STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TEAMSTERS LOCAL 214,
Labor Organization-Respondent,

Case No. CU13 K-067
-and- Docket No. 13-016862-MERC

JAMES A. COTTRELL,
An Individual Charging Party.
_____/

APPEARANCES:

Wayne A. Rudell, PLC, by Wayne A. Rudell, for Respondent

National Right to Work Legal Defense Foundation, Inc., by Aaron B. Solem and John N. Raudabaugh, for Charging Party

DECISION AND ORDER

On November 21, 2014, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Disposition in the above matter finding that Respondent Teamsters Local 214 (Union) violated § 10(2)(a) of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, by failing to acknowledge Charging Party James A. Cottrell's status as an objecting fee payer while continuing to accept payment of the full amount of his union dues. The ALJ's Decision and Recommended Order on Summary Disposition was served on the interested parties in accordance with § 16 of PERA.

After requesting and receiving an extension of time, Respondent filed exceptions to the ALJ's Decision and Recommended Order on January 14, 2015. After being granted an extension of time, Charging Party filed cross exceptions and a brief in support of cross exceptions to the ALJ's Decision and Recommended Order on February 26, 2015. Respondent filed its response to Charging Party's cross exceptions on March 6, 2015.

In its exceptions, Respondent contends that the ALJ erred by failing to conduct an evidentiary hearing before rendering her decision, by concluding that Respondent violated § 10(2)(a) of PERA when it failed to acknowledge Charging Party's status as an objecting fee payer, and by recommending that we order Respondent to refund money paid by Charging Party to Respondent after October 20, 2013.

In his cross exceptions, Charging Party argues that the ALJ erred by concluding that Charging Party may waive his right to refrain. He claims that the right to refrain cannot be waived. Charging Party also contends that the ALJ erred by failing to address his claim that Respondent's certified mail requirement violated PERA and further, by failing to recommend that we order Respondent to cease and desist from requiring bargaining unit members to provide notice of their dues checkoff revocation by certified mail.

We have reviewed Respondent's exceptions and find them to be without merit. We have also reviewed Charging Party's cross exceptions and find that some have merit.

Factual Summary:

We adopt the facts as found by the ALJ and repeat them here only as necessary. We agree with the ALJ that there are no material facts at issue.

Charging Party James A. Cottrell is employed by the Lenawee Intermediate School District (the Employer) as a bus driver and is a member of the bargaining unit represented by Respondent, Teamsters Local 214. On November 18, 2010, Charging Party signed an application for membership in Respondent Union and a Checkoff Authorization and Assignment. The application for membership, signed by Charging Party states, in relevant part: "I voluntarily submit this Application for Membership . . . so that I may fully participate in the activities of the Union." The application also explained that Charging Party could have elected "nonmember" status, entitling him to object to paying the pro rata portion of regular union dues or fees that are not germane to the chargeable union expenses of collective bargaining, contract administration, and grievance adjustment and, thereby reducing his monthly obligation to the pro rata portion of regular union dues or fees solely attributable to the Union's chargeable expenses. The Checkoff Authorization and Assignment signed by Charging Party authorizing his employer to deduct his monthly union dues from his wages and pay them to the Union provided, in relevant part:

> This authorization is voluntary and is not conditioned on my present or future membership in the Union.
>
> This authorization and assignment shall be irrevocable for the term of the applicable contract between the union and the employer or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is lesser, unless I give written notice to the company and the union at least sixty (60) days, but not more than seventy-five (75) days before any periodic renewal date of this authorization and assignment of my desire to revoke same.

As noted by the ALJ, on March 16, 2012, the Michigan Legislature enacted 2012 PA 53 (Act 53), which amended PERA at MCL 423.10(1)(b), to prohibit public school employers from assisting labor organizations in collecting union dues or agency fees. Enforcement of Act 53 was enjoined on June 11, 2012, by a U.S. District Court in *Bailey v Callaghan,* 873 F Supp 2d 879, (ED Mich, 2012). On May 9, 2013, the U.S. Court of Appeals reversed the District Court decision and remanded the matter for dissolution of the injunction. *Bailey v Callaghan*, 715 F3d 956 (CA 6, 2013).

Respondent and the Employer entered into a collective bargaining agreement, effective September 1, 2012. That contract included a union security agreement providing for agency shop and a provision requiring employees to authorize the Employer to deduct an agency fee from employee paychecks. Pursuant to the union security agreement contained in the contract, employees were required to pay union dues or agency fees to the Union to maintain their employment. The Employer was required to deduct union dues and agency fees from the wages of employees who authorized the Employer to do so and to transmit those funds to Respondent. The collective bargaining agreement expired June 30, 2014.

On December 11, 2012, the Michigan Legislature passed 2012 PA 349 (Act 349), which, among other things, expressly provided that public employees have a right to refrain from union activity and made agency shop illegal for most public employees. Act 349 became effective March 28, 2013.

At some point prior to October 2013, the Employer stopped deducting union dues and service fees from its employees' paychecks. Charging Party then began paying dues directly to the Union and continued to make payments to the Union until at least March 2014. On October 20, 2013, Charging Party sent a letter to the Respondent's president, notifying the Union of his resignation from membership. Cottrell's letter noted his obligation to pay fees to the Union "for such things as collective bargaining, contract administration, and grievance adjustments." However, he went on to object to paying dues for political and other "nonbargaining" activities and asked that Respondent notify him of the amount of the agency fee that pertained only to Union costs related to collective bargaining, contract administration, and grievance adjustment.

Respondent replied to Charging Party by a letter dated October 25, 2013. The letter acknowledged receipt of Charging Party's letter "requesting that dues deduction be stopped in accordance with Public Act 349 of 2012." The letter went on to say:

> Please be advised that by signing the Check Off Authorization, when you first became a member, you entered into a separate independent contract with this Local Union which supersedes Public Act 349. Provisions of that Agreement do not permit you to revoke your financial obligation at this time, the proper time period is from 9/3 to 9/18, and your letter must be <u>certified</u> to the Local Union President.
> (Emphasis in original.)

Respondent did not send any further correspondence to Charging Party regarding his request to be notified of the amount of the agency fee he was obligated to pay. On December 23, 2013, Charging Party filed the unfair labor practice charge in this matter alleging, among other things, that Respondent violated § 10(2) of PERA by failing to recognize Charging Party as a nonmember fee payer, by failing to allow Charging Party to cease paying dues and fees for nonchargeable expenses, and by demanding that Charging Party's revocation of his dues obligation be submitted by certified mail.

