

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondent,

-and-

CAROL A. REYNOLDS,
An Individual Charging Party.

Case No. CU15 J-034
Docket No. 15-056379-MERC

APPEARANCES:

White, Schneider, Young and Chiodini, P.C., by Catherine E. Tucker, for Respondent

Carol A. Reynolds, appearing on her own behalf

DECISION AND ORDER

On January 19, 2016, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of the Act.

The parties have had an opportunity to review the Decision and Recommended Order for a period of at least 20 days from the date of service and no exceptions have been filed by either of the parties.

ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: March 16, 2016

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondent,

Case No. CU15 J-034
Docket No. 15-056379-MERC

-and-

CAROL A. REYNOLDS,
An Individual-Charging Party.

APPEARANCES:

White, Schneider, Young and Chiodini, P.C., by Catherine E. Tucker, for Respondent

Carol A. Reynolds, appearing for herself

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

On October 5, 2015, Carol A. Reynolds, who was employed as a teacher by the Kentwood Public Schools (the Employer) until she retired at the end of July 2015, filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against her collective bargaining representative, the Michigan Education Association, pursuant to Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of PERA, the charge was assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On November 24, 2015, Respondent filed a position statement and motion for summary disposition asserting that the charge was untimely under §16(a) of PERA and that it failed to state a claim on which relief could be granted under PERA. On January 9, 2016, Reynolds filed a response to the motion. As I directed her to do in a letter dated November 30, 2015, Reynolds identified the facts set out in Respondent's motion with which she disagreed.

Based on facts set forth in the charge and pleadings and not in dispute, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Until her retirement in 2015, Reynolds was a teacher for the Employer and a member of a bargaining unit represented by Respondent and its affiliate, the Kentwood Education Association (KEA). The most recent collective bargaining agreement between the KEA and the Employer covering Reynolds' bargaining unit covers the period from September 1, 2013, through August 31, 2015.

Reynolds was for some period of time a member of Respondent. According to Reynolds, between August 2013 and August 2014, she sent Respondent four letters resigning her union membership. The first letter was sent by regular mail on August 28, 2013, the second faxed on December 4, 2013, the third sent by certified mail on or about July 15, 2014, and the fourth sent by certified mail on or about August 19, 2014. As set out below, Respondent accepted her August 19, 2014, resignation. However, it demanded that Reynolds pay the membership dues it alleged she owed for the 2013-2014 school year and billed her for those dues. At some point, Reynolds began receiving bills from a collection agency called Account Receivable Solutions, Inc. Reynolds disputed the bill, but continued to receive bills from that entity, including a bill dated September 9, 2015.

Reynolds alleges that Respondent violated §10(2)(a) of PERA by continuing to demand payment for dues after she resigned her membership.

Facts:

The facts, except as specifically noted below, are undisputed. In August 2013, Reynolds telephoned Respondent to inquire about resigning her membership. She was told to notify it by mail. On August 28, 2013, according to Reynolds, she sent a resignation letter by regular mail to the address listed on her membership form. Respondent asserts that it never received this letter.

In September 2013, Reynolds received an email from the KEA president stating that she owed dues for the 2013-2014 school year. Reynolds responded with an email stating that if she was to pay she needed a bill, the amount owed per month, and where to send her money. She did not receive a response to this email.

Sometime in the late fall of 2013, Reynolds received another email from the KEA president telling her to call Respondent about paying her dues. Reynolds called Respondent's office and explained that she had resigned. She was told to put everything in writing and mail or fax it to Respondent's office. On December 4, 2013, she faxed a letter to Respondent detailing the above events, including that she had mailed a resignation letter on August 28, 2013. Reynolds' December 4, 2013, letter reiterated that she was resigning her membership in Respondent and in the KEA.

Reynolds did not receive either a response to her faxed letter or another demand for payment until May 2014. On May 5, 2014, Respondent sent Reynolds a letter stating that the membership form she signed constituted a contract with Respondent and that, under

Respondent's governance documents, membership was on a continuing basis from year to year and could only be terminated upon a written request submitted to Respondent and postmarked between August 1 and August 31 of the year preceding the designated membership year. The letter stated that her "message was postmarked (either by the U.S. Postal Service or by your email server, depending on how you contacted us) after the August 31 deadline and therefore your membership automatically renewed for the 2013-2014 school year." The letter also stated:

Additionally, we have searched our offices for the letter you indicated you wrote and were unable to find any letter from you. As we are not able to find a letter from you during that period, we must treat this situation as any other untimely resignation request. However, if you provide us evidence that this letter was sent to us during the August time frame, we would take that under consideration and reevaluate this matter.

While we understand this is not the message you want to hear from us, it is nonetheless consistent with the rules adopted by the MEA Representative Assembly, the body elected by members to govern the organization.

As you will continue to have a dues obligation to MEA for the coming year, MEA wants to make every effort to show you the value of your dues dollars and work to earn your membership going forward.

On or about July 15, 2014, Reynolds sent Respondent a certified letter stating that she chose "not to be a part of the membership of the MEA as well as the KEA for the school year 2014-2015."

