

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

TRUE COPY

In the Matter of:

LANSING SCHOOLS EDUCATION ASSOCIATION,
MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondents,

Merc Case No. CU18 F-023

-and-

ALEXANDRA MARIE BASHOR SHOCK,
Individual Charging Party.

APPEARANCES:

White Schneider P.C., by Jeffrey S. Donahue, for Respondents

National Right to Work Legal Defense Foundation, Inc., Amanda K. Freeman and Angel J. Valencia, for the Charging Party

DECISION AND ORDER

On May 17, 2019, Administrative Law Judge Julia A. Stern issued her Decision and Recommended Order¹ in the above-entitled matter, finding that Respondents have engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

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

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

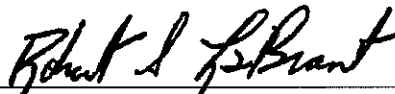
ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Edward D. Callaghan, Commission Chair



Robert S. LaBrant, Commission Member



Natalie P. Yaw, Commission Member

JUN 25 2019

Issued: _____

¹ MOAHR Hearing Docket No. 18-014022

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

In the Matter of:

LANSING SCHOOLS EDUCATION ASSOCIATION,
MICHIGAN EDUCATION ASSOCIATION,
Labor Organization-Respondents,

-and-

Case No. CU18 F-023
Docket No.18-014022-MERC

ALEXANDRA MARIE BASHOR SHOCK,
Individual Charging Party.

APPEARANCES:

White Schneider P.C., by Jeffrey S. Donahue, for Respondents

National Right to Work Legal Defense Foundation, Inc., Amanda K. Freeman and Angel J. Valencia, for the Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

On June 25, 2018, Alexandra Marie Bashor Shock, employed as a speech therapist by the Lansing School District (the Employer), filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against her collective bargaining representative, the Lansing Schools Education Association (LSEA) and the Michigan Education Association (MEA), pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MCL 423.216. Pursuant to Section 16 of PERA, the charge was assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Office of Administrative Hearings and Rules, previously the Michigan Administrative Hearing System.

On September 18, 2018, Shock filed a motion for summary disposition. On October 25, 2018, Respondents filed a response in opposition to the motion. Both parties requested oral argument. The parties then agreed that in addition to oral argument on the legal issues, a hearing would be conducted on the only factual issue in dispute, i.e. whether in February 2018 the MEA sent Shock, who is not a union member, a letter stating that she was required under the terms of her collective bargaining agreement to pay Respondent a service fee for the 2017-2018 school year. I conducted the hearing, followed by oral argument, on November 20, 2018.

Based on facts set forth in the pleadings and not in dispute, and the evidence presented at the November 20, 2018 hearing, as set forth below, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

Shock began work as a speech language pathologist for the Employer on August 14, 2017, and, as such, became a member of a bargaining unit represented by Respondent.¹ Shock did not fill out or apply to become a member of Respondent. According to Shock, in mid to late February 2018, the MEA mailed to her home address a large packet of documents which stated that Shock, as a nonmember, was required to pay money to the MEA as a “representational benefit fee.” As discussed below, the MEA denies that it ever sent Shock these documents.

On April 24, 2018, the LSEA delivered a letter to Shock through the Employer’s internal mail system. Attached to this letter was a membership application. The letter stated, “The completion of this form is terms [sic] of your employment.”

Shock alleges that by the above actions Respondent restrained and coerced her in her exercise of her Section 9 right to refrain from joining and her Section 9 right to refrain from financially assisting a union and thereby violated Section 10(2)(a) of PERA.

Findings of Fact:

2012 Amendments to Section 9 and 10 of PERA

In 2012 PA 53 the Legislature amended PERA to make it a violation of Section 10(1)(b) of PERA for a public school employer to contribute to the administration of a labor organization by collecting union dues or fees from public school employees. Public school employers with collective bargaining agreements providing for payroll deduction of union dues or fees were permitted to continue to deduct dues or service fees until the agreements expired or were terminated, extended or renewed. The amendment was made immediately effective and took effect on March 12, 2012. Enforcement of this provision was enjoined by the Federal District Court for the Eastern District of Michigan. See *Bailey v Callaghan*, 873 F Supp 2d 879 (E.D. Mich 2012). However, the injunction was dissolved by the Sixth Circuit Court of Appeals in May 2013 in *Bailey v Callaghan*, 715 F3d 956 (CA 6 2013).