Discussion and Conclusions of Law:

The Effect of Charging Party's October 20, 2013 Letter to Respondent

Charging Party has the right to resign from union membership at will pursuant to § 9(1)(b) of PERA. As we explained in *Saginaw Ed Ass'n,* 29 MPER 21 (2015):

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

Charging Party's October 20, 2013 letter to Respondent was sufficient to end his union membership. Charging Party's membership in the Union ended upon the Union's receipt of that letter. In its October 25, 2013 reply, Respondent acknowledged receipt of the Charging Party's letter. As the ALJ notes, Respondent did not expressly restrict Charging Party from resigning his union membership. Accordingly, we agree with the ALJ that the facts alleged by Charging Party do not support a finding that Respondent refused to allow Charging Party to resign from the Union.

Although Respondent's October 25, 2013 reply did not expressly acknowledge Charging Party's resignation from membership, it asserted that Charging Party's financial obligation to the Union continued until Charging Party revoked that financial obligation within the window period designated in the Checkoff Authorization and Assignment that Charging Party signed when he joined the Union. Although Charging Party continued to have a financial obligation to the Union after his resignation from membership, that financial obligation was less than that indicated in Respondent's October 25, 2013 letter.

The Obligation to Financially Support the Union

We recently considered similar issues in another case involving Respondent, *Teamsters Local 214 (Beutler)* 29 MPER ___ (Case No. CU13 I-037, issued December 11, 2015). The language of the membership application and Checkoff Authorization and Assignment were the same as that of the membership application and Checkoff Authorization and Assignment in this case. In that case, we found that the charging party, Beutler, had waived her right to refrain from financially supporting the Union under the terms of the Checkoff Authorization and Assignment. In *Beutler*, the collective bargaining agreement in place when Beutler joined the Union contained a union security clause, but that agreement expired June 30, 2013, a few months before Beutler resigned from the Union. Before that agreement expired, Respondent and Beutler's employer entered into a successor agreement that did not contain a union security clause. At that point, Beutler had the right to refrain from financially supporting the Union pursuant to § 9(1)(b) of PERA. Thus, upon the expiration of the collective bargaining agreement containing the union

security clause, Beutler had the choice to remain as a union member or to become a nonmember. She was free to resign from her union membership at will, and whether she resigned or not, her failure to pay union dues would have had no impact on her employment.

Thus, Beutler's financial obligations to the Union between the date the union security clause expired and her subsequent resignation from the Union were voluntary. Shortly after the expiration of the union security clause, Beutler had the option to revoke her financial obligation to Respondent between July 6 and July 21, 2013, the window period designated in the Checkoff Authorization and Assignment that she signed. At that point, she continued to have the right to refrain from supporting the Union pursuant to § 9(1)(b) of PERA. She had the choice of ending her union membership and her financial obligation to the Union during that window period or remaining a union member and remaining subject to her contract with Respondent, which, in the absence of a valid union security agreement, obligated her to pay union dues until she revoked her Checkoff Authorization and Assignment within the next designated window period. She waived her right to refrain from financially supporting the Union and chose to remain as a union member. For that period, her membership in the Union was voluntary and the obligation she incurred under the Checkoff Authorization and Assignment continued to be voluntary. It was not until September 2013, that she resigned from the Union and sought to revoke her financial obligation under the Checkoff Authorization and Assignment. While Beutler had the right to resign her union membership, she continued to have a contractual obligation with the Union until the beginning of the next window period pursuant to her voluntary agreement to the terms of the Checkoff Authorization and Assignment.

Unlike *Beutler*, in the matter before us the applicable collective bargaining agreement contains a union security clause. While Beutler's financial obligation to Respondent resulted from a voluntary agreement between her and the Union, the same is not true in the matter before us.

The collective bargaining agreement between Respondent and the Employer contained a union security clause that provided that Charging Party's employment was contingent upon his keeping his financial obligation to the Union. While Charging Party was not obligated to remain a union member, he was obligated to financially support the Union for the term of the union security agreement. Because there was a lawful union security provision affecting Charging Party's employment, Charging Party did not have the right to refrain from financially supporting the Union. See *Auto Workers Local 1752 (Schweizer Aircraft)*, 320 NLRB 528, 531; 320 NLRB No. 39, (1995). When his membership in the Union ended, Charging Party no longer had an obligation to pay union dues. However, he had an obligation to pay an agency fee. Moreover, as discussed below, that financial obligation ended on June 30, 2014, with the expiration of the collective bargaining agreement containing the union security provision, not the subsequent September 3 to September 18 window period indicated in Respondent's letter.

Union Responsibilities to Objecting Nonmember Fee Payers

In *Abood v Detroit Bd of Ed*, 431 US 209; 97 S Ct 1782; 52 L Ed 2d 261 (1977), the Supreme Court upheld agency fee systems in which employees who are not members of the exclusive bargaining representative are required to pay a fair share of the union's cost of

negotiating and administering a collective bargaining agreement.[1] The court noted that an agency fee system is designed to prevent the problems associated with "free riders," employees who "refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees." *Id.* at 222.

The *Abood* court also recognized that nonmember employees have a constitutional right to "prevent the Union's spending a part of their required service fees to contribute to political candidates and to express political views unrelated to its duties as exclusive bargaining representative." *Id.* at 234. Where agency shop is legal, agency fee procedures must be designed to prevent "compulsory subsidization of ideological activity by employees who object thereto without restricting the Union's ability to require every employee to contribute to the cost of collective bargaining activities." *Id.* at 237.