On July 23, 2014, Respondent sent Reynolds a letter informing her that if she decided to resign her membership, she must submit a request in writing, signed by her and postmarked between August 1 and August 31 of the year preceding the designated membership year. It also provided an address to which the letter should be sent. The letter recommended that Reynolds send the letter by certified mail and that she include the school district in which she works. The letter also included this paragraph:

We do however show a dues balance of \$970.00 that will need to be paid before the end of August 2014 should you resign membership. That figure is your dues balance from the 13-14 school year. This balance cannot be forgiven or removed by anyone in the organization and will not disappear when you resign your membership. There are several ways to pay your dues outlined below.

On or about August 19, 2014, Reynolds sent Respondent another copy of her July 15, 2014, letter with the notation, "This same letter was sent to you in July. I am resending this via certified mail to meet your requirements as was done last year."

According to Reynolds, she did not receive a bill from Respondent for dues for any year for "a period of time." During that period, according to Reynolds, she had several conversations with Employer administrators about Respondent's claim that she owed back dues.

According to Reynolds, these administrators told her not to be concerned and that they were going to meet with the KEA to “discuss the many employees involved in this matter.” Relying on these statements, Reynolds did not take any action for a period. At the end of July 2015, Reynolds retired from her employment with the Employer. According to Reynolds, at some point she began receiving actual bills from Respondent, which she also ignored. At some date which she does not identify, she received a bill for \$960.00 from Account Receivable Solutions, Inc., a collections agency. According to Reynolds, she wrote to Account Receivable Solutions, Inc., disputing the bill, but received a response stating that Respondent had told them that Reynolds had not resigned in August 2013. This letter, according to Reynolds, sent her on a search for information that resulted in her filing the instant charge. Reynolds continued to receive bills from the collection agency, including another bill for \$960.00 on September 9, 2015.

Discussion and Conclusions of Law:

Under § 16(a) of PERA, the Commission is prohibited from finding an unfair labor practice occurring more than six months prior to the filing of the charge with the Commission and the service of a copy thereof upon the party against whom the charge is made. An unfair labor practice charge that is filed more than six months after the alleged unfair labor practice is untimely and must be dismissed. The limitation contained in § 16(a) of PERA is jurisdictional and cannot be waived. *Washtenaw Cmty Mental Health*, 17 MPER 45 (2004); *Police Officers Labor Council, Local 355*, 2002 MERC Lab Op 145; *Walkerville Rural Cmty Schs*, 1994 MERC Lab Op 582. The statute of limitations period begins to run when the charging party knows or should have known of the acts constituting the unfair labor practice and has good reason to believe that the acts were improper or done in an improper manner. It is not necessary that the charging party know that the acts violated his or her legal rights. *Huntington Woods v Wines*, 122 Mich App 650 (1982).

On September 23, 2015, in *Saginaw Education Assn et al*, 29 MPER 21 (2015), the Commission held that under the amendments to PERA adopted by the Michigan legislature in 2012, public employees have the right to resign their union memberships at any time. The Commission concluded that the Michigan Education Association violated §10(2)(a) of PERA by maintaining and enforcing a “window period” policy which restricted its members right to resign their union memberships by requiring that they resign in the month of August. It held that the Union did not unlawfully interfere with the rights of its members by requiring them to give notice in writing of their resignations, but concluded that it committed an unfair labor practice by refusing to accept the written resignations of the four teachers who had filed charges in that case. The charging parties had also alleged that the Union committed an unfair labor practice by threatening to take collection actions for unpaid dues. As the ALJ in that case, I found this allegation to be without merit. However, the Commission did not address the issue of whether a threat to “take employees to collections” for unpaid dues constituted unlawful conduct because the charging parties did not raise the issue with the Commission. The Commission’s decision in *Saginaw Education Assn* is currently pending on appeal before the Court of Appeals.

Whether or not Respondent received Reynolds’ August 28, 2013, resignation letter, under *Saginaw Education Assn*, Respondent was required to accept her December 3, 2013, faxed letter as notice of resignation of her union membership.

However, I agree with Respondent that the Commission is prohibited from finding an unfair labor practice in this case because Reynolds failed to file a timely charge under §16(a) of PERA. In May 2014, Respondent sent Reynolds a letter which indicated, first, that its position was that it had not received her August 28, 2013, resignation letter and, second, that it had not accepted her December 3, 2013, letter of resignation because it was sent outside its August 1-August 31 window period. I find that when Reynolds received that letter she knew or should have realized that Respondent had not accepted her resignation. The letter also referred to her continuing “dues obligation for the coming year.” Since the letter was sent in May 2014, it was not completely clear from this letter whether the reference was to the 2013-2014 or to the 2014-2015 school year. However, in its July 23, 2014, letter, Respondent informed Reynolds that she owed it back dues in the sum of \$970 for the 2013-2014 school year and that the alleged debt would not be forgiven. I find that upon receipt of that letter Reynolds knew of the actions which constitute the alleged unfair labor practice in this case. I conclude, therefore, that the six month period in §16(a) of PERA began to run on the date she received this letter. The fact that Reynolds may not have realized that she had suffered an invasion of her legal rights or known how to go about enforcing them did not toll the statute. Reynolds was also obviously not entitled to rely on statements by Employer administrators that she “need not be concerned” about Respondent’s claim that she owed back dues. I conclude that Reynolds’ charge, filed on October 5, 2015, was untimely under §16(a) of PERA and must be dismissed on that basis. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: January 19, 2016