prescribe their own rules for the acquisition and retention of membership, their ability to limit resignations to the month of August cannot be impaired in the absence of a demonstrable impact on the Charging Parties' employment. As in *Saginaw Ed Assn*, no such impact is present here. However, as discussed in *Saginaw Ed Assn*, in *Pattern Makers* the Supreme Court explicitly held that language in the NLRA protecting a union's right to prescribe its own rules for the acquisition and retention of membership did not authorize a union to impose restrictions on the right to resign membership, and that such restrictions violated §8(b)(1)(A) of the NLRA even when the enforcement of these restrictions did not have an impact on employment status. Respondents also argue that the addition to PERA of §10(3) – making it unlawful for public employers and union to require, as a condition of employment, that employees remain union members – indicates that the Legislature did not intend to make union restrictions on resignations an unfair labor practice unless the restrictions affected an employee's employment status. For reasons discussed in *Saginaw*, I do not agree.

As in *Saginaw*, I conclude that Respondents' maintenance and enforcement of its August window policy violates §10(2) (a) because it restricts the right of employees to resign their memberships at will.

I also find that Snyder and Carr did not clearly, explicitly, and unmistakably waive their §9(b)(1) right to resign their memberships at will. I find that whether Snyder and/or Carr knew or should have known of the MEA's August window period is irrelevant to the question of waiver since, even if Carr and Snyder did not waive their right to resign at will joining Respondents even if they knew when they joined that the MEA had a restriction on resignations in its bylaws.
I also find that the Continuing Membership Applications that Snyder and Carr signed did not clearly, explicitly and unmistakably waive their right to resign at will. As was the case with the membership applications signed by the Charging Parties in *Saginaw Ed Assn*, the Continuing Membership Applications signed by Snyder and Carr did not define "membership" or clearly state that membership is limited to the obligation to pay dues and fees

Carr resigned her membership by letter dated November 4, 2013. In a letter dated December 19, 2013, the MEA notified Carr that it would not accept her resignation because it was made outside the August window period. I find that Respondents violated §10(2)(a) by refusing to accept Carr's November 4, 2013 resignation.

Snyder emailed a letter resigning her union membership and revoking her dues checkoff authorization to the BCESA on April 4, 2014. On April 17, 2013, Snyder received an email from MEA representative Jeff Murphy informing her that her resignation would not be accepted because it was submitted outside the August window period. Murphy's email clearly indicated that to be considered effective by the MEA, Snyder's written resignation would have to be sent and postmarked between August 1 and August 31. Respondents argue that Snyder's unfair labor practice charge was untimely filed under §16(a) of PERA and must be dismissed because it was not filed until March 18, 2014. Respondent points out that the six-month statute of limitations under §16(a) begins to run when the charging party "knows of the act which caused [the] injury, and has good reason to believe that the act was improper or done in an improper manner," even if the person does not realize that they have suffered an invasion of a legal right. *City of Huntington Woods v Wine,* 122 Mich App 650, 652(1983).

I agree with Respondent that Snyder knew or should have known when she received Murphy's second email that her April 4, 2013 resignation had not been accepted and that the MEA would not accept her resignation unless it was submitted in August. Insofar as Snyder's charge alleges that Respondent unlawfully refused to accept her April 4, 2013 resignation, I find that the unfair labor practice occurred, and the statute of limitations began to run, on April 17, 2013. I find that as to this allegation, Snyder's charge was untimely. However, on September 17, 2013, Snyder sent another email to Murphy that clearly indicated both her intent to resign and her belief that she had already done so. In his October 9 response, Murphy reiterated that Snyder would not be permitted to resign until she submitted a resignation in the month of August. Since, as I have concluded above, Snyder had the right to resign at will, I find that Murphy's October 9, 2013 email to Snyder constituted a separate, independent unfair labor practice in violation of §10(2)(a). Because this unfair labor practice occurred within the six month statute of limitations, the Commission is not

prohibited by §16(a) from finding an unfair labor practice based on this conduct. I find that Respondents violated §10(2)(a) on October 9, 2013 by refusing to accept Snyder's September 17, 2013 resignation.

After Respondents refused to accept Carr's resignation, Respondent GBCA and the MEA made repeated demands that Carr pay dues and assessments she allegedly owed for the 2013-204 membership year, including dues accruing after the date of her resignation. These demands included a February 10, 2014 email from Angie Chinevere, who represented herself as a MEA representative. Chinevere implied that if Carr did not make arrangements to pay her dues, the MEA would hire a debt collector.

However, Respondent has not enlisted the Grand Blanc Community Schools in its attempt to collect from Carr. Neither Respondents' repeated demands for payment nor the threat made to Carr through Chinevere to hire a debt collector have had any effect on her employment. As discussed in *Saginaw Ed Assn*, I conclude 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 with an ex-member when these attempts do not involve the member's employer or employment. I conclude, therefore, that Respondents' demands that Carr pay her 2013-2014 dues or its threats to hire a debt collector to collect what she allegedly owe did not violate §10(2)(a) of PERA.

In accord with the facts and conclusions of law set out above, I recommend that the Commission grant Charging Parties' motion for summary disposition in part, and that it issue the following order.

RECOMMENDED ORDER

Respondents Battle Creek Educational Secretaries Association, MEA, and Grand Blanc Clerical Association, MEA, and Michigan Education Association, their officers and agents, are hereby ordered to:

1. Cease and desist from restraining and coercing employees in their 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 Alphia Snyder's September 17, 2013 resignation from her union membership;

   c. Refusing to accept Mary Carr's November 4, 2013 resignation from her union membership.

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

a. Remove the last sentence from Article I of the MEA's bylaws or amend the bylaw to reflect the fact that the August window period can no longer be enforced against members not covered by a union security agreement.

b. Affirmatively notify Alphia Snyder and Mary Carr in writing that Snyder's resignation on September 17, 2013 and Carr's resignation on November 4, 2013 have been accepted.

c. With the agreement of Snyder's employer, the Battle Creek Public Schools, post the attached notice A to union members in conspicuous places on the employer's premises, including all places where notices to members of the Battle Creek Educational Secretaries Association are normally posted, for a period of 30 consecutive days.

d. With the agreement of Carr's employer, the Grand Blanc Community Schools, post the attached notice B to union members in conspicuous places on the employer's premises, including all places where notices to members of the Grand Blanc Clerical Association are normally posted, for a period of 30 consecutive days.

e. Within 60 days of the date of this order, publish both the attached notice A and the attached notice B in both the print and online editions of the MEA *Voice* and email or mail copies of this edition of the *Voice* to all members who normally receive it.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: August 29, 2014

NOTICE TO UNION MEMBERS (A)

AFTER A PUBLIC HEARING, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND THE **BATTLE CREEK EDUCATIONAL SECRETARIES 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 Alphia Snyder's September 17, 2013 resignation from union membership.

WE WILL affirmatively notify Snyder in writing that her September 17, 2013 resignation from membership has been accepted.

BATTLE CREEK EDUCATIONAL SECRETARIES 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. CU14 C-009/14-004413-MERC

NOTICE TO UNION MEMBERS (B)

AFTER A PUBLIC HEARING, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND THE **GRAND BLANC CLERICAL ASSOCATION, MEA,** 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 Mary Carr's November 4, 2013 resignation from her union membership.

WE WILL affirmatively notify Carr in writing that her November 4, 2013 resignation from union membership has been accepted.

GRAND BLANC CLERICAL ASSOCIATION, MEA

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. CU14 C-020/14-006843-MERC