Respondent has a duty to ensure that objecting nonmembers are not required to make payments for union expenses that are not due to the chargeable expenses of collective bargaining, contract administration, and grievance adjustment. It is the Union's responsibility to determine and justify the amount of chargeable union expenses that may lawfully be shared by objecting nonmembers. See *Abood*, 431 US at 239–241. A union may not collect agency fees from nonmembers "without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance ideological activities unrelated to collective bargaining." *Chicago Teachers Union, Local No 1, AFT, AFL-CIO v Hudson*, 475 US 292, 305; 106 S Ct 1066, 1075; 89 L Ed 2d 232 (1986), quoting *Abood*, 431 US at 244, (concurring opinion). See also, *Knox v Serv Employees Int'l Union, Local 1000*, 132 S Ct 2277, 2290; 183 L Ed 2d 281 (2012). In reviewing the issue of public sector agency fee payments, the U.S. Supreme Court has made it clear that "the procedures used by a union to collect money from nonmembers must satisfy a high standard." *Knox*, 132 S Ct at 2291. Nonmembers cannot lawfully be required to pay for nonchargeable union activities "unless they choose to do so after having 'a fair opportunity' to assess the impact of paying" for those activities. *Id.*

Moreover, the Union is responsible for promptly informing objecting nonmembers of their pro rata share of chargeable union expenses. An employee who is an objecting nonmember is entitled to have his or her objections addressed "in an expeditious, fair, and objective manner." *Hudson*, 475 US at 307. It is also the Union's responsibility to provide: (1) an adequate explanation of the basis for the agency fee, (2) a reasonably prompt opportunity for the objecting nonmembers to challenge the amount of the fee before an impartial decision maker, and (3) an escrow for the amounts reasonably in dispute while a challenge is pending. *Id.* at 310. While the nonmember employee has the burden of raising an objection to an agency fee, the union bears the burden of proving the validity of the assessment. *Abood*, 431 US at 239–241.

Respondent's Response to Charging Party's October 20, 2013 Letter

Charging Party's October 20, 2013 letter to Respondent stated in relevant part:

[1] In *Friedrichs v California Teachers Ass'n*, 135 S Ct 2933; 192 L Ed 2d 975; 83 USLW 3653 (2015), the United States Supreme Court granted certiorari to Friedrichs. In that case, the Supreme Court is currently considering agency shop issues that were raised in *Abood*. We cannot say what, if any, impact the Court's upcoming decision will have on the issues raised in this case.

> I understand that as a non-member of the Teamsters Local 214, by law I am still obligated to pay fees to the union for such things as collective bargaining, contract administration, and grievance adjustments. I do however object to paying dues for political activities and other non-bargaining activities. I also understand that under the U.S. Supreme Court decision "Chicago Teachers Union, Local No. 1, AFT, AFL-CIO vs. Hudson, No. 84-1503 I am to obtain from you a reduced amount for my fees that pertain only to union costs to cover collective bargaining, contract administration and grievance adjustment. Please send me an adjusted fee so that I can continue to fulfill my obligations under the current law.

Charging Party's letter to Respondent clearly indicated that he objected to paying for "political activities and other nonbargaining activities," which are expenses that cannot be charged to nonmembers who have objected to paying for such charges. Respondent's reply to Charging Party's letter ignored his objections to paying for nonchargeable expenses and his request that he be notified of the adjusted fee. Charging Party was entitled to be promptly informed of the amount of the adjusted agency fee, but Respondent failed to provide that information. By that failure, Respondent restrained Charging Party's exercise of his right to refrain under § 9(1)(b) of PERA and thereby violated § 10(2)(a).

As a nonmember who has stated his objections to paying for union expenses not attributable to collective bargaining, contract administration, and grievance adjustment, Charging Party could not lawfully be required to continue paying the same amount as the dues of union members, unless the union dues did not include any amounts attributable to nonchargeable expenses. However, Respondent has not asserted that the amounts Charging Party paid to Respondent after he resigned his union membership were exclusively related to the Union's chargeable expenses attributable to collective bargaining, contract administration, and grievance adjustment. Accordingly, Respondent has failed to meet its burden of showing that the fees collected from Charging Party were solely attributable to chargeable union expenses. See *Abood*, 431 US at 239–241.

If Charging Party had ceased making payments to Respondent, while he was subject to the union security clause, Charging Party's employment may have been jeopardized. Since Respondent failed to inform Charging Party of the amount of the agency fee that was due, Charging Party acted reasonably to the extent that he continued to make payments to Respondent while the union security clause was in effect.

Since Charging Party continued to pay the full amount of the union dues, the difference between the amount paid by Charging Party and the pro rata amount attributable to the Union's chargeable expenses for collective bargaining, contract administration, and grievance adjustment is an unlawful overpayment which must be refunded to Charging Party. *Service Employees Int'l Union, Local 517M (Diem)*, 27 MPER 47 (2014).

Given Respondent's assertion in its October 25, 2013 letter to Charging Party that Charging Party could not revoke his financial obligation until the window period of September 3 through September 18, we would not consider it unreasonable for Charging Party to have

continued to make payments to Respondent after the expiration of the union security agreement on June 30, 2014. If Charging Party continued to make payments past the expiration of the union security agreement, we would certainly agree with the ALJ's conclusion that Charging Party is entitled to the refund of any dues he paid after June 30, 2014, in addition to compensation for the difference between the appropriate agency fee and the amount Charging Party paid between his resignation from the Union and June 30, 2014.

Respondent has offered no indication of a plan to compensate Charging Party for his overpayment of the amount due as an agency fee. Even if Respondent had planned to refund the overpayment to Charging Party, Respondent's acceptance and retention of the overpayment is unlawful. By accepting and retaining funds in excess of Charging Party's pro rata share of chargeable expenses, the Union has obtained an involuntary loan for purposes to which Charging Party has objected. Such an involuntary loan is unlawful and breaches the Union's duty of fair representation in violation of § 10(2)(a) of PERA. As the Supreme Court stated in *Ellis v Brotherhood of Railway Clerks*, 466 US 435, 444; 104 S Ct 1883, 1890; 80 L Ed 2d 428 (1984):

> By exacting and using full dues, then refunding months later the portion that it was not allowed to exact in the first place, the union effectively charges the employees for activities that are outside the scope of the statutory authorization. The cost to the employee is, of course, much less than if the money was never returned, but this is a difference of degree only. The harm would be reduced were the union to pay interest on the amount refunded, but respondents did not do so. Even then the union obtains an involuntary loan for purposes to which the employee objects.