In December 2012, the Legislature adopted 2012 PA 349 (Act 349). Act 349, known colloquially as the “right to work” amendments, amended Section 9 of PERA to add an explicit right to refrain from the activities protected by that section, including joining or assisting labor organizations. Section 9(1) now reads as follows:

Sec. 9. (1) Public employees may do any of the following:

- (a) Organize together or form, join, or assist in labor organizations; engage in lawful concerted activities for the purpose of collective negotiation or

¹ Prior to her marriage in April 2018, Shock’s last name was Bashor.

bargaining or other mutual aid and protection; or negotiate or bargain collectively with their public employers through representatives of their own free choice.

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

The Legislature also added a new Section 9(2):

(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.

Prior to Act 349, PERA had explicitly authorized public employers and unions to enter into agreements requiring employees to pay union dues or service fees as a condition of continued employment. Act 349 removed this provision and added a new Section 10(3) and a new Section 10(5):

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

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

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

(c) Pay any dues, fees, assessments, or other charges or expenses of any kind or amount, or provide anything of value to a labor organization or bargaining representative.

(d) Pay to any charitable organization or third party any amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other

charges or expenses required of members of or public employees represented by a labor organization or bargaining representative.

* * *

(5) An agreement, contract, understanding, or practice between or involving a public employer, labor organization, or bargaining representative that violates subsection (3) is unlawful and unenforceable. This subsection applies only to an agreement, contract, understanding, or practice that takes effect or is extended or renewed after the effective date of the amendatory act that added this subsection.

Act 349 retained the provision in Section 10, now Section 10(2)(a), that prohibited labor organizations from restraining or coercing public employees in the exercise of their rights guaranteed by Section 9.

The 2013-2018 Collective Bargaining Agreement

On March 21, 2013, the Employer and the LSEA executed a new collective bargaining agreement. Except for Article 17, the agreement was effective July 1, 2013, through June 30, 2018. The agreement stated that Article 17 would be effective immediately upon ratification and continue in effect through June 30, 2018.

Article 17(A) provided for payroll deduction of association dues and fees for members who authorized it, and for the deduction of past due association dues and fees for members who had not authorized payroll deduction. Article 17(B), entitled "Representation Benefit Fees," included the following paragraphs:

1. Any teacher who is not a member of the Association or who does not make application for membership within thirty (30) days from the date of commencement of teaching duties shall, as a condition of employment, pay to the Association a Representation Benefit Fee in an amount not to exceed the professional dues to the Association. Any non-member who makes objection pursuant to the Association's "Policy Regarding Objections to Political-Ideological Expenditures (hereinafter referred to as the Association's Policy and Procedures) shall be required to pay a reduced Representation Benefit Fee to the full extent permitted by state and federal law. The objecting nonmember's exclusive remedy shall be through the Association's Policy and Procedures together with appropriate state or federal agencies or the courts. The nonmember may authorize payroll deduction for such fees in the same manner as provided for professional dues. The Association shall provide to all nonmembers copies of the Association's Policy and Procedures.

* * *

3. In the event the non-member shall not pay the Representation Benefit Fee directly to the Association, or authorize payment through payroll deduction, the

Board shall, upon proper written notice from the Association, deduct the Representation Benefit Fee from the teacher's wages and remit same to the Association pursuant to the conditions described in Section A.2 above for professional dues.

4. Should the provision for payroll deduction of the Representation Benefit Fee in paragraph 3 above be found contrary to law, the parties agree to negotiate procedures for termination of employment.

The Association's Policies and Procedures, as referred to in the agreement, are the procedures established by the MEA for calculating a "reduced agency fee" based on a proportionate amount of the sums the MEA and its affiliate, the National Education Association (NEA) spend on collective bargaining, contract administration, and other matters affecting nonmembers' terms and conditions of employment. The Policies and Procedures also describe the process for nonmembers who object to Respondent's calculation of the reduced fee to challenge the reduced fee before an impartial decisionmaker, in accord with the U.S. Supreme Court's decision in *Chicago Teachers Union v Hudson*, 106 S Ct 1066 (1986).

After the injunction against enforcement of 2012 PA 53 was dissolved in May 2013, the Employer ceased deducting dues or fees from paychecks. However, the Employer and the LSEA did not negotiate procedures for termination of employment as set out in Article 17(B)(4).

Shock and the 2017-2018 School Year

As noted above, Shock was hired by the Employer as a speech therapist beginning with the 2017-2018 school year. Prior to the beginning of the school year, the LSEA gave Shock a letter welcoming her to its bargaining unit and an application to become a member of Respondent. Shock did not fill out the application form. Shock received another application form in the Employer's interoffice mail and a third mailed to her home between the beginning of the school year and the end of December 2017 and did not return either. Shock, however, did not directly communicate to either the LSEA or the MEA that she did not wish to become a union member.

In accord with its Policies and Procedures as described above, the MEA's practice has been to send out a so-called *Hudson* packet each December to members of its bargaining units who have not become union members but who, in Respondent's judgment, are covered by a collective bargaining agreement that requires nonmembers to pay a service fee as a condition of employment. A copy of the packet that the MEA mailed to nonmembers throughout the State of Michigan on December 17, 2017, was entered into the record. The packet had a cover letter which addresses the nonmember by name. Its first paragraph stated:

You are employed in a bargaining unit represented by an affiliate of the Michigan Education Association (MEA). According to our latest information, you have chosen not to become a member of the association. Your collective bargaining agreement contains a provision which requires you to join the association or pay a service fee.

This packet included a copy of the “Association Policy and Procedures;” lists of expenditures made by the MEA, the NEA, and, if applicable, a local association, during the previous fiscal year, ending in August together with supporting documents; identification of expenditures deemed “chargeable” to nonmember objectors and explanations of these determinations; and a calculation of the “reduced fee” as determined the MEA’s executive director, for the current school year. The packet also includes a “service fee election form.” This form, unlike most of the rest of the documents in the packet, was specific to the individual in that it included the amount which the MEA had calculated as that member’s annual dues and the amount of his or her reduced fee. The service fee election form gave employees the choice of becoming a member and paying dues or not becoming a member and selecting from a list of three options: (1) paying a service fee equal to the amount of dues; (2) paying a reduced service fee in the amount specified on the form, (3) paying the reduced service fee and challenging the calculation of that fee per Respondent’s procedures. The service fee election form cautioned employees that failing to choose one of the above options “will cause you to pay a fee equal to Association dues less the pro rata cost of liability insurance.” The packet also included an application form for membership in the MEA, NEA and local association and options for payment, including monthly payments, one payment by the end of October and the remainder by the end of the following February, and a single lump sum payment by October 31.

Shock testified that sometime near the end of February 2018, a packet of documents approximately two inches thick was mailed to her home from the MEA. Shock studied the first five or six pages of the document and concluded that it was requesting that she pay approximately \$653, money the MEA claimed that she owed for representation services from the LSEA. After looking briefly through the rest of the documents, she discarded them. Shock was shown a copy of the packet entered into the record at the hearing and identified it as the packet she received from the MEA in late February.

Cynthia McCurtis is the MEA’s Membership Supervisor. McCurtis supervises a team of six individuals who handle billing inquiries, process new membership applications, and maintain existing member records. According to McCurtis, her team is also responsible for “opting members out of the union upon request.” McCurtis testified that the MEA relied on its local association to give it the names of members and the names of bargaining unit employees who have not joined the union so that the MEA can add them as fee payers. The membership team, along with the MEA’s finance department, have been responsible for preparing the MEA’s annual *Hudson* packet to send to nonmembers covered by union security agreements.