Here, while Respondent informed Charging Party that his financial obligations continued after his resignation from the Union, Respondent failed to inform Charging Party of the amount of the agency fee that Charging Party was obligated to pay as an objecting nonmember. Despite knowing that Charging Party had become an objecting nonmember, Respondent continued to accept payment in the amount of full union dues from Charging Party, without giving Charging Party an explanation for the amount the Union continued to collect, and without giving Charging Party an opportunity to contest the amount of the fee after Charging Party became an objecting nonmember. We, therefore, agree with the ALJ that Respondent's failure to acknowledge Charging Party's status as an objecting fee payer while continuing to accept payment in the amount of membership dues effectively compelled Charging Party to contribute to Respondent's nonchargeable expenditures. Respondent's actions in this regard constitute a breach of its duty of fair representation in violation of § 10(2)(a) of PERA.

Respondent's Demands in Its October 25, 2013 Letter

Respondent's October 25, 2013 reply to Charging Party's letter asserted that Charging Party's financial obligation to the Union continued until he revoked that financial obligation within the designated window period of September 3 to September 18 by letter "certified to the Local Union President." However, in light of Charging Party's status as an objecting nonmember in a bargaining unit covered by a union security clause, his financial obligation to the Union stemmed solely from that union security clause. Since the collective bargaining agreement expired on June 30, 2014, the union security clause was no longer binding after that

date. Moreover, after the effective date of Act 349, March 28, 2013, the Union and the Employer could not lawfully include a union security clause in their successor collective bargaining agreement. Accordingly, Charging Party's financial obligation to the Union ended with the expiration of the collective bargaining agreement on June 30, 2014, not the subsequent September 3 to September 18 window period indicated in Respondent's letter.

Charging Party has asserted that Respondent's demand that employees provide notice of their dues checkoff revocation by certified mail is a further violation of PERA. We agree with Charging Party that Respondent may not lawfully require notice by certified mail for either the membership resignation or the notice of objections to payment for nonchargeable expenses.[2] Certainly, sending notice to the Union by certified mail may help a former union member to establish that he or she did send such notice to the Union if the existence of the notice is questioned. See, for example, *Service Employees Int'l Union, Local 517M (Diem)*, 27 MPER 47 (2014). However, we see no legitimate purpose for a union to require a former union member to expend the effort and money, even though a small amount, that would be involved in sending a notice of membership resignation or objections to payment for nonchargeable expenses by certified mail. Accordingly, we agree with the National Labor Relations Board in *California Saw & Knife Works*, 320 NLRB 224, 237; 320 NLRB No. 11, (1995) that a union's requirements that objections be sent by certified mail constitutes an arbitrary restriction on the employee's exercise of the right to be an objecting fee payer. See also *Weaver v Univ of Cincinnati*, 942 F2d 1039, 1046-47 (CA 6 1991).

Accordingly, if Respondent failed to recognize Charging Party as an objecting nonmember *because* Charging Party failed to submit the notice of his objections to paying for nonchargeable union expenses by certified mail, Respondent has further restrained Charging Party in his right to refrain from supporting the Union and has done so in violation of § 10(2)(a). However, since there is no evidence of Respondent's reason for failing to recognize Charging Party's rights as an objecting nonmember, an order requiring Respondent to cease and desist from requiring those it represents to provide notice by certified mail is not appropriate.

Whether Summary Disposition Is Appropriate in This Case

In its exceptions, Respondent contends that the ALJ erred by failing to conduct an evidentiary hearing before rendering her decision. As indicated in the ALJ's decision, both parties submitted prehearing briefs to the ALJ in March 2014. Attached to Charging Party's prehearing brief was a proposed stipulation of facts and proposed joint exhibits. Respondent did not contest the material facts alleged by Charging Party in the proposed stipulation of fact or the proposed joint exhibits. On the contrary, in Respondent's prehearing brief, Respondent argues that the only unlawful action that Charging Party contends the Union committed was to send the October 25, 2013 letter to Charging Party.

Respondent's letter in response to Charging Party's October 20, 2013 letter forms the basis for the ALJ's finding that Respondent committed an unfair labor practice. Respondent's

[2] Whether Respondent may require certified mail notice for revocation of the obligation to pay dues when the employee is not affected by a union security clause, as in *Beutler*, is not before us. Although we need not address that issue here, we see no reason why that scenario would lead to a different result.

letter acknowledged receipt of Charging Party's October 20, 2013 letter, informed Charging Party that his revocation of his Checkoff Authorization and Assignment was untimely, and notified him that he would need to resubmit his revocation within the next window period, "certified to the Local Union President" (Emphasis in original.). Moreover, Respondent's prehearing brief acknowledges that the collective bargaining agreement between Respondent and Charging Party's employer applicable to Charging Party's employment for the period of September 1, 2012 through June 30, 2014 contains a union security provision that required Charging Party to pay dues or an agency fee as a condition of employment. The undisputed facts alleged in the proposed stipulation of facts and proposed joint exhibits offered by Charging Party, as corroborated by Respondent's prehearing brief, contain the material facts on which the ALJ's decision is based and on which our affirmance of the ALJ's decision is based.

Therefore, we find no merit in Respondent's contention that the ALJ erred by failing to conduct an evidentiary hearing. Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, R 423.165 authorized the ALJ to summarily dispose of the case in appropriate circumstances and stated:[3]

> The commission or *administrative law judge* designated by the commission may, on its own motion or on a motion by any party, order dismissal of a charge or issue a ruling in favor of the charging party. The motion may be made any time before or during the hearing. (Emphasis added.)

We also look to *Smith v Lansing Sch Dist*, 428 Mich 248, 250-251, 255-259 (1987) for guidance on the issue of whether the Administrative Procedures Act, MCL 24.201 – 24.328, requires an evidentiary hearing to be held. In *Smith*, at 257, the Supreme Court said:

> We agree with appellants that § 72(3) [of the APA] does not require a full evidentiary hearing when, for purposes of the proceeding in question, all alleged facts are taken as true. That is, we construe that portion of § 72(3) to require affording the opportunity to present evidence on issues of fact only when such issues exist.

As indicated above in the factual summary section of this decision, there are no material issues of fact in this case. Thus, the decision in this matter depends purely on the resolution of issues of law. Therefore, an evidentiary hearing is neither necessary nor appropriate. Inasmuch as there are no material facts in dispute, summary disposition is proper. *Quinto v Cross and Peters Co*, 451 Mich 358, 362-363 (1996). As indicated above, the ALJ's decision correctly resolved the issues of law.

We have also considered all other arguments submitted by the parties and conclude that they would not change the result in this case. Therefore, for the foregoing reasons, we affirm the ALJ's decision.

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[3] Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACS, was amended on December 16, 2014. However, the changes made by that amendment do not affect the outcome in this case.

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: January 14, 2016

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

TEAMSTERS LOCAL 214,
Labor Organization-Respondent,

Case No. CU13 K-067
Docket No. 13-016862-MERC

-and-

JAMES A. COTTRELL,
An Individual-Charging Party.
_____/

APPEARANCES:

Wayne Rudell, for Respondent

Aaron B. Solem and John N. Raudabaugh, National Right to Work Legal Defense Foundation, for Charging Party

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

On December 23, 2013, James A. Cottrell, employed by the Lenawee Intermediate School District (the Employer) as a bus driver, filed an unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) alleging that his collective bargaining representative, Teamsters Local 214, violated §§9 and 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, by refusing to accept his resignation from membership in that labor organization and acknowledge his request to become an agency fee payer and his objection to paying that portion of his fee used for purposes not germane to collective bargaining, contract administration or grievance adjustment. Pursuant to §16 of PERA, the charge was assigned for hearing to Julia C. Stern, Administrative Law Judge for the Michigan Administrative Hearing System (MAHS).

On March 3, 2014, in accord with an agreement reached at a prehearing conference, Charging Party filed a pre-hearing position statement. Included with the position statement were proposed stipulations of fact and four proposed exhibits. On March 26, 2014, Respondent filed a position statement and motion for summary dismissal of the charge. Respondent does not dispute any of the facts asserted in Charging Party's proposed stipulation. Charging Party filed a response to the motion on April 15, 2014.

Based on facts set out in the charge and pleadings and not in dispute, and on the arguments made by the parties in the motion and in their position statements, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Cottrell is a member of a bargaining unit of the Employer's employees represented by the Respondent. On November 18, 2010, Cottrell signed an application to become a member of Respondent and an authorization to have his dues deducted from his paycheck.

Effective September 1, 2012, Respondent and the Employer entered into a collective bargaining agreement with a provision requiring employees to "sign and deliver to the Board authorization to deduct a service fee" from their paychecks. The agreement, which remained in effect until June 30, 2014, also required the Employer to deduct dues and services fees from the checks of employees who authorized this and transmit these monies to Respondent. The Employer ceased deducting union dues and service fees from its employees' paychecks sometime before October 2013. Cottrell then began paying his dues directly to Respondent by check.

On October 20, 2013, Cottrell sent a letter to Respondent resigning his membership, acknowledging his obligation under the collective bargaining agreement to pay a service fee to Respondent, and asserting his objection to paying dues or fees used for political or non-bargaining activities. Cottrell asked Respondent to inform him of the amount of the reduced or adjusted fee he was required to pay as a nonmember objector. On October 25, 2013, Respondent sent Cottrell a letter stating that the terms of the checkoff authorization that he signed when he became a member did not permit him to revoke his "financial obligation" at that time. The letter informed Cottrell that the proper period for revoking his financial obligation was between September 3 and September 18. Cottrell received no other response to his October 20 letter. Cottrell continued to pay dues to Respondent by check, and Respondent continued to cash his checks.

Cottrell alleges that Respondent violated §§9(1)(b) and 10(2)(a) of PERA by refusing to accept his resignation and allow him to immediately exercise his right, under *Abood v Detroit Bd of Ed*, 431 US 209 (1977) and *Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v Hudson*, 475 US 292 (1986), to cease paying dues and fees used for purposes other than collective bargaining, contract administration, and grievance adjustment.

Facts:

The facts set out in charge section above and below are not in dispute.

Cottrell's Membership Application and Checkoff Authorization

The "Application and Notice for Membership in Local Union No. 214," which Cottrell signed on November 18, 2010, read as follows:

> I voluntarily submit this Application for Membership in Local Union 214, affiliated with the International Brotherhood of Teamsters, so that I may fully participate in the activities of the Union. I understand that by becoming and remaining a member of the Union, I will be entitled to attend membership meetings, participate in the development of contract proposals for collective bargaining, vote to ratify or reject collective bargaining agreements, run for Union office or support candidates of my choice, receive Union publications and take advantage of programs available only to Union members. I understand that only as a member of the Union will I be able to determine the course the Union takes to represent me in negotiations to improve my wages, fringe benefits and working conditions. And, I understand that the Union's strength and ability to represent my interests depends upon my exercising my right, as guaranteed by federal law, to join the Union and engage in collective activities with my fellow workers.
>
> I understand that under the current law, I may elect "nonmember" status, and can satisfy any contractual obligation necessary to retain my employment by paying an amount equal to the uniform dues and initiation fee required of members of the Union. I also understand that if I elect not to become a member or remain a member, I may object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining, contract administration and grievance adjustment, and I can require the Local Union to provide me with information concerning its most recent allocation of expenditures devoted to activities that are both germane and non-germane to its performance as collective bargaining representative sufficient to enable me to decide whether or not to become an objector. I understand that nonmembers who choose to object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining will be entitled to a reduction in fees based on the aforementioned allocation of expenditures, and will have the right to challenge the correctness of the allocation. The procedures for filing such challenges will be provided by my Local Union, upon request.

On the same date, Cottrell signed a "checkoff authorization and assignment" which stated:

> I, James A. Cottrell, hereby authorize my employer to deduct from my wages each and every month an amount equal to the monthly dues, initiation fees and uniform assessments of Local Union 214, and direct such amounts so deducted to be turned over each month to the Secretary-Treasurer of such Local Union for and on my behalf.
>
> This authorization is voluntary and is not conditioned on my present or future membership in the Union.
>
> This authorization and assignment shall be irrevocable for the term of the applicable contract between the union and the employer or for one year,

> whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is lesser, unless I give written notice to the company [sic] and the union at least sixty (60) days, but not more than seventy-five (75) days before any periodic renewal date of this authorization and assignment of my desire to revoke same.

The language in the first sentence of third paragraph of Cottrell's checkoff authorization appears to be patterned on language in §302(c)(4) of the National Labor Relations Act (NLRA), 29 USC §186(c)(4). Section 302(a) of that Act makes it unlawful for employers to give money or other things of value to labor organizations which represent or would admit to membership the employees of that employer. Section 302(c) contains exceptions, including, in §302(c)(4), money deducted by the employer from employees' wages in payment of union membership dues, "[P]rovided, that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner." Section 302(c)(4), therefore, permits dues checkoff where employees have authorized it, but effectively requires labor organizations to give their members at least one opportunity annually to revoke their checkoff authorizations. PERA contains no provision similar to §302 of the NLRA.