The program the MEA uses to manage its membership records is called netForum. It has a separate program, Billhighway, to manage its billing. A screenshot from the billing software on or around the date of the hearing indicated that Shock had been identified by the MEA as “an opt-out litigant,” that she had not been billed for any service fee, that she had never paid any service fee, and that her current outstanding balance was zero. A second screen shot, from the invoice and payment ledger, was also admitted. According to this document, Shock was first entered into the system as a new hire “OBUM” on February 5, 2018, with a retroactive hire date of September 1, 2017. The acronym OBUM stands for “other bargaining unit member,” which means that the individual has not yet joined the union but the MEA is not sure yet whether he or

she wants to do so. Shock was added to the records by Jessica Fowler, employed by the MEA as a field membership assistant (FMA). At the time she created the record, Fowler also entered the following notes: "Lansing E has agency shop until 6/31/18. FMA will contact membership to have Hudson packet issued." McCurtis testified that the invoice and payment ledger indicates that prior to February 5, 2018, the MEA did not have Shock anywhere in its record-keeping systems. The next entry for Shock on the invoice and payment ledger page is dated June 28, 2018 and indicates that Shock had been confirmed as a National Right to Work Foundation litigant and was not to be contacted further by Respondent.

An email from Fowler to the MEA's membership department dated February 28, 2018, was also entered into the record. Attached to the email is a list of the names, salaries, hire dates and home addresses of twenty-five individuals, including Shock, hired between January 25, 2016, and January 8, 2018. Fowler identified these individuals as her "current list of fee payers from Lansing that were not in the system in time to automatically be sent a *Hudson* packet." Fowler noted that she was still waiting for a home address for one of these individuals.

According to McCurtis, Fowler's email was consistent with the MEA's records indicating that Shock was not in the MEA's membership system, either as a member or as a feepayer, on December 17, 2017, when the MEA mailed the MEA's annual *Hudson* packet and therefore would not have received the packet in December. McCurtis testified that the MEA sends out late *Hudson* packets to individuals who were not in the membership system at the time the December packet was mailed. The late *Hudson* packets are not all mailed at the same time. However, according to McCurtis, her search of the records indicated that that none of the individuals listed in Fowler's email, including Shock, received a late *Hudson* packet during the 2017-2018 school year. McCurtis explained that packets were not sent because Fowler did not supply these names in time for the membership office to send them, give the individuals thirty days to return the service fee election form, enter the type of fee payer class into the record, and then wait an additional month to start billing before the school year ended.

An excerpt from the MEA's master spreadsheet of fee payers was also admitted into the record. In addition to Shock's name, this document lists Shock's bargaining unit, her "fee payer class," which is marked "none," and a series of monetary amounts including amounts labeled as "FP MEA Fee A," "FP MEA Fee B," and "FP MEA Fee C." The document also has boxes labeled "date mailed," "date postmarked," and "payment received," all of which are blank on Shock's record. McCurtis testified that if Shock had been sent a *Hudson* packet in 2017-2018 the date the packet was mailed and the date it was postmarked would have been entered on this spreadsheet. She also testified that had Shock been sent a *Hudson* packet in 2017-2018 and not responded within thirty days, her class would have been changed from none to "A," which is the highest rate. Then, according to McCurtis, if she had not responded after another thirty days the MEA would have begun to bill her. McCurtis testified that in preparation for the hearing she had done a thorough search of the MEA's records and could not find any record that Shock had been sent a bill.

McCurtis testified that only her office sends out *Hudson* packets, including late *Hudson* packets. According to McCurtis, Fowler, as a field membership assistant, had no access to the packets and therefore could not have sent Shock a *Hudson* packet.

On April 24, 2018, Shock received a short memo from LSEA through the Employer's interoffice mail which welcomed her to her new position with the school district. Attached to the memo was the application form to become a member of the LSEA, MEA, and NEA. The memo stated, "Please take a moment to fill out our MEA continuing membership application and return it to our office. The completion of this form is terms [sic] of your employment." Shock did not fill out the application.

Shock testified that on the following day, April 25, 2018, she was approached by Christina Frenzel, another speech language pathologist, who is a member of the LSEA executive board. Frenzel asked Shock if she had received a packet of mail from the union because Frenzel had noticed that Shock's name was on a list of individuals who had not paid the bargaining unit representation fee. Shock said that she had received the letter but had not paid the fee because she could not afford it. Frenzel told Shock that she was obligated to pay as a term of the contract and that she could set up a payment plan.