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 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). As noted above, the Employer ceased deducting dues from Cottrell's paycheck sometime before October 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 (1)(a) of that section.[4]

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(2)(a) of PERA states that the "restrain or coerce" language in that subsection 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:

---

[4] 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), only 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.

(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.

In addition, §10(5) now states:

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.

Cottrell Resigns His Membership

On October 20, 2013, Cottrell sent Respondent the following letter:

I am employed by the Lenawee Intermediate School District, Adrian, Michigan, in the transportation department as a school bus driver. I have also been a member in good standing of the Teamsters, Local 214. Effective immediately, I resign from my membership in the local union and all of its affiliated unions under the U.S. Supreme Court decision "Communication Workers v Beck" of 1988, commonly known as the Beck law.

I understand that as a non-member of the Teamsters Local 214, by law I am still obligated to pay fees to the union for such things as collective bargaining, contract administration, and grievance adjustments. I do however object to paying dues for political activities and other non-bargaining activities. I also understand that under the U.S. Supreme Court decision "Chicago Teachers Union, Local No. 1, AFT, AFL-CIO vs. Hudson, No. 84-1503 I am to obtain from you a reduced amount for my fees that pertain only to union costs to cover collective bargaining, contract administration and grievance adjustment. Please send me an adjusted fee so that I can continue to fulfill my obligations under the current law.

Thereafter, Cottrell received from Respondent the following letter, dated October 25, 2013. The letter read:

> We are in receipt of your letter requesting that your dues deduction be stopped in accordance with Public Act 349 of 2012.
>
> Please be advised that by signing the Check Off Authorization, when you first became a member, you entered into a separate independent contract with this Local Union which supercedes [sic] Public Act 349. Provisions of that Agreement do not permit you to revoke your financial obligation at this time, the proper time period is from 9/3 to 9/18, and your letter must be *certified* to the Local Union President. [Emphasis in original].

Cottrell did not receive any other communication from Respondent in response to his October 20 letter. Beginning on October 14, 2013, and continuing at least through March 2014, Cottrell sent Respondent monthly checks representing the full amount of his union dues and fees. Respondent cashed these checks.

Discussion and Conclusions of Law:

In a Decision and Recommended Order issued by me in *Saginaw Ed Assn and MEA (Eady-Miskiewicz et al)*, Case Nos. CU13 I-054-CU13 I-06/Docket Nos. 13-013125-MERC through 13-013134-MERC, issued on September 2, 2014, and now pending on exceptions before the Commission, I concluded that PERA now incorporates a right to refrain as that right has been interpreted under the NLRA. I concluded, as discussed in that decision, that the right to refrain includes a right to resign one's union membership at will. In *Saginaw*, I found that the union in that case violated §10(2)(a) of PERA by refusing the requests of the charging parties to resign their union memberships outside of a window period. I also concluded that the union violated §10(2)(a) by maintaining and enforcing a policy, contained in its bylaws, restricting its members' right to resign outside of a one month window period.

In this case, however, there is no indication that Respondent has a policy restricting when its members can resign their memberships. Moreover, unlike the union in *Saginaw Ed Assn*, Respondent did not inform Cottrell that his October 20, 2013, request to resign was untimely. Rather, it merely told him that he must wait until the following September to "revoke his financial obligation." Cottrell does not allege that Respondent explicitly told him that Respondent had not accepted his October 2013 resignation, or that the only time he could submit a valid resignation was in September. I conclude that the facts, as Cottrell alleges them, do not support a finding that Respondent refused to allow him to resign his union membership in October 2013.

Cottrell also alleges, however, that Respondent violated its obligation under §10(2)(a) of PERA to recognize his right, as a nonmember, to object to paying for union expenditures for non-collective bargaining purposes. When Cottrell resigned his union membership, the Employer was not deducting either dues or a service fee from Cottrell's paycheck and could not lawfully have done so under PA 53. However, Cottrell acknowledged in his October 20, 2013, letter that

he had a financial obligation to Respondent under the union security agreement then in effect, even though nothing was being deducted from his check, and he continued to acknowledge this obligation by remitting dues. Cottrell asserts that Respondent had a duty under §10(2)(a) to affirmatively acknowledge his objection by providing him with an adjusted service fee reflecting only its expenditures for collective bargaining, contract administration and grievance adjustment (hereinafter "chargeable expenditures.")

On September 2, 2014, I issued another Decision and Recommended Order, *Standish-Sterling Educational Support Personnel Assn,* Case No. CU14 B-002/Docket No. 14-002293-MERC, also pending on exceptions. Like Cottrell, the charging party in *Standish-Sterling* attempted to resign his union membership and assert his objection to paying dues or fees for non-chargeable expenditures while covered by a union security agreement, but outside the window period for revoking his checkoff authorization. Like Cottrell, the charging party in *Standish Sterling* was an employee of a public school employer, and his employer had ceased deducting dues from his paycheck before he resigned. Like Respondent, the union in *Standish-Sterling* did not acknowledge the charging party's status as an objecting non-member and, like Cottrell, the charging party continued to pay dues. I concluded in that case that the union violated PERA by refusing to accept the charging party's resignation. I also held that the union was obligated to permit newly-resigned members to assert their objections to contributing to the union's non-chargeable expenditures immediately and to allow them to pay a reduced agency fee in lieu of dues. I found, therefore, that the union in that case violated §10(2)(a) of PERA by failing to provide the charging party with a reduced agency fee.

As discussed in *Standish-Sterling,* Cottrell's rights as an objecting non-member included the opportunity to pay a reduced service fee based on the union's chargeable expenditures. In this case, neither dues nor service fees were deducted from Cottrell's paycheck and sent to Respondent after he resigned. Respondent's October 23 letter did not demand that Cottrell continue to pay dues, but merely stated that he continued to have a financial obligation to Respondent until he revoked his dues authorization within the window period. As Respondent points out in its motion for summary disposition, Cottrell does not allege that Respondent ever directly demanded that he continue to pay dues. However, I find that because Respondent did not acknowledge his status as an objecting fee payer, Cottrell could have reasonably believed that he might eventually be subject to discipline or discharge under the terms of the collective bargaining agreement if he did not pay the full amount of his union dues and fees. I find that by failing to acknowledge Cottrell's status as an objecting fee payer while continuing to accept payment of the full amount of his dues, Respondent effectively compelled Cottrell to contribute to its non-chargeable expenditures and violated its duty of fair representation under §10(2)(a) of PERA.