On May 21, 2018, Shock, through her attorney, sent the MEA a letter alleging that it had violated Shock's right under PERA to refrain from joining a union and her right not to pay either dues or fees as a condition of employment. On June 5, 2018, Shock received a letter from the MEA's attorney. The letter stated that it was unclear from its records whether the MEA had demanded payment from Shock, but that, if made, this demand would not have violated PERA because Respondent and the Employer had an agency shop agreement that was valid through June 30, 2018. The letter also asserted that merely sending Shock a membership application did not violate PERA.

Discussion and Conclusions of Law:

In *Taylor Sch Dist v Rhatigan*, 318 Mich App 617 (2016), lv den 501 Mich 693, the Court held that the Act 349 amendments properly applied to union security agreements, like the one in the instant case, entered into between the enactment of those amendments and their effective date. It held that Section 10(5) of Act 349 did not authorize unions and employers to enforce such agreements after Act 349 took effect on March 28, 2013.

The Commission has since held that even where the agreement did not condition an employee's continued employment on payment of the service fee, a union's attempts to require nonmembers to pay a service fee under a union security agreement entered into after Act 349 was enacted violates Section 10(2)(a) because these attempts interfere with employees' Section 9 right to refrain from financially assisting a labor organization. In *MEA and its affiliate Ann Arbor Education Assn (Robinson)*, 31 MPER 59 (2018), the MEA sent Robinson, after he resigned his union membership, a *Hudson* packet which, like the *Hudson* packet in this case, contained a service fee election form and informed Robinson that his collective bargaining agreement contained a provision which required him to either join the union or pay a service fee. The MEA also subsequently sent Robinson a bill for a service fee for the school year following his resignation. The Commission's decision finding that the union security agreement was unenforceable and that the MEA's actions violated Section 10(2)(a) was affirmed by the Court of Appeals in an unpublished decision issued on March 19, 2019, docket no. 343570, 32 MPER 48.

The Commission reached the same conclusion in a related case involving the same collective bargaining agreement, *Ann Arbor Education Assn, (Finnan and Merante)* 31 MPER 55 (2018). In that case, both Finnan and Merante were sent *Hudson* packets with service fee election forms in December after they had resigned their union memberships and both returned their forms with payment, with Finnan indicating that he was paying under protest. This Commission decision was also upheld by the Court of Appeals in an unpublished opinion issued on March 19, 2019, docket no. 343577, 32 MPER 49.

In this case, Shock was never sent a bill for a service fee. However, she asserts that the MEA violated her right not to financially assist a labor organization by demanding, in the *Hudson* packet, that she pay a service fee and wrongfully telling her that her collective bargaining agreement required her to pay that fee. Shock testified that she received the packet in late February 2018. Respondent maintains that it never sent Shock that packet. Respondent's witness, McCurtis, testified that Shock could not have received that packet. I find both Shock's and McCurtis' testimony credible. However, Shock testified that she personally received the packet, while McCurtis could only testify that if a packet had been sent and the MEA had followed its normal procedures, the MEA's records would have reflected that a packet had been mailed to her. However unlikely it may seem that the MEA mailed Shock a *Hudson* packet without McCurtis' knowledge and without recording that event anywhere in its membership or billing systems, I conclude that Shock's testimony that she received the packet in the mail should be given more weight. I find as a matter of fact, therefore, that Shock was mailed a late *Hudson* packet and received it sometime in late February 2018. I also note that according to Shock's testimony at the hearing, Frenzel, a member of the LSEA's executive board, later spoke personally to Shock to tell her that the collective bargaining agreement obligated her to pay the service fee.

Respondents also argue that the memo Shock received on April 24, 2018, did not constitute unlawful coercion or restraint, first, because merely sending Shock a membership application was not coercive; second, because there is no evidence that the LSEA or the MEA took any action against Shock when she failed to complete the membership application; and third, because the fact that Shock did not contact the LSEA to object to the memo after she received it indicates that she was not coerced or restrained.

Shock has not alleged that it was unlawful for Respondent to send her a membership application or to ask her to become a member. What she alleges to have been unlawful was the inclusion of the statement, "The completion of this form is terms [sic] of your employment." Respondent argues that this statement was too ambiguous and too vague to rise to the level of a threat, citing *Bank v Michigan Education Assn*, 315 Mich App 496, 505 (2016). In that case, the Court of Appeals held that a union's statement to an employee that she owed membership dues for the period after she had resigned from the union was not sufficient to support her request for an injunction prohibiting the union from seeking to collect those dues.

Section 10(1)(a) of PERA prohibits public employers from interfering with, restraining, or coercing public employees in the exercise of their Section 9 rights. The Commission is frequently asked to determine whether a statement or statements made by a public employer to an employee violate this section. In making this determination, the Commission examines whether the employer's statement reasonably tended to interfere with, restrain, or coerce the employee in the exercise of his

or her Section 9 rights. The Commission has consistently held its determination of whether an employer's statement violates Section 10(1)(a) does not depend on the employer's motive or on whether the employee was actually coerced. *New Buffalo Bd of Ed*, 2001 MERC Lab Op 47, 49; *City of Greenville*, 2001 MERC Lab Op 55, 56. Rather, the test is an objective one, i.e., whether a reasonable employee would interpret the statement as an express or implied threat. *Eaton Co Trans Auth*, 21 MPER 35 (2008); *City of Greenville*, at 56. *New Buffalo Bd of Ed*, at 48. In determining whether the public employer's statement constitutes a violation of Section 10(1)(a), the Commission looks both at the content and the context of the employer's statement. *City of Inkster*, 26 MPER 5 (2012); *New Buffalo Bd of Ed* at 48; *New Haven Cmty Sch*, 1990 MERC Lab Op 167, 179.

The "threats" made by a public employer typically involve discipline or other actions involving an employee's employment status or terms and conditions of employment. However, I find that the Commission's test for assessing the coercive nature of employer statements can also usefully be applied to union's statements to unit members regarding their obligation to join the union or pay union dues or fees. That is, the test should be whether a reasonable employee would interpret his union's statement as a threat to take action that would violate the employee's Section 9 rights. This determination should not depend on whether the union intended the statement as a threat, or whether the recipient was, in fact, coerced.

I conclude that under the above test, both the statement in the April 24, 2018 memo that completing the application for union membership was "terms of [Shock's] employment" and statements contained in the *Hudson* packet Shock received constituted unlawful restraint and coercion under Section 10(2)(a) of PERA. The collective bargaining agreement between the Employer and the Union did not, on its face, require Shock to become a member of Respondent. Moreover, because under Section 9 of PERA Shock has a right to refrain from joining a union, Respondent could not lawfully compel Shock, by any means or method, to become a union member. I agree with Respondent that the phrase "term of employment" is somewhat ambiguous. However, I find that the sentence in the memo clearly conveys to the recipient that he or she is required to apply for union membership. I find that while a union subject to PERA may not be required to inform the members of its bargaining unit that they do not have to become members of the union, it cannot, consistent with its obligation to act toward them in good faith, tell them that they do have this obligation. Shock did not respond to the memo by filling out the application. However, the test is not whether Shock was, or felt she was, coerced to become a union member by the memo, but whether a reasonable person would feel coerced. I find that a reasonable employee, when told by his bargaining agent that he must do something as a "term of his employment," and given no further explanation, would conclude that either the union or his employer would take some action if he failed to do it. I conclude, therefore, that a reasonable employee would have interpreted the LSEA's statement in its April 24, 2018 memo as an implied threat to take some type of action to compel him to become a member of Respondent. I find the statement in the April 24, 2018, memo that filling out a union membership application was a term of Shock's employment to constitute unlawful coercion or restraint of Shock's right to refrain from joining a union and a violation of Section 10(2)(a) of PERA.