The remaining issue to be decided here is the appropriate remedy, in addition to a cease and desist order, for Respondent's unfair labor practice. Clearly, Respondent should be ordered to refund the difference between the dues Cottrell paid after October 20, 2013, and the reduced service fee he was obligated to pay, as an objecting non-member, until the union security agreement in the collective bargaining agreement expired on June 30, 2014. I note that the pleadings, which were filed in March and April 2014, give no indication as to whether Cottrell continued to pay dues after this date. However, if Cottrell's financial obligation to Respondent

ended when the union security clause covering him expired, he is also entitled to a full refund of the dues, if any, he paid after June 30, 2014.

Respondent asserts, as it informed Cottrell in its October 23, 2013 letter, that when Cottrell signed his checkoff authorization he entered into a separate contract with Respondent under which he continued to have a financial obligation to it until he revoked that obligation within the window period set out in the authorization. Cottrell argues that, under PERA, there was no lawful contract because checkoff authorizations must be revocable at will. Respondent relies on NLRA precedent, including *Smith's Food and Drug Centers,* 358 NLRB No. 66 (2012), to support its position that this contract was lawful.

As discussed in *Saginaw Ed Assn,* the right to refrain from §7 activity under the NLRA includes the right not to financially assist a union. *International Brotherhood of Electrical Workers, Local 2088 (Lockheed Inc),* 302 NLRB 322 (1991). However, as the NLRB held in that case, this right does not preclude an employee from individually agreeing to pay dues after he has resigned and is no longer a member. In *Lockheed,* the NLRB concluded that the charging party in that case had not explicitly agreed, in the checkoff authorization he had signed, to continue to pay dues after he had resigned his membership. Therefore, it concluded, the checkoff agreement did not constitute a clear, unmistakable and explicit waiver by the charging party of his right not to financially contribute to the union. However, in a companion case issued the same day, *United Steelworkers of America, Local 4671 (National Oil),* 302 NLRB 367 (1991), the charging party had signed a checkoff agreement authorizing his employer "to deduct from my pay each month, while I am in employment with the collective bargaining unit in the Company, and *irrespective of my membership status in the Union,* monthly dues, assessments…" [Emphasis added]. The Board held that by signing this agreement, the charging party clearly authorized his employer to continue to checkoff dues until he properly revoked his checkoff authorization within the designated window period, even if he resigned his union membership before that date. Therefore, the checkoff authorization obliged the charging party to pay dues until the authorization was revoked in accord with its terms.

In *Smith's,* the Board adopted the conclusion of its administrative law judge (ALJ) that a union did not violate §8(b)(1)(A) of the NLRA by continuing to accept money deducted from the paychecks of former union members who had both resigned their memberships and attempted to revoke their checkoff authorizations. *Smith's* arose in a right-to-work state, and the employees involved were, therefore, not subject to a union security agreement. The employees had voluntarily joined the union and signed checkoff authorizations that stated:

> To: Any Employer under contract with United Food and Commercial Workers Union, Local 99, AFL-CIO
>
> You are hereby authorized and directed to deduct from my wages, commencing with the next payroll period, an amount equivalent to dues and Initiation fees as shall be certified by the Secretary-Treasurer of Local 99 of the United Food and Commercial Workers Union, AFL-CIO, and remit same to said Secretary-Treasurer.

> This authorization and assignment is voluntarily made in consideration for the cost of representation and collective bargaining and is not contingent upon my present or future membership in the Union. This authorization and assignment shall be irrevocable for a period of one (1) year from the date of execution or until the termination date of the agreement between the Employer and Local 99, whichever occurs sooner, and from year to year thereafter, unless not less than thirty (30) days and not more than forty-five (45) days prior to the end of any subsequent yearly period I give the Employer and Union written notice of revocation bearing my signature thereto.

The employees resigned their memberships at various times, all of which were outside of the window periods contained in their checkoff authorizations. They also, at various times but separately from their resignations, attempted to revoke these authorizations. None of the employees revoked their checkoff authorizations within the window periods contained in the authorizations they had signed. The NLRB's General Counsel argued that the employees were allowed to revoke their checkoff authorizations at will because the authorizations were ambiguous. It also asserted that because the employees had resigned, the union was on notice that their dues obligation ended when their period of irrevocability ended. It argued that resignation was the functional equivalent of revocation within the yearly escape period, even though the revocations themselves were not timely. It asserted, therefore, that the union violated §8(b)(1)(A) by continuing to accept and retain dues deducted from their wages after the period of irrevocability.

The ALJ rejected the General Counsel's argument that the authorizations were ambiguous. He also concluded that its argument that the union was required to treat the employees' resignations as checkoff revocations was untenable under *Lockheed* and *National Oil.* Adopting the ALJ's recommendation that the charge be dismissed, the Board noted that there was no evidence that any of the employees revoked, or even inquired about revoking, their authorizations within any of the possible window periods.

As the cases above make clear, checkoff authorizations are not, as a matter of law, revocable at will under the NLRA nor are they automatically revoked when a union member resigns his or her membership. Cottrell argues that NLRB precedents are not applicable here because §302(c)(4) of the NLRA expressly allows checkoffs to be made irrevocable for a one year period, and PERA contains no similar provision. The window period language in the dues checkoff agreement Cottrell signed appears to have been taken from §302(c)(4). However, the Board did not rely on §302(c)(4) when it concluded in *Lockheed*, *National Oil,* and *Smith's* that employees who explicitly agreed in a checkoff authorization to pay dues after they resigned their memberships were bound by that agreement until they revoked that agreement within the window periods contained in the agreement.