Like the statement in the April 24, 2018, memo that filling out a union membership application was a term of the Shock's employment, the statement in her *Hudson* packet that her collective bargaining agreement contained a provision which required her to join the union or pay a

service fee was legally incorrect. Because that provision was entered into after Act 349 was enacted, it could not lawfully be enforced after Act 349 took effect. That sentence, and the service fee election form which was included in Shock's *Hudson* packet, clearly communicated to Shock that her only options were to become a union member and pay dues or elect one of the service fee options. As the Commission found on similar facts in *Ann Arbor Education Assn, (Finnan and Merante)*, 31 MPER 55 (2018), even though the *Hudson* packet did not imply that Shock's employment would be in jeopardy if she did not pay the service fee, it nevertheless constituted a demand for payment of that fee. As the Commission held in that case, by demanding that Finnan and Merante pay a service fee that they did not owe, Respondent unlawfully restrained or coerced them in their right under Section 9 of PERA to refrain from financially assisting a labor organization. As discussed above, the determination of whether a statement constitutes unlawful coercion or restraint does not depend on whether the employee was in fact coerced, but whether a reasonable employee would interpret the statement as a threat. Thus, the fact that Finnan and Merante paid the service fees the union demanded but Shock did not does not serve to distinguish the cases. I find that Respondent unlawfully restrained or coerced Shock in the exercise of her Section 9 right to refrain from financially assisting a union by demanding, in the *Hudson* packet she received in February 2018, that Shock pay Respondent a service fee.

Based on the findings of fact set and the conclusions of law set forth above, I conclude that Respondent violated Section 10(2)(a) of PERA and I recommend that the Commission issue the following order.

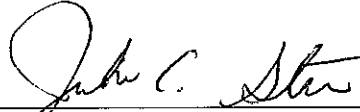
RECOMMENDED ORDER

Respondents Lansing Schools Education Association and Michigan Education Association, their officers, agents, and representatives are hereby ordered to:

1. Cease and desist from restraining or coercing Alexandra Marie Bashor Shock in the exercise of her right guaranteed by Section 9 of PERA to refrain from joining a labor organization by implicitly threatening to take action if she failed to become a member of Respondent.
2. Cease and desist from restraining or coercing Alexandra Marie Bashor Shock in the exercise of her right guaranteed by Section 9 of PERA to refrain from financially supporting a labor organization by demanding that she, a nonmember, pay them a service fee for the 2017-2018 school year.
3. Refrain from collecting or attempting to collect a service fee from Shock for the 2017-2018 school year.

4. Post the attached notice to bargaining unit members in all places on the premises of the Lansing School District where notices members of the bargaining unit represented by the Lansing Schools Education Association are customarily posted for a period of 30 consecutive days or, in the alternative, mail or email copies of this notice to all members of this bargaining unit.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Julia C. Stern
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules

Dated: May 17, 2019

NOTICE TO BARGAINING UNIT MEMBERS

UPON THE FILING OF AN UNFAIR LABOR PRACTICE CHARGE BY ALEXANDRA BASHOR SHOCK, AN INDIVIDUAL, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND THE **LANSING SCHOOLS EDUCATION ASSOCIATION AND THE MICHIGAN EDUCATION ASSOCIATION** TO HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

WE HEREBY NOTIFY THE MEMBERS OF OUR BARGAINING UNIT THAT:

WE WILL NOT restrain or coerce Alexandra Marie Bashor Shock in the exercise of her right guaranteed by Section 9 of PERA to refrain from joining a labor organization by implicitly threatening to take action against her if she failed to become a member.

WE WILL NOT restrain or coerce Alexandra Marie Bashor Shock in the exercise of her right guaranteed by Section 9 of PERA to refrain from financially supporting a labor organization by demanding that she, a nonmember, pay us a service fee for the 2017-2018 school year.

WE WILL NOT collect or attempt to collect a service fee from Shock for the 2017-2018 school year.

LANSING SCHOOLS EDUCATION ASSOCIATION

By: _____

Title: _____

Date: _____

MICHIGAN EDUCATION ASSOCIATION

By: _____

Title: _____

Date: _____

If this notice is not mailed to bargaining unit members, it must remain posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510. Case No. CU18 F-023