Cottrell argues that "federal law holding that private-sector checkoffs can be irrevocable for one year has no purchase here." I agree with Cottrell that *SeaPAK v Industrial Employees, National Maritime Union*, 300 F Supp 1197 (SD GA, 1969), aff'd per curium, 423 F2d 1229 (CA 5, 1970), aff'd per curium, 400 US 985 (1971) is not applicable. In *SeaPAK*, a union in a right to work state brought an action to enjoin the employer from refusing to deduct dues from

the paychecks of employees who had revoked their checkoff authorizations outside of the window period in their authorizations. The employer relied on a state statute that explicitly made checkoff authorizations revocable at will. The Courts held that despite §14(b) of the NLRA, which allows states to prohibit membership in a labor organization as a condition of employment, the state statute was preempted by §302(c)(4) of the NLRA. In the instant case, federal preemption is not an issue; public employees covered by PERA are not "employees" under §2(3) of the NLRA. Whether the Legislature could make checkoff authorizations revocable at will is also not an issue. The fact is, unlike the state law in *SeaPAK*, PERA does not explicitly make checkoff authorizations, or agreements to pay dues after resigning, revocable at will. It does explicitly give public employees the right to refrain from §9 activities. This is a right that employees subject to the NLRA, both in right-to-work states and elsewhere, have enjoyed since 1947. As discussed in *Saginaw Ed Assn*, I conclude that the right to refrain in §9 of PERA does not prohibit a union from entering into a binding agreement with an employee in which the employee voluntarily agrees to make financial contributions to the union until that agreement is properly revoked in accord with its terms.

I find, however, that the document which Cottrell signed on November 18, 2010 did not clearly and explicitly obligate Cottrell to continue to financially support the union after June 30, 2014. I note that in *Lockheed,* at 328, the NLRB stated that it would construe language in a checkoff authorization specifying a period of irrevocability as applying only to the method by which dues payments would be made so long as dues payments were properly owing. Like the checkoff authorization signed by the charging party in *National Oil,* Cottrell's checkoff authorization agreement authorized his employer to continue to deduct monies from his paycheck and transmit them to Respondent, whether or not he was a union member, unless and until he revoked the authorization in accord with its terms. However, this agreement ceased to be enforceable when Cottrell's employer was prohibited by PERA from deducting either union dues or services fees from his paycheck. I conclude that Cottrell was not obliged, by the terms of the agreement he signed on November 18, 2010, to continue to pay a reduced service fee to Respondent after June 30, 2014. I will, therefore, also order Respondent to fully refund any dues Cottrell paid to it after that date.

As set out above, I conclude that Respondent violated its duty of fair representation under §10(2)(a) of PERA when it failed, after Cottrell resigned his union membership in October 2013 and asserted his rights as an objecting nonmember under *Abood,* to acknowledge his status as an objecting nonmember and provide him with the rights it provides to other objectors, including the opportunity to pay a reduced service fee based on its chargeable expenditures, while continuing to accept his checks for the full amount of his dues. I will, therefore, recommend that the Commission order Respondent, as a remedy for its unfair labor practice, to refund to Cottrell: (1) any dues he paid after June 30, 2014, plus interest; and (2) dues he paid between the date he resigned his membership, October 20, 2013 and June 30, 2014, plus interest, less the amount of the reduced service fee Cottrell would have paid for that period as a non-member a non-member who objected to the use of his service fees for purposes other than collective bargaining, contract enforcement, and grievance administration.

Based on facts not in dispute and on the conclusions of law reached above, I recommend that the Commission deny Respondent's motion for summary dismissal and that it issue the following order.

RECOMMENDED ORDER

Respondent Teamsters Local 214, its officers and agents, are hereby ordered to:

1. Cease and desist from violating its duty of fair representation under §10(2)(a) of PERA by:

   a. Failing to acknowledge, after October 2013, James Cottrell's status as a nonmember objecting to paying dues or fees for purposes other than collective bargaining, contract administration, and grievance adjustment;

   b. Failing to accord to Cottrell the rights accorded to other objecting nonmembers, including but not limited to, the opportunity to pay a reduced service fee in lieu of dues.

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

   a. Provide Cottrell with the information it provided to nonmembers in 2013 and 2014 with respect to its chargeable and nonchargeable expenditures.

   b. Provide Cottrell with the amount of the reduced service fee paid to Respondent in 2013 and 2014 by objecting nonmembers and, if feasible, the opportunity to challenge this fee before an impartial decision maker.

   c. Refund to Cottrell all dues he paid after June 30, 2014, including interest at the statutory rate of 6% per annum, computed quarterly.

   d. Refund to Cottrell all dues he paid between the date he resigned his union membership, October 20, 2013, and June 30, 2014, including interest at the statutory rate of 6% per annum, computed quarterly, but less the amount of the reduced service fee Cottrell would have paid for that period as a non-member who objected to the use of his service fees for purposes other than collective bargaining, contract enforcement, and grievance administration.

   c. With the agreement of Cottrell's employer, the Lenawee County Intermediate School District, post the attached notice to union members in conspicuous places on the employer's premises, including all places where notices to members of Respondent's bargaining unit are normally posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: November 21, 2014

NOTICE TO UNION MEMBERS

AFTER A PUBLIC HEARING, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND **TEAMSTERS LOCAL 214** 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 violate our duty of fair representation under §10(2) of PERA toward the employees we represent by failing to acknowledge the rights of nonmembers covered by union security clauses to object to paying dues and fees for purposes other than collective bargaining, contract administration, and grievance adjustment, including the opportunity to pay a reduced service fee in lieu of dues.

WE WILL provide James Cottrell with the information we provided to other nonmembers in 2013 and 2014 with respect to our chargeable and non-chargeable expenditures.

WE WILL provide James Cottrell with the amount of the reduced service fee paid in 2013 and 2014 by nonmembers who objected to paying services fees for purposes other than those set out above and, if feasible, the opportunity to challenge the amount of this fee before an impartial decision maker.

WE WILL refund to Cottrell: (1) the dues he paid after the union security clause expired on June 30, 2014, including interest at the statutory rate of 6% per annum, computed quarterly; and (1) the dues he paid between the date he resigned his union membership, October 20, 2013, and June 30, 2014, including interest at the statutory rate of 6% per annum, computed quarterly, but less the amount of the reduced service fee Cottrell would have paid for that period as a non-member who objected to the use of his service fees for purposes other than collective bargaining, contract enforcement, and grievance administration.

TEAMSTERS LOCAL 214

By: _____

Title: _____

Date: _____

Any questions concerning this notice may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510.
Case Nos. CU13 K-067/13-016862-MERC